Nos. 24-20 & 24-151

IN THE
Supreme Court of the United States

MIRIAM FULD, ET AL.,

Petitioners,

v.

PALESTINE LIBERATION ORGANIZATION, ET AL.,

Respondents.

UNITED STATES OF AMERICA,

Petitioner,

v.

PALESTINE LIBERATION ORGANIZATION, ET AL.,

Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENTS

GASSAN A. BALOUL
Counsel of Record
MITCHELL R. BERGER
SQUIRE PATTON BOGGS (US) LLP
2550 M Street, NW
Washington, D.C. 20037
(202) 457-6000
gassan.baloul@squirepb.com

February 28, 2025 *Counsel for Respondents*

QUESTION PRESENTED

The Promoting Security and Justice for Victims of Terrorism Act (PSJVTA) mandates that courts shall "deem" that Respondents "have consented" to personal jurisdiction in the United States if they engage in either of two types of predicate conduct: (i) payments relating to Palestinians imprisoned or killed as a result of committing overseas attacks harming American nationals; or (ii) any actions in the United States other than participation in the United Nations, meetings with government officials, and activities "ancillary" thereto.

In cases before the PSJVTA, courts uniformly held that the payments, which occur entirely outside the United States, do not support personal jurisdiction because they are not connected to the forum or to Plaintiffs' claims. For the same reasons, courts held that Respondents' alleged U.S. activities cannot support jurisdiction. Now, under the broad provisions of the PSJVTA, Petitioners assert that Respondents "consented" to personal jurisdiction in the United States by engaging in the same conduct previously held insufficient to support the exercise of jurisdiction as a matter of due process.

The question presented is:

Whether the Second Circuit correctly held that the PSJVTA violates due process by requiring courts to "deem" that Respondents "have consented" to personal jurisdiction based on conduct that cannot support a presumption that Respondents have submitted to jurisdiction in the United States.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitution, Statutes, and Rules

Other Authorities

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

Relevant constitutional and statutory provisions are reproduced in the appendix. App. 1a-5a.

INTRODUCTION

The PSJVTA is the latest legislative attempt to undo an unbroken line of cases holding that Respondents PA and PLO are not subject to personal jurisdiction in the United States for their alleged involvement in terrorist attacks in Israel and Palestine. Time and again, courts have held that exercising personal jurisdiction over Respondents would violate due process because the attacks did not target Americans, and Respondents lack any other constitutionally-sufficient connection to the United States. Because jurisdictional due process protections are rooted in the Constitution, these decisions cannot be undone by legislation.

As the Second Circuit held, the PSJVTA attempts an end-run around settled constitutional analysis by declaring that Respondents always shall be "deemed" to "consent" to personal jurisdiction when they engage in the same conduct courts have previously held *insufficient* to support jurisdiction under the Due Process Clause. Pet. App. 25a-38a, 44a. [1] The PSJVTA accordingly seeks to elide the constitutional boundaries of due process recognized in prior cases.

The Second Circuit saw through this ruse, holding—like every other federal court to consider the issue—that "deemed consent" imposed by legislative fiat cannot paper over the lack of any constitutionally-meaningful connection between Respondents, the forum, and the conduct that gave rise to Plaintiffs'

[1] Pet. App. refers to the appendix to Plaintiffs' petition.

claims. As the courts below recognized, the PSJVTA only pretends to replace traditional due process "minimum contacts" analysis with "consent." Respondents have not taken any actions that could be understood as submission to personal jurisdiction: they did not sign a contract agreeing to jurisdiction, they did not accept any benefit from the Government conditioned on submission to jurisdiction, and they did not take any other actions signifying their express or implied agreement to litigate these disputes in the United States. Rather, Respondents have repeatedly and successfully challenged personal jurisdiction on facts nearly identical to those here.

The court of appeals scrupulously followed this Court's guidance in *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122 (2023) and *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee* ("*Bauxites*"), 456 U.S. 694 (1982) in holding that Respondents' conduct does not meet due process standards for consent-based jurisdiction. Respondents have not taken any action that manifests submission to jurisdiction under *Bauxites*. And the PSJVTA does not grant any benefit to Respondents in exchange for submission to jurisdiction that could bring this case closer to *Mallory*. The court of appeals thus explained that "Congress cannot take conduct otherwise insufficient to support an inference of consent" and "brand it as 'consent.'" Pet. App. 44a.

Under *Mallory*, neither form of conduct relied upon by Petitioners—making payments in Palestine and conducting UN-related activities in the United States—signals Respondents' submission to personal jurisdiction in the United States. As to the payments, that is because the United States does not have antecedent authority to permit them in the first place—just as Pennsylvania could not offer a company

the right to do business in New Jersey in exchange for consent to jurisdiction in Pennsylvania. As to the activity prong, the PSJVTA specifically excludes "official" UN business and "ancillary" activities, does not waive or withdraw preexisting statutory restrictions on Respondents' activities in the United States, and does not permit any U.S. activity at all by Respondents. In turn, since at least the PSJVTA's effective date, Respondents perform no U.S. activities outside the UN sphere (whether those activities are denominated "official" UN activity or "ancillary" activity). The PSJVTA merely avoids interfering with the United Nations' preexisting authority to grant international actors "invitee" status.

Allowing Congress to impose "consent" on Respondents in these circumstances would swallow the due process test and eviscerate the meaning of consent. If due process required nothing more than notice, then nothing would stop Congress from decreeing that a defendant shall be "deemed" to have "consented" to personal jurisdiction by engaging in any activity anywhere in the world. These are not merely theoretical concerns. That is precisely what the PSJVTA purports to do here. The Government's argument that such jurisdiction could satisfy "fundamental fairness" under a "flexible" due process standard that "*depends on the type of actor involved*" (Gov't Br. 5, 25), underscores Petitioners' failure to offer any meaningful or consistent guardrails.

Nor can the PSJVTA be upheld as an exercise of the enumerated power to punish extraterritorial offenses. Although Petitioners significantly overread the scope of that power, the bottom line is that Congress cannot impose personal jurisdiction as a punishment or sanction. This Court's decisions hold that personal jurisdiction must be independently

established consistent with due process minimum contacts even when Congress has the power to enact statutes with extraterritorial substantive reach.

Nor does Plaintiffs' historical argument save the statute. The founders believed due process of law protected the natural rights of individuals, and early American courts regularly held that personal jurisdiction protections were safeguarded from Congressional interference. Neither the payments nor Respondents' alleged "official" and "ancillary" UN-related actions are within the territorial authority of the United States. The Framers never imagined that Congress would have power to create jurisdiction over foreign actors for conduct not within the territorial limits of, and not directed at, the United States.

STATEMENT

The PA is the domestic government of parts of the West Bank and the Gaza Strip, collectively referred to as "Palestine." Pet. App. 6a. The PA provides conventional government services, including public safety, healthcare, transportation, a judicial system, and public schools, with over 155,000 government employees. *Id.* at 143a-44a. Under the Oslo Accords, the PLO conducts Palestinian foreign affairs, including operating its mission to the United Nations. *Id.* at 6a; *see also* JA 65-68 (State Dept. Statement of Interest). The United States does not recognize Respondents as sovereign. Gov't Br. 3; Pet. App. 153a.

Respondents are currently forbidden from operating in the United States. *See* 22 U.S.C. §§ 5201(b), 5202; Palestinian Anti-Terrorism Act of 2006, Pub. L. No. 109-446, § 7(a)[2], 120 Stat. 3318 (22 U.S.C.

[2] Plaintiffs erroneously cite Section 7(b), rather than Section 7(a), of the Palestinian Anti-Terrorism Act, which is the provision cited by the Second Circuit. Pls. Br. 45 n.11 (citing Pet.

§ 2378b note); *United States v. PLO*, 695 F. Supp. 1456, 1465-68, 1471 (S.D.N.Y. 1988). An invitation from the United Nations affords the sole exception, permitting Palestine's UN mission to conduct activities relating to its role as a UN Non-Member State "invitee." Pet. App. 10a n.2. The PLO had a diplomatic mission in Washington, D.C., but that office closed in 2018, before the PSJVTA became effective. *Ibid.* Respondents have no other offices and conduct no activities in the United States. *Id.* at 28a, 64a.

A. Courts Unanimously Agree Respondents Are Not Subject to Personal Jurisdiction in the United States.

Because Respondents' alleged actions do not have any constitutionally-meaningful connection to the United States, federal courts have long held that exercising personal jurisdiction over Respondents for alleged attacks in Israel and Palestine would violate due process. In *Sokolow*, Plaintiffs brought Anti-Terrorism Act claims for attacks allegedly assisted by Respondents. *Id.* at 140a. The Second Circuit dismissed for lack of jurisdiction because Respondents' U.S. activities were not related to the attacks, and the attacks themselves "were not expressly aimed at the United States." *Id.* at 170a-78a. That Americans were injured was "random and fortuitous." *Id.* at 170a. Plaintiffs' experts confirmed the "killing was indeed random" as the attackers fired "indiscriminately." *Ibid.*[3]

App. 28a n.9). Section 7(a) prohibits the PA from operating in the U.S. absent presidential certification. The Government acknowledges Section 7(a) remains in effect. Gov't Br. 7, 42.

[3] The D.C. Circuit reached the same conclusion in look-alike cases. *Livnat v. Palestinian Auth.*, 851 F.3d 45, 58 (D.C. Cir. 2017); *Klieman v. Palestinian Auth.*, 923 F.3d 1115, 1127 (D.C.

Plaintiffs sought review by this Court, but the United States recommended against certiorari. Resp. App. 7a. It warned that Plaintiffs' Fifth Amendment analysis was "not [] well developed" and that the decision did "not conflict with any decision of this Court [or] implicate any conflict among the courts of appeals." *Id.* at 13a, 21a-24a. The United States rejected the argument that denying jurisdiction harmed other anti-terrorism efforts: "[N]othing 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 24a. This Court denied certiorari. *Sokolow v. PLO*, 584 U.S. 915 (2018).

B. Congress Tries Different Approaches to Jurisdiction in the ATCA and the PSJVTA.

In response to these decisions, Congress passed the Anti-Terrorism Clarification Act of 2018 ("ATCA"), Pub. L. No. 115-253, 132 Stat. 3183 (2018). The ATCA provided that Respondents "shall be deemed to have consented to personal jurisdiction" if they accepted either of two government benefits: (1) specified U.S. foreign assistance, or (2) maintaining a U.S. office pursuant to an Executive Branch waiver of the statutory prohibitions on Respondents' activities in the United States.

The *Sokolow* plaintiffs sought to revive their case under the ATCA by moving to recall the mandate. The Second Circuit denied their request because Respondents did not accept either of the government

---

Cir. 2019); *Shatsky v. PLO*, 955 F.3d 1016, 1037-38 (D.C. Cir. 2020).

benefits specified in the ATCA, and given the interest in judicial finality. Pet. App. 134a-35a; *see also Klieman*, 923 F.3d at 1128. The *Sokolow* plaintiffs petitioned for certiorari, but Congress intervened again by enacting the PSJVTA in December 2019.

The PSJVTA requires courts to always "deem" that Respondents "consent" to personal jurisdiction if, after certain dates, they engage in either of two types of conduct: (i) outside the United States, making payments relating to Palestinians imprisoned or killed as a result of committing overseas attacks harming American nationals; or (ii) in the United States, engaging in "any activity" other than UN participation, meetings with government officials, and activities "ancillary" thereto. 18 U.S.C. § 2334(e). The PSJVTA, in other words, takes the same conduct previously held as insufficient to create personal jurisdiction, and instructs courts to treat it as "deemed consent" to jurisdiction.

This Court issued a GVR for further consideration in light of the PSJVTA. Pet. App. 13a. The *Fuld* plaintiffs filed a separate case, relying on the PSJVTA as the "sole basis" for jurisdiction. *Ibid.* The Government intervened in both cases to defend the statute.

C. The Lower Courts Unanimously Hold that Applying the PSJVTA Would Violate Due Process.

Respondents raised an as-applied challenge to the PSJVTA, arguing that the conduct alleged by Plaintiffs could not give rise to valid "consent" to jurisdiction. *Sokolow* C.A. Def. Supp. Br. #569 at 7 ("PSJVTA … is unconstitutional as applied to Defendants in these cases"); *Fuld* C.A. Def. Supp. Br. #222 at 7 (same); *Sokolow* & *Fuld* Oral Arg. (2d Cir.

May 3, 2023) at 20:30 ("This is not a facial challenge. This is an as applied challenge to the statute."). Both district courts held that the PSJVTA's "deemed consent" provisions violated the Fifth Amendment's Due Process Clause. Pet. App. 15a, 60a. They reviewed extensive evidence and briefing regarding the factual predicates of the PSJVTA, but declined to decide if the activities predicate was satisfied. *Id.* at 15a, 67a-68a, 74a. Two other courts reached the same conclusion. *Shatsky v. PLO*, No. 18-12355, 2022 WL 826409, *4-5 (S.D.N.Y. Mar. 18, 2022); *Levine v. PLO*, 688 F. Supp. 3d 1001, 1010 (D. Colo. 2023).

The Second Circuit affirmed, holding that the PSJVTA's "deemed consent" scheme "cannot support a fair and reasonable inference of the defendants' voluntary agreement to proceed in a federal forum." Pet. App. 26a. "Congress cannot take conduct otherwise insufficient to support an inference of consent, brand it as 'consent,' and then decree that a defendant, after some time has passed, is 'deemed to have consented' to the loss of a due process right for engaging in that conduct." *Id.* at 44a. "This unprecedented framework for consent-based jurisdiction," the court concluded, "predicated on conduct that is not 'of such a nature as to justify the fiction' of consent, cannot be reconciled with 'traditional notions of fair play and substantial justice.'" *Ibid.*

The Second Circuit relied on this Court's recent decision in *Mallory*, which "underscores" the difference "between the PSJVTA and business registration statutes," because unlike the statute at issue in *Mallory*, the "PSJVTA does not require that the PLO and the PA consent to jurisdiction as a condition of securing a legal right to do business in the United States, which remains prohibited under

current law." Pet. App. 35a. Unlike the corporate defendants in *Mallory*, Respondents did not accept "some in-forum benefit in return for an agreement to be amenable to suit in the United States." *Ibid.* The court thus affirmed the dismissal in *Fuld* and denied the motion to recall the *Sokolow* mandate. Pet. App. 52a, 70a.

The Second Circuit then denied *en banc* review. In a concurrence to that denial, Judge Bianco (a member of the Panel) explained that nothing in the Panel's opinion requires an "exchange of benefits" as the sole basis to infer consent, and that the PSJVTA in any event falls outside the *Mallory* line of "exchange of benefits" cases. *Id.* at 212a-15a. Adopting the new "nexus" tests proposed by Petitioners, he explained, "would allow Congress to subject any foreign entity to personal jurisdiction in the United States, even in the absence of any contacts with the United States, if that entity knowingly and voluntary engages in any conduct around the world (with some undefined nexus to the United States) after Congress enacts legislation deeming the continuation of that conduct to constitute consent." *Id.* at 216a. This "would allow the government to declare conduct to be consent, even if that conduct could not reasonably be considered to be consent." *Ibid.*

SUMMARY OF ARGUMENT

1. To establish valid "consent," a plaintiff must demonstrate "actions of the defendant" that support a "presumption" the defendant submitted to jurisdiction in the forum. *Bauxites*, 456 U.S. at 704-09 (discussing the "*Hammond Packing* presumption"). A *Bauxites* "presumption" of "legal submission to … jurisdiction" must rest on conduct by the defendant that is "material" or "related" to the issue of jurisdiction over the defendant. *Ibid.*; *see* Pet. App. 31a (facts underlying *Hammond Packing* presumption were "material" and "related to" jurisdiction). In applying this rule, this Court has distinguished between a defendant's voluntary conduct signaling submission to jurisdiction, and "'mere assertions' of power" by the forum to impose jurisdiction on a nonconsenting defendant. *Id.* at 704-05; *see also College Savings Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 675 (1999) (State must make "a 'clear declaration' that it intends to submit itself to our jurisdiction").

As one barometer for submission under *Bauxites*, courts recognize a narrow category of "implied consent" statutes by which a party agrees to personal jurisdiction by accepting a benefit conditioned by the forum on consent. This Court's recent decision in *Mallory*—where all four opinions cited *Bauxites*—falls squarely within this category. As the Court explained, the business registration statute at issue in *Mallory* required foreign corporations to submit to jurisdiction "*in exchange for* status as a registered foreign corporation and the *benefits* that entails." 600 U.S. at 127 (plurality op.) (emphasis added); *see also id.* at 167 (Barrett, J., dissenting) (explaining the majority's standard "casts [the statute] as setting the terms of a bargain"). Though this Court fractured on whether

the bargain was fair, everyone agreed that Norfolk Southern had accepted the benefits of the bargain.

This case is the opposite of *Mallory*. The PSJVTA offers no exchange from which the presumption of "consent" or submission can be reasonably inferred. *See* Pet. App. 28a, 35a-36a & n.13. The PSJVTA creates two triggers for "deemed consent" jurisdiction. In the first, the statute provides that a payment program limited exclusively to Palestine, which courts had previously held was not aimed at the United States in any way, creates "deemed consent" jurisdiction in the United States. Unlike the statute in *Mallory*, neither Congress nor the Executive has antecedent authority to grant Respondents permission to make, or not make, those payments. The PSJVTA simply punishes Respondents for the program. Respondents have ended that program, but the statute imposes personal jurisdiction for making payments that the United States had no power to permit or prohibit in the first place.

The second trigger provides that Respondents shall be "deemed" to consent to jurisdiction if they undertake "any activity" in the United States that is not part of or "ancillary" to United Nations or diplomatic activity. Like Pennsylvania in *Mallory*, the United States can exclude Respondents from its territory. And it has successfully done so. But unlike the statute in *Mallory*, the PSJVTA does not grant any territorial access to Respondents, does not waive or withdraw preexisting statutory restrictions on Respondents' U.S. activities, and does not permit any activity at all by Respondents. *See* Pet. App. 29a, 35a. The activities prong does not offer any "benefit" for Respondents to accept, in exchange for their purported consent. And in any event, Respondents

have not taken non-UN actions in the United States that could trigger that prong in the first place.

The Government's new "exchange of undertakings" rationale for the PSJVTA (Gov't Br. 20) does not solve this problem. The only "benefit" offered to Respondents is the "*benefit of avoiding jurisdiction in ATA suits*." Gov't Br. 41 (emphasis added). This is entirely circular, and contrary to *Bauxites*, and would support consent jurisdiction in every instance where Congress purports to impose jurisdiction.

2. Petitioners' amorphous new warning-plus-nexus test for consent jurisdiction supplants traditional minimum contacts on the one hand, and the *Bauxites*/*Mallory* framework for deemed consent on the other, yet provides no meaningful guardrails in their place. *See* Pet. App. 35a-38a & n.13. The test proposed by Petitioners is entirely *ad hoc* in both its formulation and application, *see* Gov't Br. 34-38, and provides no prospective guidance on a dependable rule, or any limiting principle. The grab-bag list of factors advocated by the Government under its "flexible" approach to due process offers no general, even-handed rule for this Court to divine. *See ibid.*

The Court has already rejected the same "notice" formulation of consent that Petitioners advance now, *see College Savings Bank*, 527 U.S. at 679-80, and for good reason. Petitioners effectively ask whether Congress can *impose* jurisdiction on Respondents, when the actual text of the PSJVTA asks if Respondents can be deemed to have *consented* to jurisdiction. Implied consent "cannot be based solely on a government decree" that the defendant "consents" by engaging in "activities unrelated to being sued in the forum." Pet. App. 21a. Otherwise, if "notice" alone could serve as a valid basis for implying consent to jurisdiction, there is no end to the types of activities

that could give rise to "deemed consent" to jurisdiction.

To avoid that critique, Petitioners advocate a sea change in Fifth Amendment jurisdictional due process, contending that due process limits under the Fourteenth Amendment have no application here. But as *Mallory* explained, distinctions "sounding in federalism"—often urged as the chief factor distinguishing due process under the Fifth and Fourteenth Amendment—play no role in analyzing the constitutionality of a *consent* statute, as the PSJVTA purports to be. *See Mallory*, 600 U.S. at 144 (plurality op.); *see also id.* at 156 (Alito, J., concurring in part). Moreover, no court has ever agreed that the Fifth Amendment requires only a generic "fairness" test uninformed by this Court's prior limitations on personal jurisdiction.

3. The decision below is also faithful to the original public understanding of the Fifth Amendment. Founding-era sources indicate that due process limited the extraterritorial reach of the federal courts. Early cases further demonstrate that due-process limits on discriminatory legislation were seen as essential to protecting individual liberty. These historical limits work against the PSJVTA: Respondents' alleged UN activities are not considered to be within the territorial authority of the United States; and the PSJVTA singles out Respondents to receive less jurisdictional due process.

Plaintiffs rely on the enumerated power to "define and punish" extraterritorial offenses (Art. I, § 8, cl.10). That clause does not apply here. In any case, *Bauxites* and *College Savings* hold that jurisdiction cannot be imposed as "punishment" or a "sanction" for a defendant's disfavored conduct. *Bauxites*, 456 U.S. at 706 (discussing *Hovey v. Elliott*, 167 U.S. 409 (1897));

College Savings Bank, 527 U.S. at 686-87. Nor does Plaintiffs' theory fit under *Mallory*, which instead required the forum's power to *permit* conduct on condition and treated acceptance of permission as a waiver. *Mallory*, 600 U.S. at 144-45 ("personal jurisdiction is a *personal* defense that may be waived or forfeited" by "accepting an in-state benefit with jurisdictional strings attached") (plurality op.); *id.* at 147-48 (waiver occurs when "a defendant … voluntarily invoke[s] certain benefits from a State that are conditioned on submitting to the State's jurisdiction") (Jackson, J., concurring). The PSJVTA includes no such permission.

4. This Court may also affirm on the alternative ground that the PSJVTA violates the separation-of-powers doctrine. The PSJVTA attempts to usurp the judicial function by dictating that courts must always find "consent" to personal jurisdiction if Respondents engage in certain activities. In our system, courts determine whether conduct satisfies the due process test for submission to jurisdiction, and courts have already held that those same activities are insufficient to support the exercise of jurisdiction under the Due Process Clause.

5. Finally, Plaintiffs misstate the factual record regarding Respondents' alleged activities in the United States. No court has concluded that Respondents' activities were sufficient to trigger jurisdiction under the activities prong. And Respondents have consistently contested Plaintiffs' allegations that they engaged in any non-UN related activities in the United States after the trigger date.

ARGUMENT

I. The Act's "Deemed Consent" Provisions Violate Due Process.

"The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)). Because the "assertion of jurisdiction" over a foreign defendant "exposes [the defendant] to the State's coercive power," it is subject to review in federal court for "compatibility" with due process. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918 (2011) (holding assertion of personal jurisdiction over foreign corporations violated due process). The personal jurisdiction requirement "represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty." *Bauxites*, 456 U.S. at 702.

This Court's cases have typically focused on "two kinds of personal jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction." *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 592 U.S. 351, 358, 365 (2021). General jurisdiction "extends to 'any and all claims' brought against a defendant," but is available "only when a defendant is 'essentially at home'" in the forum. *Ibid.* Specific jurisdiction "covers defendants less intimately connected" to the forum, "but only as to a narrower class of claims." *Id.* at 359. Specific jurisdiction applies when the defendant "take[s] some act by which it purposefully avails itself of the privilege of conducting activities within the forum," and the

plaintiff's claims "arise out of or relate to the defendant's contacts with the forum." *Ibid.* (cleaned up).

This case, however, does not involve either of those traditional forms of personal jurisdiction. Pet. App. 18a. Respondents are not subject to general jurisdiction, because they are not "fairly regarded as at home" in the United States. *See Livnat*, 851 F.3d at 56-57 (explaining Respondents' "headquarters, officials, and primary activities are all in the West Bank"). And Respondents are not subject to specific jurisdiction, because they have not engaged in any "suit-related conduct" in the United States. Pet. App. 166a; *Livnat,* 851 F.3d at 56-57; *Shatsky*, 955 F.3d at 1037. Contrary to the assertions of some amici,[4] it is undisputed the attacks at issue "were not expressly aimed at the United States," but rather "affected United States citizens only because they were victims of indiscriminate violence that occurred abroad." Pet. App. 168a, 170a; *see also Klieman*, 923 F.3d at 1124-26; Pet. App. 7a-9a. Indeed, Petitioners do not argue that Respondents are subject to either general or specific jurisdiction in this case.[5]

---

[4] *See, e.g.*, ACLJ Br. 8 (claiming "the crucial fact supporting jurisdiction" is "[Respondents'] ongoing funding of terrorist activity towards the United States"); *id.* at 17 (inaccurately asserting Respondents engaged in "targeted support of the killing of Americans"); House Br. 8 (claiming Congress intended to hold Respondents "accountable … for their attacks on Americans").

[5] In *Fuld*, plaintiffs did not allege that Respondents had sufficient contacts with the United States to support the exercise of general or specific jurisdiction. JA 384-85 (identifying the PSJVTA as sole basis for personal jurisdiction); Pet. App. 12a-13a, 18a-19a. The *Fuld* plaintiffs also did not challenge the district court's conclusion that the complaint failed to sufficiently

Instead, Petitioners rely on a third traditional basis for establishing personal jurisdiction: consent. Latching onto the "deemed consent" provisions of the PSJVTA, Petitioners assert that Respondents "consented" to personal jurisdiction by engaging in precisely the same types of activities previously held *insufficient* to support the exercise of general or specific jurisdiction under the Due Process Clause. Petitioners make this claim despite the fact that Respondents have *contested* jurisdiction at every turn, and have not taken any action that would reasonably support a presumption they have submitted to personal jurisdiction in the United States. As every court to consider the issue has concluded, allowing Congress to impose "consent" to jurisdiction in such circumstances would "push the concept of consent well beyond its breaking point," letting "fiction get the better of fact and mak[ing] a mockery of the Due Process Clause." Pet. App. 123a-24a.

A. Implied Consent Must Be Based on Some Actions of the Defendant that "Amount to a Legal Submission to the Jurisdiction of the Court."

As this Court recently reaffirmed in *Mallory*, "'express or implied consent' can continue to ground personal jurisdiction—and consent may be manifested in various ways by word or deed." *Mallory*, 600 U.S. at 138 (plurality op.); *see also id.* at 153 (Alito, J., concurring in part) ("Consent is a separate basis for personal jurisdiction."). "Because the requirement of personal jurisdiction represents first of all an

---

allege the attack targeted Americans. Pet. App. 104a n.4. The *Sokolow* plaintiffs do not now challenge the Second Circuit's holding that they likewise failed to establish general or specific jurisdiction. Pet. App. 157a-80a.

individual right, it can, like other such rights, be waived." *Bauxites*, 456 U.S. at 703. And in determining whether a statute gives rise to valid consent to personal jurisdiction, *Mallory* confirmed that this Court's prior decision in *Bauxites* sets forth the appropriate standard. *See Mallory*, 600 U.S. at 138, 145-46 (plurality op.); *see also id.* at 147-49 (Jackson, J., concurring) (finding *Bauxites* "particularly instructive"); *id.* at 153, 156 (Alito, J., concurring in part) (citing *Bauxites*); *id.* at 167 (Barrett, J., dissenting) (same).

Bauxites establishes two basic principles that guide the consent inquiry—the second of which Petitioners largely ignore. *First*, *Bauxites* acknowledged that there is no "magic words" requirement for consent to personal jurisdiction. *See Mallory*, 600 U.S. at 136 n.5. "A variety of legal arrangements have been taken to represent express or implied consent to the personal jurisdiction of the court," including submission by appearance, stipulation, forum-selection clauses, and "constructive consent" through "the voluntary use of certain state procedures." *Bauxites*, 456 U.S. at 703-04. Each of these "legal arrangements," the Court explained, may result in an effective waiver of the personal-jurisdiction requirement, because the defendant has taken some actions that "amount to a legal submission to the jurisdiction of the court." *Id.* at 704-05.

In many cases, determining whether a defendant's actions "amount to a legal submission to the jurisdiction of the court" is straightforward. A party may expressly agree—through a forum-selection clause, for example—to litigate a dispute in a particular forum. *See, e.g.*, *Nat'l Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311, 315-16 (1964) ("parties to a

contract may agree in advance to submit to the jurisdiction of a given court"). So long as the party's consent was "freely negotiated" and enforcement would not be "unreasonable and unjust," such provisions "[do] not offend due process." *Burger King*, 471 U.S. at 472 n.14 (internal quotations omitted).

A party may also consent to personal jurisdiction by taking certain actions in the litigation itself, which demonstrate the party's submission to the jurisdiction of the court. This Court has held, for example, that a party who "voluntarily participated in the entire course of proceedings" without objecting to jurisdiction "clearly implied [its] consent" to jurisdiction through its own conduct. *Roell v. Withrow*, 538 U.S. 580, 584 (2003). Similarly, the Federal Rules have long provided that a party submits to personal jurisdiction by filing a responsive pleading, without objecting to personal jurisdiction. *See* Fed. R. Civ. P. 12(h); *see also Bauxites*, 456 U.S. at 705 (explaining that "[t]he expression of legal rights is often subject to certain procedural rules," and "fail[ing] to follow those rules may well result in a curtailment of the rights").

These canonical forms of consent are not at issue in this case, however, because Respondents have not expressly consented to personal jurisdiction in the United States, or taken any action in the litigation itself demonstrating their submission to jurisdiction.[6] And in the absence of such conduct, determining whether a defendant submitted to personal

---

[6] To the contrary, Respondents have long maintained (in *Sokolow*, for more than a decade) that they are *not* subject to personal jurisdiction in the United States, and moved to dismiss Petitioners' claims on that basis. *Sokolow* C.A. Defs. Br. 14 (Nov. 10, 2015) (describing history); *Fuld* C.A. Defs. Br. 29 (same).

jurisdiction is more difficult. *See Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 685-86 (2015) (explaining implied consent requires "a deeply factbound analysis" to determine "whether [the defendant's] actions evinced the requisite knowing and voluntary consent").

Second, in determining whether the defendant's conduct "amount[ed] to a legal submission to the jurisdiction of the court," *Bauxites* expressly distinguished between conduct capable of supporting a jurisdictional finding, and "'mere assertions' of power" by the forum to impose jurisdiction on nonconsenting defendants. 456 U.S. at 704-05.

The question in *Bauxites* was whether the defendant's failure to comply with court-ordered jurisdictional discovery could be treated as a constructive waiver of its objection to personal jurisdiction. This Court held that it could, but only because "[t]he preservation of due process was secured by the presumption" that the defendant's specific conduct—its "refusal to produce evidence *material to*" the jurisdictional inquiry—"was but an admission of the want of merit in the asserted defense." *Id.* at 705, 709 (emphasis added; internal quotations omitted). By refusing to produce the requested jurisdictional discovery, the defendant implicitly acknowledged that it *did* have sufficient contacts with the forum to support the exercise of personal jurisdiction. *Id.* at 706. The Court thus held that it was fair to treat the defendant's conduct as a constructive waiver of any objection. *See ibid.* ("[T]he sanction is nothing more than the invocation of a legal presumption, or what is the same thing, the finding of a constructive waiver.").

To illustrate the "due process limits" that apply to implied consent, *Bauxites* distinguished an earlier

case—*Hovey*, 167 U.S. 409—in which this Court held that "it *did* violate due process for a court to take similar action as '*punishment*' for failure to obey a court order" unrelated to the asserted defense. 456 U.S. at 706 (emphasis added). The defendant's conduct in that case—failure "to pay into the registry of the court a certain sum of money"—did not support the presumption of a "want of merit" in the asserted defense. *Id.* at 705-06. Subjecting the defendant to the court's jurisdiction, this Court explained, therefore would constitute an improper penalty, rather than a valid presumption of constructive waiver drawn from the defendant's own conduct. *Id.* at 706.

Petitioners ignore this central aspect of *Bauxites*' reasoning, describing the opinion as merely "canvassing factors that made consent 'just' and satisfied due process." Gov't Br. 25; *see also* Pls. Br. 36-39. But *Bauxites* could not have been clearer in specifying the reason it was fair to infer that the defendant consented to personal jurisdiction: "[T]he preservation of due process was secured by the presumption that the refusal to produce evidence material to the administration of due process was but an admission of the want of merit in the asserted defense." *Bauxites*, 456 U.S. at 705 (quoting *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 350-51 (1909)). The fact that the defendant's conduct was *material* to jurisdiction, in other words, was precisely what distinguished a permissible inference of consent from an improper penalty.

The same distinction between valid, implied consent and the improper imposition of jurisdiction runs throughout this Court's cases addressing the waiver of jurisdictional defenses. In *College Savings*

Bank, for example, plaintiffs argued that a state agency waived its immunity and "impliedly" consented to jurisdiction in federal court by knowingly and voluntarily engaging in interstate marketing, after a federal statute made clear that such activity would subject it to jurisdiction for Lanham Act claims. 527 U.S. at 671, 676. This Court emphatically rejected this "constructive-waiver" theory, holding:

> There is a fundamental difference between a State's expressing unequivocally that it waives its immunity, and Congress's expressing unequivocally its intention that if the State takes certain action it shall be deemed to have waived that immunity. In the latter situation, the most that can be said with certainty is that the State has been put on notice that Congress intends to subject it to suits brought by individuals. That is very far from concluding that the State made an "altogether voluntary" decision to waive its immunity.

Id. at 680-81. The constitutional requirement of knowing and voluntary consent would mean nothing, the Court explained, if Congress had "[the] power to exact constructive waivers" of jurisdictional defenses "through the exercise of Article I powers." *Id.* at 683. Accordingly, this Court held that merely providing *notice* of Congress's intent to subject the defendant to jurisdiction if it "voluntarily" engaged in "federally regulated conduct" was insufficient to establish a constructive waiver. *Id.* at 679-82.

In describing the circumstances in which plaintiffs *could* demonstrate implied consent to jurisdiction, *College Savings Bank* located valid "consent" in the same place as many other implied consent statutes: the defendant's acceptance of a government benefit or

privilege conditioned upon consent to jurisdiction. As the Court explained, Congress may "condition its grant of [federal] funds to the States" upon their willingness to consent to jurisdiction in a federal forum. *Id*. at 686-87. The "acceptance of the funds" by the State would thereby signal its "agreement" or consent to the condition attached. *Ibid.* The Court noted, however, that accepting a "gift" or "gratuity" conditioned on consent to jurisdiction presents a "fundamentally different" case than the imposition of jurisdiction by legislative fiat. *Ibid.* In the latter case, "what Congress threatens if the State refuses to agree to its condition is not the denial of a gift or gratuity, but a sanction."[7] *Ibid.*

This Court has used the same barometer to evaluate other implied consent statutes as well, examining whether the defendant signaled its agreement to personal jurisdiction by accepting a government benefit or privilege with "jurisdictional

---

[7] Petitioners criticize Respondents' (and the Second Circuit's) reliance on *College Savings Bank*, arguing that decision addresses state sovereign immunity rather than personal jurisdiction. Pls. Br. 41-42; Gov't Br. 39-40. This Court's decision, however, refutes that reading. Relying on the "classic description of an effective waiver of a constitutional right," the Court explained that "[c]onstructive consent is not a doctrine commonly associated with the surrender of *constitutional rights*." *College Savings Bank*, 527 U.S. at 681-82 (emphasis added). Because "[s]tate sovereign immunity, no less than the right to trial by jury in criminal cases, is constitutionally protected," courts should "indulge every reasonable presumption against waiver." *Id.* at 682. Contrary to Petitioners' assertions, the principles underlying *College Savings Bank* are not limited to state sovereign immunity, but rather apply more broadly to implied waivers of constitutional protections.

strings attached." *Mallory*, 600 U.S. at 145 (citing *Bauxites*).

Many states, for example, have enacted statutes conditioning the "privilege" of driving on public roads on consent to personal jurisdiction in the state. In *Hess v. Pawloski*, this Court held that such "implied consent" statutes do not violate due process because the state maintains the antecedent authority "to regulate the use of its highways," and "to exclude a non resident" from that use unless they consent to jurisdiction in the state. 274 U.S. 352, 356-57 (1927). By "accept[ing]" the "privileges" of driving on public roads, a non-resident defendant "signifi[es] … his agreement" to consent to personal jurisdiction in the forum. *Id.* at 354-57; *see also Wuchter v. Pizzutti*, 276 U.S. 13, 19 (1928) ("[T]he act of a non resident in using the highways of another state may be properly declared to be an agreement to accept service of summons in a suit growing out of the use of the highway…").

This Court applied a similar analysis to the business registration statute at issue in *Mallory*. The statutory scheme in that case required foreign corporations to consent to personal jurisdiction "*in exchange for* status as a registered foreign corporation and the *benefits* that entails." 600 U.S. at 127 (emphasis added). In affirming the constitutionality of such implied-consent statutes, this Court explained that a defendant may submit to jurisdiction by "accepting an in-state benefit with jurisdictional strings attached." *Id.* at 145 (plurality op.) (citing *Bauxites*). "[A] variety of legal arrangements may represent express or implied consent to personal jurisdiction consistent with due process, and these arrangements can include requiring at least some

companies to consent to suit *in exchange* for access to a State's markets." *Id.* at 144 n.10 (emphasis added; cleaned up); *see also id.* at 147-48 (Jackson, J., concurring) (explaining that "one way to waive personal-jurisdiction rights" is to "voluntarily invoke certain benefits from a State that are conditioned on submitting to the State's jurisdiction"); *id.* at 167 (Barrett, J., dissenting) (noting the majority's standard "casts [business registration statutes] as setting the terms of a bargain").[8]

In addition to business registration and driver registration statutes, many states have also adopted corporate director statutes, which similarly "deem" that non-resident defendants "consent" to jurisdiction in the forum by accepting appointment to a corporation's board of directors. *See, e.g.*, *Armstrong v. Pomerance*, 423 A.2d 174, 176 & n.4 (Del. 1980) (analyzing Delaware corporate director statute). By accepting the benefits afforded to directors under state law, a non-resident director impliedly consents to personal jurisdiction in the state for any claims

---

[8] As Justice Gorsuch explained, these types of exchange-of-benefits statutes have a long history. "As the use of the corporate form proliferated in the 19th century," "[l]awmakers across the country soon responded" by "adopt[ing] statutes requiring out-of-state corporations to consent to in-state suits *in exchange for* the rights to exploit the local market and to receive the full range of *benefits* enjoyed by in-state corporations." 600 U.S. at 129-30 (emphasis added). The statute at issue in *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), for example, required foreign corporations to "agree[] to accept service of process in Missouri on any suit as a condition of doing business there." *Id.* at 133. Conversely, Respondents are not aware of any history (and Petitioners cite none) permitting a legislature to simply "deem" that foreign defendants "have consented" to suit, in the absence of any benefit or privilege conditioned on consent.

related to the corporation. *Ibid.*; *see also Swenson v. Thibaut*, 250 S.E.2d 279, 289-91 (N.C. Ct. App. 1978) (same).

In each of these cases, the defendant's acceptance of a benefit or privilege conditioned by the forum on consent to jurisdiction signals the defendant's implied agreement to submit to jurisdiction—just as a state's acceptance of a conditional "gift" or "gratuity" from the federal government would signal its implied waiver of sovereign immunity under *College Savings Bank*. By accepting the benefit provided by the forum, the defendant enters a bargain whereby it consents to personal jurisdiction in exchange for permission to engage in conduct the forum could otherwise prohibit. Indeed, the exchange of "reciprocal obligations" is exactly what makes the exercise of personal jurisdiction "fair" to a defendant under the Due Process Clause. *Ford*, 592 U.S. at 367-68 (explaining that "allowing jurisdiction in these cases treats Ford fairly" because Ford enjoyed "the benefits and protections" of state law when doing business in the forum).

As this Court has recognized, however, implied consent becomes a disguised form of legislatively-imposed jurisdiction when the forum does not offer any corresponding benefit for the defendant to accept or reject, in exchange for its consent to jurisdiction. If the forum does not have the antecedent authority to permit (or to prohibit) the conduct purportedly giving rise to "consent," the defendant's choice to engage in such conduct does not reflect any implied agreement to submit to jurisdiction, because the defendant's ability to engage in the activity did not depend on any benefit conferred by the forum in the first instance. *See College Savings Bank*, 527 U.S. at 680-81 (holding

Congress's bare "intention" to subject defendant to jurisdiction failed to establish implied consent because "there is little reason to assume actual consent based upon the [defendant's] mere presence in a field subject to congressional regulation").

This does not mean that reciprocity or an exchange of benefits is necessary to establish implied consent in every case.[9] As this Court reaffirmed in *Mallory*, a "variety of legal arrangements" may give rise to valid consent, and statutes conditioning a government benefit on consent to jurisdiction in the forum are merely one, commonly-accepted example. *See* 600 U.S. at 144 & n.10; *see also id.* at 147-49 (Jackson, J., concurring). A defendant can also consent to personal jurisdiction by appearing in court without objecting, voluntarily agreeing to a forum-selection clause, violating a jurisdictional discovery order, or engaging in any other conduct that "amount[s] to a legal submission to the jurisdiction of the court." *Bauxites*, 456 U.S. at 704-05. But nothing in this Court's cases suggests (as Petitioners claim) that the forum can simply "deem" that any conduct it chooses shall constitute "consent" to personal jurisdiction, when the

---

[9] Petitioners repeatedly mischaracterize the decision below as holding that implied consent must "be based on 'reciprocal bargains' between the forum's sovereign and the defendant," or is limited to "reciprocal bargain[s]" and "litigation-related conduct." Pls. Br. 5, 12, 37-38; *see also* Gov't Br. 15, 20. But the Second Circuit itself refuted any such suggestion, explaining that "[t]he receipt of a benefit from the forum is *not a necessary prerequisite* to a finding that a defendant has consented to personal jurisdiction," but rather is simply *one commonly-accepted mechanism* that "can suffice under the circumstances to 'signal consent to jurisdiction.'" Pet. App. 35a-36a n.13 (emphasis added).

conduct itself does not support the presumption that the defendant submitted to jurisdiction in the forum.

B. Respondents Have Not Engaged in Any Conduct Signaling Consent to Personal Jurisdiction in the United States.

Measured against these standards, the PSJVTA fails to establish valid consent to personal jurisdiction. As the Second Circuit recognized, neither form of conduct relied upon by Petitioners—making social welfare payments *in Palestine* or maintaining a UN office and conducting UN-related activities in the United States—signals Respondents' approval or acceptance of personal jurisdiction in the United States. As to the payments, that is because the United States does not have antecedent authority to permit them in the first place. As to UN-related activities, they are specifically exempted from the PSJVTA. The PSJVTA does not waive preexisting restrictions on Respondents' U.S. activity and does not permit any U.S. activity by Respondents. Accordingly, neither type of predicate conduct alleged by Plaintiffs provides a valid basis for "deeming" that Respondents have "consented" to jurisdiction under the standards set forth in *Bauxites* and *Mallory*.

1. Social Welfare Payments Made Outside the United States Do Not Support the Presumption that Respondents Submitted to Jurisdiction.

The first type of conduct specified by the PSJVTA—payments made in Palestine to those imprisoned or killed as a result of committing attacks, or to their families—has "no direct connection to the United States, let alone to litigation in a United States court." Pet. App. 108a. The payments at issue

occurred entirely outside the United States, under Palestinian law, were not within the power of the U.S. government to permit, and were not directed at the United States. Any decision to make (or stop making) such payments therefore reflects Respondents' own domestic laws and policy choices,[10] rather than some implicit agreement to consent to jurisdiction in the United States.

Inferring consent to personal jurisdiction based on such payments would be doubly immaterial to jurisdiction in this case, because courts have consistently held that the same payments are *insufficient* to establish the requisite "connection" between Respondents, Plaintiffs' claims, and the United States to support the exercise of personal jurisdiction. *See, e.g.*, *Shatsky*, 955 F.3d at 1022-23, 1037 (holding alleged "martyr payments" did not confer specific jurisdiction). As the Second Circuit recognized, continuing to engage in the same, constitutionally-insufficient conduct "cannot reasonably be interpreted as signaling the defendants' 'intention to submit' to the authority of the United States courts." Pet. App. 26a. "Rather, such activities allegedly constitute 'consent' under the PSJVTA only because Congress has labeled them that way." *Ibid.* "This declaration of purported consent, predicated on conduct lacking any of the indicia of valid consent previously recognized in the case law, fails to satisfy constitutional due process." *Ibid.*

In asserting that such payments may serve as a valid basis for implied consent to jurisdiction,

---

[10] As explained below, Respondents no longer make payments because a person, or a family member, was killed or imprisoned in connection with the Israeli-Palestinian conflict.

Petitioners repeatedly conflate federal authority to punish extraterritorial conduct (so-called "prescriptive" or "legislative" jurisdiction) and federal authority to subject nonresident defendants to personal jurisdiction in U.S. courts (so-called "adjudicative" jurisdiction). Although Congress may legislate that making such payments will subject a party to potential *liability*, [11] that prescriptive authority does not answer the separate constitutional question whether Respondents can be forced to submit to *adjudication* of such claims in U.S. courts.

Personal jurisdiction "is an important limitation on the jurisdiction of the federal courts over purely extraterritorial activity that is *independent of the extraterritorial reach of a federal statute* or the court's subject matter jurisdiction." *Litecubes, LLC v. N. Light Prods.*, 523 F.3d 1353, 1363 & n.10 (Fed. Cir. 2008) (emphasis added). Although Congress can "extend[] a cause of action to reach extraterritorial activity," it is well-established that a federal court can adjudicate such claims only if it "has personal jurisdiction over the defendants." *Id.* at 1363. In other words, Congress's "prescriptive jurisdiction"—its authority to make federal law applicable to foreign conduct—"is activated only when there is personal jurisdiction, often referred to as 'jurisdiction to adjudicate.'" *Laker Airways v. Sabena, Belgian World Airlines*, 731 F.2d 909, 923 (D.C. Cir. 1984).

Accordingly, even if Congress maintains the prescriptive authority to impose civil liability under U.S. law for extraterritorial payments, that authority

---

[11] Plaintiffs seek to justify jurisdiction to adjudicate by over-reading the Offenses Clause. Respondents address this issue in Section III.C.

does not answer the separate question whether Respondents are subject to personal jurisdiction in the United States for claims related to such payments. *See* Pet. App. 180a (holding federal statute providing for jurisdiction through service of process in ATA cases "does not answer the constitutional question of whether due process is satisfied"). Congress may object to the payments as a matter of federal policy, and impose a variety of sanctions (e.g., ATA liability and conditions on foreign aid to Palestine) to discourage such payments. But those policy concerns, standing alone, do not somehow transform constitutionally-insufficient conduct overseas into grounds for "deemed consent" to personal jurisdiction in the United States. The same limitation applies to all extraterritorial statutes, whether the punishment is direct (as in the Alien Tort Statute or Foreign Corrupt Practices Act) or collateral (as in the PSJVTA).

Petitioners also misleadingly suggest that the payments were closely linked to the United States because they were made "for terror attacks against Americans." *See, e.g.*, Pls. Br. 3. That assertion overlooks the courts' consistent holdings that the attacks at issue (and *a fortiori* any payments purportedly following from such attacks) did *not* target the United States, and "affected United States citizens only because they were victims of indiscriminate violence that occurred abroad." Pet. App. 168a.

Importantly, in February 2025 Respondents formally revoked the old payments program, so that payments will now use need-based qualifications that "apply to all families in need of assistance in

Palestinian society."[12] The EU already has lauded this "important step" of "restructuring the social welfare system and revoking the 'prisoners and martyrs' payment' mechanism."[13]

To be clear, however, the old program was intended to provide a "social safety net in the face of brutal and oppressive living conditions under Israeli military occupation." *See* Carnegie Endowment for Int'l Peace, *Palestinian Prisoner Payments* (2021).[14] The PA provided monthly welfare payments to Palestinians imprisoned in Israel for political crimes and security offenses, to their families, and to the families of Palestinians killed during political violence. *Ibid.*; *see also* Brookings Institution, *Why the Discourse About Palestinian Payments to Prisoners' Families Is Distorted and Misleading* (2020).[15] Israel broadly defines what constitutes a "security offense" in the occupied territories, and Palestinians can be imprisoned for participating in political demonstrations without a permit, waving the Palestinian flag without approval, or posting social

---

[12] WAFA, *President Mahmoud Abbas issues decree-law restructuring the social welfare system* (Feb. 10, 2025), https://english.wafa.ps/Pages/Details/154504 (the new law "revok[es] … the laws and regulations related to the system of paying financial allowances to the families of prisoners, martyrs, and the wounded").

[13] European Union, Statement on the issuance of a decree-law restructuring the social welfare system by the Palestinian Authority's President Abbas (Feb. 20, 2025), https://ec.europa.eu/commission/presscorner/detail/en/statement_25_535.

[14] Available at: https://carnegieendowment.org/features/palestinian-prisoner-payments?lang=en.

[15] Available at: https://www.brookings.edu/articles/why-the-discourse-about-palestinian-payments-to-prisoners-families-is-distorted-and-misleading.

media messages critical of Israeli forces and the occupation. Carnegie Endowment, *supra*. An estimated seventy percent of Palestinian families have at least one relative detained by Israel, and nearly 33,700 families received monthly payments under the program. *Ibid.* Given this context, portraying those payments as rewarding terrorism is "wrong and incendiary." Brookings Institution, *supra*.

2. Respondents' Alleged U.S. Activities Fail to Establish Implied Consent to Personal Jurisdiction.

Plaintiffs' allegations under the "activities" prong of the PSJVTA likewise fail to establish a valid basis for inferring that Respondents consented to personal jurisdiction, for two reasons: (1) Respondents' alleged U.S. activities do not support the presumption that they have submitted to jurisdiction in the United States, as courts have previously held the same conduct insufficient to support the exercise of personal jurisdiction; and (2) contrary to Petitioners' assertions, the PSJVTA does not offer any "benefit" for Respondents to "accept," in exchange for their purported consent.

The activities prong directs courts to "deem[]" that Respondents "have consented to personal jurisdiction" if they maintain *any* office or conduct "*any activity* while physically present in the United States"—regardless of whether that activity would support a presumption that Respondents submitted to jurisdiction in the United States. *See* 18 U.S.C. § 2334(e)(1) (emphasis added). By expressly encompassing "any activity" conducted in the United States (no matter how trivial or jurisdictionally-insignificant), this provision fails to ensure that Respondents' purported "consent" to jurisdiction is

grounded in conduct capable of supporting a jurisdictional finding as required by *Bauxites* and *Mallory*.

The specific conduct relied upon by Plaintiffs in these cases illustrates this infirmity. Relying on the activities prong's broad language, the *Fuld* plaintiffs alleged that Respondents "consented" to personal jurisdiction in the United States when their UN mission issued a tweet highlighting "surfing in Gaza." JA 217. Plaintiffs overlooked the date of the tweet and its hashtag, which referenced the UN's International Day of Sport for Development and Peace. JA 218. More importantly, such conduct obviously bears no relationship to Plaintiffs' claims, the underlying attacks, or any purported agreement to litigate ATA claims in U.S. court. Sending a message promoting "surfing in Gaza" cannot reasonably be interpreted as signaling Respondents' agreement to submit to jurisdiction in U.S. court for claims related to alleged terrorist attacks in Israel and Palestine years (and in some cases, decades) earlier.

The rest of Plaintiffs' jurisdictional claims are similarly incapable of supporting a presumption of consent to jurisdiction. Plaintiffs allege that Respondents maintained an office (Palestine's UN mission) in New York and engaged in press conferences and social media activity "intended to influence the public" and "affect U.S. foreign policy" while physically present in the United States. JA 409.[16]

---

[16] As explained further in Section V, these types of UN-related activities (and "ancillary" activities) cannot be considered as grounds for "deemed consent" under the PSJVTA.

But courts confronted with virtually identical (if not more extensive) allegations have consistently held that these types of activities are not material to jurisdiction, as *Bauxites* requires. That is, they do *not* establish a sufficient connection between Respondents, the claims at issue, and the United States to support the exercise of personal jurisdiction under the Due Process Clause. *See, e.g.*, Pet. App. 147a, 161a, 177a-78a (holding maintenance of office in Washington, D.C., retention of a lobbying firm, "promot[ing] the Palestinian cause in speeches and media appearances," and engaging in "extensive public relations activities" to "influence United States policy" were insufficient to establish personal jurisdiction); *Klieman*, 923 F.3d at 1118, 1123-26 (holding alleged "campaign" to "influence" U.S. foreign policy "through the use of U.S. offices, fundraising, lobbying, [and] speaking engagements" insufficient). As the Second Circuit recognized, the continuation of the same conduct previously held *insufficient* to support the exercise of personal jurisdiction cannot support a reasonable presumption that, by engaging in such conduct, Respondents submitted to jurisdiction in the United States.

Rather than explaining why the same, constitutionally-insufficient conduct could support a presumption of submission to jurisdiction under *Bauxites* and *Mallory*, Petitioners instead attempt to shoehorn this case into the line of "benefits" cases described above. Petitioners assert that the U.S. Activities prong extracts valid "consent" by conditioning a government benefit (entry into the United States) on Respondents' purported agreement to submit to personal jurisdiction in U.S. courts. *See* Pls. Br. 43-45; Gov't Br. 27, 40-41.

As the Second Circuit recognized, however, that argument fails because the PSJVTA does not authorize Respondents to enter the United States, or to conduct any activities here. Pet. App. 29a. "Indeed, the statute does not offer *any* in-forum benefit, right, or privilege that the PLO and the PA could 'voluntarily invoke' in exchange for their submission to the federal courts." Pet. App. 35a. As the Government concedes (at 3), for decades "Congress has heavily restricted respondents' activities on U.S. soil." The PSJVTA does nothing to alter or remove those restrictions, or to permit otherwise-prohibited activities in the United States. Accordingly, unlike the "benefits" cases described above, the PSJVTA does not offer any government "benefit" or privilege for Respondents to "accept," in exchange for their purported consent to personal jurisdiction.

The activities prong's failure to establish valid, implied consent to jurisdiction on these facts is perhaps best illustrated by contrasting the PSJVTA with its predecessor statute, the ATCA. More than three decades ago, Congress enacted the Anti-Terrorism Act of 1987, which prohibits the PLO and affiliates from operating in the United States by making it unlawful to (1) "receive anything of value except informational material from the PLO;" (2) "expend funds from the PLO"; or (3) "establish or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by," the PLO.[17] 22 U.S.C. § 5202.

---

[17] The sole exception is for activities conducted by Respondents in furtherance of Palestine's role as a Permanent Observer at the United Nations. As described below, the PSJVTA mirrors

Congress passed the 1987 Act for the express purpose of denying the PLO and its affiliates the "benefit" of "operating in the United States." *See* 22 U.S.C. § 5201(b). And, consistent with that purpose, the 1987 Act has been interpreted as a "wide gauged restriction of PLO activity within the United States," *PLO*, 695 F. Supp. at 1471, that deprives Respondents of the "many benefits which accrue to organizations operating in the United States, including political stability, access to our press and capital infrastructure, and … the patina of legitimacy." *Mendelsohn v. Meese*, 695 F. Supp. 1474, 1484 (S.D.N.Y. 1988) ("The avowed interest asserted by Congress in favor of the ATA is … to deny the PLO the benefits of operating in the United States.").[18]

Recognizing those restrictions, the ATCA provided that Respondents "shall be deemed to have consented to personal jurisdiction" if they accepted either of two government benefits: (1) certain types of U.S. foreign aid, or (2) the "benefit" of a formal "waiver or suspension" of the prohibitions on the PLO's U.S. activities under the 1987 Act, which would have allowed it to maintain a mission in Washington, D.C. *See* 18 U.S.C. § 2334(e)(1) (2018) (superseded by PSJVTA).

In defending the constitutionality of the ATCA, the Government specifically argued that because "[t]he

---

longstanding law by providing that a court cannot consider UN activities to determine personal jurisdiction.

[18] Several amici assume Respondents "operate freely on U.S. soil." Grassley Br. 4; AFLF Br. 5; ACLJ Br. 5. Untrue. Consistent with the 1987 Act's prohibitions, Respondents do not maintain any physical premises in the United States (other than Palestine's UN mission), and do not engage in any non-UN related activities here.

political branches have long imposed *conditions on these benefits*," it was "reasonable and consistent with the Fifth Amendment for Congress and the Executive to determine that the [PLO's] maintenance of an office in this country after a waiver …, or the [PA's] continued receipt of certain foreign assistance, should be 'deemed' consent to personal jurisdiction in civil cases under the ATA." U.S. Brief 12-13, *Klieman v. Palestinian Auth.*, No. 15-7034 (D.C. Cir. Mar. 13, 2019) (emphasis added). The ATCA satisfied Fifth Amendment due process, in other words, because it grounded "deemed consent" on Respondents' choice to accept or reject either of two distinct government benefits conditioned upon consent. This interpretation is consistent with *Mallory*, *Hess*, and the other authorities described above, which similarly hold that acceptance of a government benefit with "jurisdictional string attached" may provide a valid basis for inferring consent to personal jurisdiction. *Mallory*, 600 U.S. at 145.

The PSJVTA, by contrast, does not permit any activity by Respondents. It does not offer to waive the prohibitions imposed by the 1987 Act, nor does it permit Respondents to conduct any previously-unauthorized activities in the United States. The statute therefore does not offer any benefit for Respondents to accept, in exchange for their purported "consent" to personal jurisdiction.

Rather than identifying conduct that might actually demonstrate Respondents impliedly submitted to jurisdiction in the United States (such as the acceptance of U.S. foreign aid or some other government benefit), "Congress simply took conduct in which the PLO and PA had previously engaged—conduct that the Second and D.C. Circuits had held

was insufficient to support personal jurisdiction in *Waldman I*, *Livnat*, *Shatsky*, and *Klieman*—and declared that such conduct 'shall be deemed' to be consent." Pet. App. 108a. Because such conduct does not support the presumption that Respondents submitted to jurisdiction in the United States, it fails to provide a valid basis for implied consent under this Court's precedent.

II. This Court Should Reject Petitioners' Attempts to Rewrite Established Due Process Standards.

Stripped of the fiction of "consent," the PSJVTA attempts to impose jurisdiction over Respondents based on the same activities federal courts have already held insufficient to support personal jurisdiction under the Due Process Clause. But deemed consent statutes cannot pass constitutional muster merely by providing advance notice of jurisdictional consequences, as Petitioners propose, without undermining fundamental due process protections. Petitioners fail to provide any sound reason for this Court to depart from well-established precedent by applying a less demanding due process standard in this case.

A. Permitting Congress to Impose Consent to Jurisdiction based on Constitutionally-inadequate Conduct Would Eviscerate Due Process Protections.

Petitioners fail to offer any consistent standard or limiting principle for "deemed consent," instead proposing an entirely ad hoc and "flexible" formulation. Gov't Br. 5, 22, 38, 46. They concede that consent to personal jurisdiction must be "knowing and voluntary." Pls. Br. 40. But they attempt to redefine

that standard, asserting that a "deemed consent" statute satisfies due process if it merely provides "notice" and is "not fundamentally unfair or exorbitant" (the Government's version, Gov't Br. 1, 14, 23), or gives "fair warning" and is "reasonable" (Plaintiffs' version, Pls. Br. 24, 26).

In advancing these ever-shifting standards, Petitioners "blur[] the requirements" for specific jurisdiction and consent. Pet. App. 222a (Bianco, J., concurring). On the one hand, Petitioners contend that "consent" is a separate basis for personal jurisdiction and do not argue that requirements for general or specific jurisdiction have been met. *E.g.*, Pls. Br. 36-37. On the other hand, to defend the PSJVTA as creating valid "consent" to jurisdiction, Petitioners admittedly rely on "non-consent cases," *see* Gov't Br. 25, that do not address "deemed consent" statutes at all. Importing an interest-balancing test into consent, Petitioners draw their purported standards from cases like *Ford* and *Burger King*—seminal "minimum contacts" cases. Gov't Br. 25-26; Pls. Br. 40-43. But those cases squarely hold that "[t]he Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum *with which he has established no meaningful contacts, ties, or relations*." *Burger King*, 471 U.S. at 471-72 (emphasis added). Of course, courts examining whether personal jurisdiction may be asserted over Respondents under a minimum contacts analysis have resoundingly answered that question in the negative because Respondents lack any constitutionally-meaningful connection to the United States. *See supra* I.B.2.

Petitioners give no more than lip service to the concept of consent, instead offering a framework

under which Congress can legislatively *decree* jurisdiction if Respondents do not comply with Congress's demands. Rather than establishing Respondents' "consent" as a separate basis for jurisdiction, Petitioners advance the same formulation of "consent" that *College Savings Bank* rejected as impermissibly *imposing* personal jurisdiction by legislative fiat. Writing for the Court, Justice Scalia drew the distinction between consent to jurisdiction and imposed jurisdiction. 527 U.S. at 679-81. Putting the defendant "on notice" of *Congress's* intention to subject the defendant to suit, the Court explained, remains "very far" from demonstrating that *a defendant* "made an 'altogether voluntary' decision" to submit to jurisdiction. *Id.* at 681. *College Savings Bank*—just like *Bauxites* and *Mallory*—requires that a legislative presumption of consent to jurisdiction must be based on conduct that can support a presumption of submission to jurisdiction. *Id.* at 675 ("altogether voluntary" consent, or a "gratuity); *id.* at 676 (State must make "a 'clear declaration' that it intends to submit itself to our jurisdiction"). The Court of Appeals here applied the *College Savings Bank* framework to conclude that the PSJVTA is an attempt to impose jurisdiction—not a consent jurisdiction statute. Pet. App. 39a-40a (applying *College Savings Bank*).

With no dependable or predictable due process test, Congress and state legislatures could simply enact statutes declaring that the same activities insufficient under minimum contacts "shall be deemed consent" to personal jurisdiction. In theory, the Government agrees it should be impermissible for a State to "circumvent constitutional limits on personal jurisdiction by simply declaring nonresident defendants to have consented to suit." Gov't Br. 25.

But under a mere "notice" and not-"exorbitant" test, for virtually any decision dismissing claims for lack of personal jurisdiction, the legislature could simply repackage the same contacts with the forum as grounds for "deemed consent" to jurisdiction. Under *Daimler AG v. Bauman*, for example, a California court could not exercise jurisdiction over a foreign car manufacturer and its U.S. subsidiary, which distributed vehicles to California dealerships, but were incorporated and maintained their principal places of business elsewhere. 571 U.S. 117, 139 (2014). Under Petitioners' reasoning, Congress could declare that any foreign corporation that distributed vehicles to California dealerships "shall be deemed to have consented to personal jurisdiction" in the state.

There is no clear, predictable, or limiting principle that would cabin this new mechanism from use against *all foreign actors* in securities, antitrust, trademark, and copyright cases to name just a few. Pet. App. 216a (Bianco, J., concurring). Such a test would substitute "the well-established requirement that *consent* be knowing and voluntary with the concept that all that is necessary is that a person's *conduct* be knowing and voluntary." *Ibid.* Under Petitioners' interpretation, Congress could "subject any foreign entity to personal jurisdiction in the United States, even in the absence of any contacts with the United States, if that entity knowingly and voluntarily engages in any conduct around the world (with some undefined nexus to the United States) after Congress enacts legislation deeming the continuation of that conduct to constitute consent to personal jurisdiction in the United States courts." *Ibid.* This framework would in fact allow Congress to impose jurisdiction over domestic defendants, too, in every type of federal question case. *See* House Br. 5-6

(listing "corporate law and governance, bankruptcy and tax, criminal, environmental, civil rights, and labor laws"), and 12-14 (listing Helms-Burton, False Claims Act, and antitrust); Chamber Br. 28-29. And it would "elevate the risk of foreign nations engaging in retaliatory assertions of jurisdiction over United States citizens and companies." Chamber Br. 26.

Petitioners' vision of "consent" offer no guardrails at all. The Government contends repeatedly that due process is "flexible," such that it can be measured on a sliding scale, with different standards "depend[ing] on the type of actor involved." Gov't Br. 5, 22. Petitioners did not argue below that Respondents cannot "invoke the same extent of due process limitations as any other defendant," Gov't Br. 5, and have therefore forfeited this argument, *see Am. Nat. Bank & Tr. Co. of Chicago v. Haroco, Inc.*, 473 U.S. 606, 608 (1985). But such an ad hoc approach also underscores the fundamental absence of any principled standards for interpreting or applying Petitioners' conception of due process. It is unclear to whom the sliding scale of due process applies, what criteria determine who gets what degree of due process, and how those standards differ. Petitioners note that Respondents would "lack due process rights entirely" if the United States "recognized respondents as the government of a sovereign state." Gov't Br. 28. But in that case, Respondents "would receive the protection of sovereign immunity." Pet. App. 212a (Bianco, J., concurring).

Petitioners prefer to place Respondents in a category of one, as though that saves the statute, noting that the PSJVTA applies "only to respondents and their successors and affiliates" and a "narrow" class of claims. Gov't Br. 18. But as the Court of

Appeals explained, "[s]uch singling out [of Respondents] does not cure a constitutional deficiency. Where, as here, a statute impinges on constitutional rights, it cannot be salvaged on the basis that it violates the rights of only a handful of subjects." Pet. App. 45a.

On the contrary, the Government's defense that the statute is targeted against *sui generis* groups amplifies—rather than ameliorates—these constitutional concerns. The Constitution vests the "judicial powers" in a non-political branch precisely to protect "the rights of one person" from the "tyranny of shifting majorities." *INS v. Chadha*, 462 U.S. 919, 961-62 (1983) (Powell, J., concurring). A statute (like the PSJVTA) that singles out only two "*sui generis*" groups (the PA and PLO) for disparate treatment therefore warrants *more* scrutiny, not less. *See City of Boerne v. Flores*, 521 U.S. 507, 529 (1997) (holding that if Congress were permitted to define the constitutional protections afforded to individual groups, "it is difficult to conceive of a principle that would limit congressional power").

This Court should likewise reject Petitioners' argument that the PSJVTA's deemed consent provisions are "reasonable" because Congress thinks they further "national-security and foreign-policy interests." *See* Gov't Br. 34-37; Pls. Br. 30-31, 43. Although courts may defer to Congress on matters of legislative policy, "respect for Congress's policy judgments … can never extend so far as to disavow restraints on federal power that the Constitution carefully constructed." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 538 (2012). "Our precedents, old and new, make clear that concerns of national security and foreign relations do not warrant

abdication of the judicial role …. [T]he Government's 'authority and expertise in these matters do not automatically trump the Court's own obligation to secure the protection that the Constitution grants to individuals.'" *Holder v. Humanitarian Law Project*, 561 U.S. 1, 34 (2010).

Accordingly, the Government's "foreign affairs power ... , 'like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution.'" *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 416 n.9 (2003). Even in cases involving "foreign affairs" and "national security," courts adhere to the well-settled rule that "a statute cannot grant personal jurisdiction where the Constitution forbids it." *Gilson v. Republic of Ire.*, 682 F.2d 1022, 1028 (D.C. Cir. 1982). In *Livnat*, for example, plaintiffs urged the court to depart from "ordinary due-process requirements" and exercise personal jurisdiction over Respondents because the ATA reflected "Congress's intent to provide redress in U.S. courts for terrorism abroad." 851 F.3d at 53. The D.C. Circuit rejected that argument, holding "Congress cannot wish away a constitutional provision." *Ibid.* Deference is even less appropriate where, as here, Congress's explicit purpose is to reverse federal decisions establishing the constitutional limits of personal jurisdiction. *See City of Boerne*, 521 U.S. at 536.

Petitioners and their amici also greatly overstate the significance of the PSJVTA, attempting to paint it as a "critical component of Congress's comprehensive anti-terror scheme." Grassley Br. 4; *see also* Gov't Br. 3 ("key foreign-policy and national-security tool"); Pompeo Br. 3 ("important tool in the United States' counterterrorism arsenal"). Despite that rhetoric, the

PSJVTA applies only to Respondents—two *sui generis* entities the courts have repeatedly found do *not* target Americans. By its plain terms, the PSJVTA does not apply to Hamas, Hezbollah, the Islamic State, or any other terrorist group or state-sponsor of terrorism.

There is similarly no merit to the assertion that the decision below would "gut" the ATA, U.S. House Br. 2, or place Respondents "beyond the reach of Congress and American courts," Grassley Br. 5. When a defendant targets the United States or its citizens, or engages in conduct in the United States substantially connected to terrorist attacks overseas, U.S. courts can (and do) exercise personal jurisdiction over the defendant. *See, e.g.*, *Mwani v. Bin Laden*, 417 F.3d 1, 11-14 (D.C. Cir. 2005) (foreign defendants who "orchestrated the bombing of the American embassy in Nairobi" were subject to personal jurisdiction because they "purposefully directed their terror at the United States"); *Licci v. Lebanese Canadian Bank*, 732 F.3d 161, 169-74 (2d Cir. 2013) (foreign bank that used U.S. correspondent accounts to transfer funds for Hezbollah was subject to personal jurisdiction). The Due Process Clause precludes the exercise of personal jurisdiction only when plaintiffs cannot establish the requisite connection between the defendant's conduct, the attack giving rise to plaintiffs' claims, and the forum. *See Klieman*, 923 F.3d at 1126 (distinguishing claims against Respondents from *Mwani*, in which the defendants "indisputably aimed to kill Americans").

B. The Fifth and Fourteenth Amendments Reflect the Same Due Process Standards.

When evaluating the constitutionality of a "consent" statute like the PSJVTA, the due process standards under the Fifth and Fourteenth Amendments are the same. The question is whether

the actions chosen by Congress to constitute consent satisfy the standards for consent established by this Court in *Bauxites* and *Mallory*. Petitioners fail to identify any reason why the standard for consent would differ under the Fifth and Fourteenth Amendments. Whether Congress, in a different statute, could directly impose jurisdiction on Respondents is not at issue because, in the PSJVTA, Congress expressly chose a "consent" mechanism.

1. Petitioners argue that the primary difference between the due process analysis under the Fifth and Fourteenth Amendments is that the Fourteenth Amendment inquiry protects "interstate federalism" interests, which are absent under the Fifth Amendment. *See* Pls. Br. 29-32; Gov't Br. 30-34. For that reason, Petitioners assert that the constraints on personal jurisdiction under the Fifth Amendment are "less restrictive than the Fourteenth Amendment's." Gov't Br. 31.

But as this Court recently explained in *Mallory*, potential due process concerns "sounding in federalism" play no role in analyzing the constitutionality of a *consent* statute—even under the (purportedly more rigorous) Fourteenth Amendment. *See Mallory*, 600 U.S. at 144 (plurality op.); *see also id.* at 156 (Alito, J., concurring in part). "Our personal jurisdiction cases have never found a Due Process Clause problem sounding in federalism when an out-of-state defendant submits to suit in the forum state. After all, personal jurisdiction is a *personal* defense that may be waived or forfeited." *Ibid.*

The Government also inaccurately claims that "[i]n *Mallory*, five Justices agreed that federalism concerns bear on the personal-jurisdiction analysis even in consent cases, albeit through different

constitutional mechanisms." Gov't Br. 32 (citing Justice Alito's concurrence and Justice Barrett's dissent). That assertion is not faithful to Justice Alito's opinion, which joined the plurality in holding that federalism concerns play no role in determining whether a defendant has *consented* to personal jurisdiction:

> [W]e have never held that a State's assertion of jurisdiction unconstitutionally intruded on the prerogatives of another State when the defendant had consented to jurisdiction in the forum State. Indeed, it is hard to see how such a decision could be justified. The Due Process Clause confers a right on 'person[s],' Amdt. 14, § 1, not States. If a person voluntarily waives that right, that choice should be honored.

600 U.S. at 156 (Alito, J. concurring in part). Contrary to the Government's assertions, five Justices thus plainly agreed that "federalism concerns" do *not* bear on the personal-jurisdiction analysis in consent cases. Federalism interests thus fail to provide a valid reason for treating consent differently under the Fifth and Fourteenth Amendments.

2. If it reaches beyond consent, this Court should hold that the jurisdictional due process standards are substantively the same. Every circuit to reach the issue agrees that the standards developed under the Fourteenth Amendment apply under the Fifth Amendment. *See* Pet. App. 49a-51a; *Livnat*, 851 F.3d at 54-56.

The Fifth Circuit recently summarized the reasoning behind these decisions: "Both Due Process Clauses use the same language and serve the same purpose, protecting individual liberty by

guaranteeing limits on personal jurisdiction." *Douglass v. Nippon Yusen Kabushiki Kaisha*, 46 F.4th 226, 235 & 238 n.22 (5th Cir. 2022) (en banc) ("Every court that has considered this point agrees that the standards mirror each other."). The Eleventh Circuit similarly explained that "the operative language of the Fifth and Fourteenth Amendments is materially identical, and it would be incongruous for the same words to generate markedly different doctrinal analyses." *Herederos De Roberto Gomez Cabrera v. Teck Res. Ltd.*, 43 F.4th 1303, 1308 (11th Cir. 2022). As Justice Frankfurter explained: "To suppose that 'due process of law' meant one thing in the Fifth Amendment and another in the Fourteenth is too frivolous to require elaborate rejection." *Malinski v. New York*, 324 U.S. 401, 415 (1945) (Frankfurter, J., concurring).[19]

No case supports Petitioners' views that the due process standards are lower under the Fifth Amendment. *See* Pet. App. 45a-46a. Courts have long rejected the notion "that federalism's irrelevance in the Fifth Amendment context justifies a 'more lenient' standard for personal jurisdiction." *Id.* at 48a; *Douglass*, 46 F.4th at 239 n.24 (collecting cases from various circuits). Nor does any case suggest that the lack of federalism concerns changes the personal liberty analysis that underlies the doctrine of personal jurisdiction, or that the quality or meaning of the contacts (or the consent) must be different.

---

[19] The framers of the Fourteenth Amendment intended that identical wording would create identical rights. *See* Cong. Globe, 39th Cong., 1st Sess. 1088-89 (1866) (purpose of amendment was to "enforce the bill of rights as it stands in the Constitution today" and the meaning of due process was that which "the courts have settled [] long ago").

Moreover, this Court consistently assumes the minimum contacts due process analysis applies to federal statutes, reflecting that the authority to legislate extraterritorially does not create jurisdiction to adjudicate over foreign defendants. *See Kiobel v. Royal Dutch Petroleum*, 569 U.S. 108, 124-25 (2013) (Alien Tort Statute); *id*. at 139 (Breyer, J., concurring) (same); *Jesner v. Arab Bank, PLC*, 584 U.S. 241, 313, (2018) (Sotomayor, J., dissenting) (same); *Mohamad v. Palestinian Auth*., 566 U.S. 449, 460 (2012) (plaintiffs still must establish "personal jurisdiction" under the Torture Victim Protection Act); *Abitron Austria GmbH v. Hetronic Int'l, Inc*., 600 U.S. 412, 445 (2023) (Sotomayor, J. concurring) (assuming foreign companies have personal jurisdiction defenses to Lanham Act claims).

3. Petitioners argue that application of minimum contacts standards would be unfair, referencing other jurisdictional standards. Their examples are not persuasive.

The Government argues that if Respondents were "natural persons," then "the mere act of serving them" in the United States would suffice for tag jurisdiction under *Burnham*. *See* Gov't Br. 28-29. But if Respondents were natural persons, they would have to physically enter the United States to be served with tag jurisdiction. And, as the Government admits, Plaintiffs served process on Respondents' ambassador. *Ibid*. Natural persons would not have an ambassador (even assuming that *Burnham* applies to diplomatic envoys), so tag jurisdiction would not be available.[20]

---

[20] One amici even argues that service itself creates jurisdiction. Sachs Br. 27. But service performed under the Federal Rules only does so when "exercising jurisdiction is consistent with the

The Government also compares Respondents to corporations, claiming that personal jurisdiction would be appropriate if Respondents were "corporations registered to do business in New York" and New York had a corporate registration statute "like the one upheld in *Mallory*." Gov't Br. 41-42. This comparison actually supports Respondents. Under the ATCA, Congress stated that specific benefits (certain foreign aid or an Executive waiver to have an office in the U.S.) were conditioned on consent to jurisdiction, just like Pennsylvania conditioned the benefit of doing business in the state on submission to jurisdiction in *Mallory*. But unlike Norfolk Southern, Respondents did not accept the benefit conditioned on consent, just like any foreign corporation could avoid personal jurisdiction in Pennsylvania by refusing to register.

The Government further argues that the United States has a special relationship with Respondents. But it cites laws limiting Respondents' presence in the United States, restricting foreign assistance, and punishing them for interacting with international bodies. Gov't Br. 35-36. Those are one-sided penalties, not actions by Respondents that might signify submission to jurisdiction.

The Government also argues that Respondents should not be treated like "run-of-the-mill foreign private defendants for due process purposes," but should receive some lesser subset of Fifth Amendment due process rights. Gov't Br. 35-36. It did not raise

---

United States Constitution and laws." Fed. R. Civ. P. 4(k)(2)(B). And that question turns on whether Respondents "really submitted to proceedings." *Mallory*, 600 U.S. at 144. In any case, neither Petitioner makes this argument, nor did the courts below pass on it.

this argument below, and so it is waived. More importantly, it presents no authority for the novel idea that some persons should be entitled to less process than others when convenient for the Government. This is a dangerous doctrine, which would quickly create different classes of people entitled to different classes of due process. As explained below, *infra* at III.D, this is exactly the kind of position the Due Process Clause was designed to protect against.

Plaintiffs, in turn, argue that the correct comparison for purposes of fairness is to criminal cases. Pls. Br. 14, 29, 32-33. But the fulcrum of their comparison has nothing to do with personal jurisdiction. It is not controversial, but it is entirely irrelevant to personal jurisdiction, that the Second Circuit has found a sufficient "nexus" for Congress to enact an extraterritorial criminal statute when the statute focuses on "activity [that aims] to cause harm inside the United States or to U.S. citizens or interests." *United States v. Sanchez*, 972 F.3d 156, 169 (2d Cir. 2020) (citation omitted).

But that begs the question whether Congress can go further and legislate that all defendants sued under such laws are subject to personal jurisdiction in suits making such civil claims. The Second Circuit rejected that assertion, Pet. App. 180a-81a, and this Court denied certiorari after the Solicitor General saw no conflict with any decision of this Court. CVSG Br. 14-16, No. 16-1071 (U.S. Feb. 22, 2018).

Underscoring the irrelevance of legislative authority to enact laws criminalizing extraterritorial offenses, "in a criminal case, personal jurisdiction is based on the physical presence of the defendant in the forum, independent of any minimum-contacts

analysis." CVSG Br. 21, *Fed. Ins. Co. v. Saudi Arabia*, No. 08-640 (U.S. May 29, 2009). Physical presence is required even if the United States must conduct a "forcible abduction" of an individual abroad. *United States v. Alvarez-Machain*, 504 U.S. 655, 661, 670 (1992) (abducted from Mexico); *United States v. Yunis*, 924 F.2d 1086, 1089 (D.C. Cir. 1991) (terrorist lured into international waters). Due process standards in civil cases do not require physical presence, but instead the more *lenient* standard of a forum-connection consistent with due process.

4. Finally, one amicus argues Respondents are not persons under the Fifth Amendment. Chamber Br. 5-16. This Court should ignore this argument as neither Petitioner raises it here. In any case, two Circuits have expressly held that Respondents are persons under the Due Process Clause. Pet. App. 153a-54a; *Livnat*, 851 F.3d at 49-53 (D.C. Cir. 2017). The Government has also acknowledged the unbroken line of authority holding that Respondents are "persons." U.S. Amicus Br. 9-12, *Sokolow v. PLO*, No. 16-1071 (U.S. Feb. 22, 2018). This Court has presupposed Respondents are "persons" when contrasting a statute's use of the word "individual," which does not include Respondents, with use of the word "person," which would include entities like Respondents. *Mohamad*, 566 U.S. at 454-55. This Court has similarly assumed that unincorporated associations (which is how Respondents are classified in the United States, *see* Pet. App. 159a) are entitled to due process just like corporations. *California State Automobile Association Inter-Insurance Bureau v. Maloney*, 341 U.S. 105, 108 (1951); *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 140-41 (1951).

Nor should the issue be controversial. The "Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Because foreign defendants are "forced to appear in the United States" to answer potential claims, they are "entitled to the protection of the Due Process Clause." *GSS Grp. Ltd. v. Nat'l Port Auth.*, 680 F.3d 805, 816 (D.C. Cir. 2012). Amici's argument also relies on treating Respondents like sovereigns. Chamber Br. 6. But Respondents lack "attributes of sovereignty like sovereign immunity" and "territorial security" and do not enjoy other "special privileges" that are "available only to entities that are juridical equals in the eyes of the United States." *Livnat*, 851 F.3d at 50-51.

III. The Original Meaning of Due Process Imposes Limitations on Jurisdiction.

The Court should not upend well-settled law on the Fifth Amendment's Due Process Clause based on scant historical evidence. As the Government and a leading proponent of Plaintiffs' maximalist position agree, "the plaintiffs' theory is not easily confirmed as a historical matter" because "[s]howing that Founding-era due process *didn't* limit federal personal jurisdiction is an exercise in proving a negative." Gov't Br. 47 (citation omitted); Sachs Br. 7.

Plaintiffs' "[e]vidence of the understanding of those who crafted the Fifth Amendment's Due Process Clause is surprisingly slim." Lawrence Rosenthal, *Does Due Process Have an Original Meaning? On Originalism, Due Process, Procedural Innovation ... and Parking Tickets*, 60 Okla. L. Rev. 1, 29 (2007). Contrary to Plaintiffs' broad claims (Pls. Br. 18-19),

"neither Madison nor anyone else involved in the process made any substantive comments about its meaning." *Id.* at 29, 52 (calling the same kinds of evidence relied upon by Plaintiffs "murky and incomplete"). As members of this Court have explained, when the proponent of a historical claim that would overturn longstanding precedent admits that it is speculative, wisdom counsels against adopting that position. Amy Coney Barrett, *Originalism and Stare Decisis*, 92 Notre Dame L. Rev. 1921, 1924 & n.8 (2017); Amy Coney Barrett & John Copeland Nagle, *Congressional Originalism*, 19 U. Pa. J. Const. L. 1, 11 (2016) (history is only "conclusive when it is determinate"); *Gamble v. United States*, 587 U.S. 678, 722-23 (2019) (Thomas, J., concurring) (declining to overturn precedent where "historical record present[ed] knotty issues about the original meaning of the Fifth Amendment," insufficient to render precedent "demonstrably erroneous").

Plaintiffs also failed to raise this argument below, depriving the Second Circuit of an opportunity to address it. On appeal, only the *Fuld* plaintiffs raised originalism, and only to argue for a "relaxed" or "nexus" standard—very different from the extreme position they take before this Court.[21] *See Fuld* C.A. Pls. Br. 49, 61. The Court should decline to consider such arguments. *See Springfield v. Kibbe*, 480 U.S. 257, 259 (1987) ("We ordinarily will not decide questions not raised or litigated in the lower courts.").

---

[21] Plaintiffs first introduced their maximalist theory in their petition for rehearing *en banc*. *See Hoover v. Ronwin*, 466 U.S. 558, 574 n.25 (1984) (argument made "for the first time" at the rehearing stage "precludes our consideration").

The argument fails regardless. The founders believed due process protected the natural, unwritten rights of individuals. Early courts regularly held that personal jurisdiction was one of those rights protected from the power of the "sovereign" and the "legislature." They also believed that due process precluded discriminatory statutes that sought to strip protections from specific individuals or groups. The PSJVTA transgresses these limitations—and early American courts would have struck it down.

A. Founding-era Judges Believed that Due Process Restrained Legislative Power and Protected Natural Rights.

For early Americans, due process rights had a long history of protecting individuals against legislative acts. "The due process and law-of-the-land clauses of the American state and federal constitutions originate in Magna Charta and the English customary constitution. This is uncontroversial." Nathan S. Chapman & Michael W. McConnell, *Due Process As Separation of Powers*, 121 Yale L.J. 1672, 1681, 1722-23 (2012). The Due Process Clause "grew out of the 'law of the land' provision of Magna Carta and its later manifestations in English statutory law.'" *O'Bannon v. Town Ct. Nursing Ctr.*, 447 U.S. 773, 792 n.2 (1980) (Blackmun, J. concurring).

As this Court explained, due process requires courts to decide if any "process" ordered by Congress is "in conflict" with "the constitution itself" and whether it contravenes the "settled usages and modes of proceeding existing in the common and statute law of England." *Murray's Lessee v. Hoboken Land & Imp. Co.*, 59 U.S. 272, 277 (1855). Legislative acts were overturned when contrary to "due process of law," which was also called the "law of the land." *Id.* at 276;

Edward Coke, *The Second Part of the Institutes of the Laws of England* at 50-55 (London, 6th Ed. 1772) (the phrase "by the Law of the Land" is also "rendered, without due process of Law").

"[A]t least one common, public understanding of the Due Process Clause of the Fifth Amendment at the time it was ratified in 1791 was that it protected *unenumerated natural and customary rights against encroachment by Congress*." Frederick Mark Gedicks, *An Originalist Defense of Substantive Due Process: Magna Carta, Higher-Law Constitutionalism, and the Fifth Amendment*, 58 Emory L.J. 585, 596 (2009) (emphasis added); *see also* 3 Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, 451 (2d ed. 1836) ("A bill of rights is only an acknowledgment of the preexisting claim to rights in the people." (quoting Virginia legislator George Nicholas)).

Early cases applied these limitations, unwritten in positive law but widely-understood, to overturn legislative acts. *See, e.g., Bowman v. Middleton*, 1 Bay 252 (1792) (holding that law was "against common right, as well as against Magna Charta"); *Zylstra v. Corp. of City of Charleston*, 1 Bay 382, 384 (1794) (refusing to enforce law because "the trial by jury is a common law right; not the creature of the constitution, but originating in time immemorial; it is the inheritance of every individual citizen"); *Taylor v. Porter & Ford*, 4 Hill 140, 145 (N.Y. Sup. Ct. 1843).

Plaintiffs seek to exclude personal jurisdiction safeguards from those protected rights inherited from England, but early judges called personal jurisdiction an "eternal principle of justice" that may not be exercised "over persons not owing [the State] allegiance or not subjected to [its] jurisdiction by being

found within [its] limits." *Mills v. Duryee*, 11 U.S. 481, 486 (1813) (Johnson, J., dissenting). Justice Story explained that "American courts" had "fully recognized" the English limits on jurisdiction over persons that were not physically "present" "within the jurisdiction." Joseph Story, *Commentaries on the Conflict of Laws,* § 545 (1834); *see id.*, §§ 537-550 (discussing personal jurisdiction).

Scholars may disagree about whether the founders were correct "that the law of the land bound Parliament" in England, "but revolutionary Americans believed that it did, and that is all that matters." Gedicks, 58 Emory L.J. at 657. American due process became "a *restraint on the legislative* … powers of the government, and cannot be so construed as to leave congress free to make any process 'due process of law,' by its mere will." *Murray's Lessee*, 59 U.S. at 276 (emphasis added); *Appeal of Ervine*, 16 Pa. 256, 268 (1851) (rejecting proposition that the legislature can determine what counts as "due process").

B. Early Courts Applied Customary Due Process Rights Inherited From English Law to Limit Personal Jurisdiction.

Among the important customary rights inherited from eighteenth-century English law, and zealously protected by early American courts, were limits on personal jurisdiction. Historically, English "common law courts neither exercised nor believed they could exercise jurisdiction in personal actions without either physical custody of the defendant or an appearance by him." Nathan Levy, Jr., *Mesne Process in Personal Actions at Common Law and the Power Doctrine*, 78 Yale L.J. 52, 94 (1968). American courts adopted that doctrine, which protected individual

rights as an inherent due process limitation on sovereignty: "The general rule is that all sovereignty is strictly local, and cannot be exercised beyond the territorial limits. This flows from the nature of sovereignty, which being *supreme* power, cannot exist where it is not supreme." *The Schooner Exch. v. McFaddon*, 11 U.S. 116, 126-27 (1812).

The strength of this doctrine is shown in *Picquet v. Swan*, 19 F. Cas. 609, 611-13 (C.C.D. Mass. 1828), where Justice Story, riding circuit, explained that jurisdiction did not extend outside national boundaries. Service of process was originally a means of affirming that the defendant's person was within the sovereign's territorial boundaries and, because of that presence, subject to the *in personam* jurisdiction of its courts. Justice Story explained that "no sovereignty can extend its process beyond its territorial limits, to subject either persons or property to its judicial decisions," and "[e]ven the court of king's bench in England, though a court of general jurisdiction, never imagined, that it could serve process in Scotland, Ireland, or the colonies, to compel an appearance, or justify a judgment against persons residing therein at the time of the commencement of the suit." 19 F. Cas. at 611-12. *Picquet* affirmed that exerting jurisdiction "beyond those limits; and any attempt to act upon persons or things beyond them, would be deemed an usurpation of foreign sovereignty, not justified or acknowledged by the law of nations." *Ibid.* *Picquet* concluded that "[e]very exertion of authority beyond this limit is a mere nullity." *Ibid.*

Not surprisingly, Justice Story's other writings reflect this limited view of federal jurisdiction. He explained that "jurisdiction, to be rightfully exercised, must be founded either upon the person being within

the territory, or upon the thing being within the territory; for, otherwise, there can be no sovereignty exerted." Story, *Commentaries on the Conflict of Laws* § 539. As such, "no state or nation can, by its laws, directly affect, or bind property out of its own territory, or persons not resident therein." *Id.* § 20 ("no sovereign has a right to give the law beyond his own dominions").

Plaintiffs twist Justice Story's words to mean the opposite of what *Picquet* actually says. Plaintiffs claim that Congress could order the federal courts to summon a foreigner "from the other end of the globe" and that if Congress had "prescribed such a rule, the court would certainly be bound to follow it." Pls. Br. 25. The first quote is part of an argument that Justice Story *rejected* as "so repugnant to the general rights and sovereignty of other nations" to be an implausible reading of a statute. 19 F. Cas. at 613. The second quote ("bound to follow it") explicitly discussed *in rem* jurisdiction ("by attachment"). The preceding sentence in the opinion (beginning with "Unless") stated that serving a summons "by any attachment" of "property, however small, within the district" can create an "in invitum" judgment against an "alien, who has never been within the United States." *Id.* at 615. That quote affirms Justice Story's belief that Congress had authority to create expansive *in rem* jurisdiction even based on small amounts of property, and the courts would be "bound to follow it." *Ibid.* But that only contrasts with Justice Story's repeated statements that the *sovereign*—which includes Congress, by definition—could never exercise *in personam* jurisdiction over someone outside its territory.

Plaintiffs (and some amici) conflate Justice Story's distinction between *in personam* and *in rem* jurisdiction. But *Picquet* clearly distinguished the two:

> Where a party is within a territory, he may justly be subjected to its process, and bound personally by the judgment pronounced, on such process, against him. Where he is not within such territory, and is not personally subject to its laws, if on account of his supposed or actual property being within the territory, process by the local laws may by attachment go to compel his appearance, and for his default to appear, judgment may be pronounced against him, *such a judgment must, upon general principles, be deemed only to bind him to the extent of such property, and cannot have the effect of a conclusive judgment in personam, for the plain reason, that except so far as the property is concerned, it is a judgment coram non judice.*

Id. at 612 (emphasis added). *Picquet* thus exemplified the founding-era belief that foreign defendants could only be bound to the extent of their property within the United States.

Plaintiffs also string together unrelated phrases from *Toland v. Sprague*, 37 U.S. 300 (1838), *see* Pls. Br. 25-26, to suggest that *in personam* jurisdiction could cover any person in a foreign jurisdiction. Like Justice Story in *Picquet*, *Toland* was careful to distinguish between *in personam* and *in rem* jurisdiction:

> That the right to attach property, to compel the appearance of persons, can properly be used only in cases in which such persons are amenable to the process of the court, in personam; that is,

> where they are inhabitants, or found within the United States; and not where they are aliens, or citizens resident abroad, at the commencement of the suit, and have no inhabitancy here...

Id. at 330. Like *Picquet*, *Toland* noted that Congress could have authorized "civil process from any circuit court, to have run into any state of the Union." *Id*. at 328. But until Congress passed "positive legislation" on the issue, *Toland* held that process "can only be served upon persons within the same districts." *Id*. at 330. This holding does not support Plaintiffs' argument.

These personal jurisdiction limits on legislative and sovereign power were well-established at the founding. *See Kibbe v. Kibbe*, 1 Kirby 119, 126 (Conn. Super. Ct. 1786) (a Massachusetts court lacked jurisdiction over Connecticut defendant unless "both parties are within the jurisdiction of such courts at the time of commencing the suit"); *Schooner Exch.* 11 U.S. at 136-37 ("every sovereign" is "incapable of conferring extra-territorial power"); *id.* at 132 (Syll.) (Attorney General Pinkney explaining "the judicial department['s] power cannot extend beyond the territorial jurisdiction"); *United States v. Bevans*, 16 U.S. (3 Wheat.) 336, 386-87 (1818) ("[T]he jurisdiction of a state is co-extensive with its territory; co-extensive with its legislative power."); *The Apollon*, 22 U.S. 362, 370 (1824) (same); *Rose v. Himely*, 8 U.S. 241, 279 (1808) ("the legislation of every country is territorial; that beyond its own territory, it can only affect its own subjects or citizens"); *Cohens v. Virginia*, 19 U.S. 264, 295 (1821) ("legislative power has no operation, beyond the territorial limits under its authority").

Plaintiffs ignore these early cases that universally speak of personal jurisdiction as a limit on both "*sovereign*" and "*legislative*" authority. Pls. Br. 17-20. Although those cases do not explicitly name the Due Process Clause, founding-era judges "often did not view constitutional provisions as creating rights," so they found "little need to actually anchor rights that were 'universally esteemed fundamental and essential to society' to a particular constitutional textual source." Charles Rhodes, *Liberty, Substantive Due Process, and Personal Jurisdiction*, 82 Tul. L. Rev. 567, 580-81 (2007). Nor does the specific provision matter as the early cases show that personal jurisdiction safeguards limited legislative power.

In the mid-nineteenth century, however, courts started to more commonly refer to "due process" as a source of individual rights. *Ibid.*; *see Bloomer v. McQuewan*, 55 U.S. (14 How.) 539, 553 (1852) (federal statute "certainly could not be regarded as due process of law."). At that point, not surprisingly, courts started locating personal jurisdiction in the Due Process Clause. For instance, *Lafayette Ins. Co. v. French*, 59 U.S. (18 How.) 404, 408 (1856), explicitly tied personal jurisdiction to due process, requiring certain state-based contacts, to properly exercise jurisdiction "by due process of law." State courts also began to refer to "due process of law" as requiring personal jurisdiction. *See Owen v. Miller*, 10 Ohio St. 136, 143 (1859) ("[t]o constitute due process of law, ... there must be jurisdiction over the person of the owner, or over his property").

The Framers' limited views of personal jurisdiction fit well within their historical context. As the Court has explained, it "is implausible to suppose that the First Congress wanted their fledgling Republic ... to

be the custos morum of the whole world." *Kiobel*, 569 U.S. at 123. Federal courts were thus "designed and implemented ... to fit [the Framers'] practical governance imperatives, most pertinently, their geopolitical circumstances as a new, weak state." Thomas Lee, *Article IX, Article III, and the First Congress*, 89 Fordham L. Rev. 1895, 1898, 1901 (2021).

C. Grants of Extraterritorial Authority to Congress Did Not Affect Personal Jurisdiction.

As proof of the "unlimited" jurisdiction of the federal courts, Plaintiffs point to the "thousands of 'prize' and 'capture' cases." Pls. Br. 18, 23-27. But even those cases did not go to judgment unless the person (*i.e.*, pirate) or property (*i.e.*, prize ship) was brought within the sovereign's physical power. Plaintiffs rely on *Talbot v. Jansen*, 3 U.S. 133, 133-34 (1795), but the prize ship in that case was "then lying at Charleston, within the jurisdiction of the Court." *The Marianna Flora*, 24 U.S. 1, 39-40 (1825), similarly required the Government to "capture" the ship and the "sending in of the ship for adjudication" before "condemnation in our Courts." It pointed to many cases dismissed for failure to bring a captured vessel to "*the most convenient port for adjudication*." *Id.* at 21 n.r. Jurisdiction required that prizes "taken at sea … be brought with due care into some convenient port for adjudication by a competent court." *Jecker v. Montgomery*, 54 U.S. 498, 510 (1851) (citation omitted).

Plaintiffs rely on *Ex parte Graham*, 10 F. Cas. 911, 913 (C.C.E.D. Pa. 1818), but that case explains that even federal courts sitting in "admiralty" found it "essential to the exercise of this jurisdiction by any particular court, that the person or thing against

whom or which the court proceeds, should be within the local jurisdiction of such court."

The constitutional basis for those extraterritorial cases was the congressional Define and Punish Clause and the "judicial admiralty and maritime Jurisdiction." *See* U.S. Constit. Art. I, § 8, Cls. 10; Art. III, § 2, Cls. 1. Those specific grants of authority were exceptions to the pre-existing jurisdictional limits.[22] Had the Framers believed Congress was unconstrained by national borders, those grants of authority would be superfluous. Edmund Randolph's conclusion, cited by Plaintiffs (at 19), that the "federal courts had the exclusive power 'to decide all causes arising wholly on the sea, and not within the precincts of any county'" confirms that jurisdiction was originally intended to be territorially limited.

The historical focus on territoriality invalidates the application of the PSJVTA in this case. Respondents' only actions here are the "official" or "ancillary" UN activities of its UN mission, which are excluded from the PSJVTA. Plaintiffs' own cases, which arose under the enumerated authority to punish extraterritorial offenses, were not exempt from the additional requirement of personal jurisdiction. The same requirement exists today.

---

[22] Plaintiffs rely on congressional authority to define and punish piracy and offenses against the law of nations. Pls. Br. 17; *see also* Sachs Br. 22, 28. But the founders did not believe that "piracy" encompassed "other high seas crimes," let alone other "international law offenses." Eugene Kontorovich, *The "Define and Punish" Clause and the Limits of Universal Jurisdiction*, 103 Nw. U. L. Rev. 149, 159 (2009). And, as *Sosa v. Alvarez-Machain*, 542 U.S. 692, 724 (2004), explained, "the First Congress" believed that "Offenses" against the law of nations were limited "to Blackstone's three primary offenses: violation of safe conducts, infringement of the rights of ambassadors, and piracy."

When Congress exercises its constitutional authority to create causes of action, it does not supplant the independent requirement to establish *personal* jurisdiction over defendants. This Court's decisions under the Alien Tort Statute—a Founding-era enactment—and similar extraterritorial laws also require personal jurisdiction to be independently established consistent with due process. *See supra* II.B.

In the end, Plaintiffs' novel idea that Congress can impose personal jurisdiction on anyone in the world as a punishment finds no historical support. Leading jurists like "James Wilson (a drafter of the Constitution), John Marshall, and Joseph Story" rejected the idea that Congress had the power to "punish" anyone in the world, and by "1820, both Congress and the Supreme Court had rejected universal jurisdiction over anything but 'piracies.'" Kontorovich, 103 Nw. U. L. Rev. at 152-53.

D. The Original Meaning of Due Process Ensured "Equality Before the Law" and Forbade Discriminatory Statutes.

Even if personal jurisdiction were satisfied, the original public meaning of the Due Process Clause also required statutes to provide equality of treatment. At the founding, natural law and the "law of the land" precluded discriminatory statutes—like the PSJVTA—that sought to strip protections from specific individuals or groups.

As originally understood in England, due process of law prohibited legislatures from engaging in acts that are "effectively a judicial decree" or exercising "quasi-judicial power," and required them to act "by means of generally applicable legislation administered by courts," prohibiting "laws that

reduced procedural protections for a small class of citizens." Chapman & McConnell, 121 Yale L.J. at 1672, 1680, 1720, 1762, 1766-68, 1803. [23]

"As elaborated by courts in the early decades of the nineteenth century, this general law conception interpreted due process to require general and impartial laws rather than 'special' or 'class' legislation that imposed particular burdens upon, or accorded special benefits to, particular persons or particular segments of society." Ryan C. Williams, *The One and Only Substantive Due Process Clause*, 120 Yale L.J. 408, 425 (2010). American courts repeatedly affirmed the principle that discriminatory legislation seeking to "swe[ep] away the life, liberty and property of *one* or a *few* citizens, by which neither the representatives nor their other constituents are willing to be bound, is too odious to be tolerated in any government where freedom has a name." *Vanzant v. Waddel*, 10 Tenn. 260, 270-71 (1829); *see also Calder v. Bull*, 3 U.S. 386, 388 (1798) (the legislature may only "establish rules of conduct for *all* its citizens in future cases") (emphasis added); *Holden v. James*, 11 Mass. 396, 404-05 (1814) ("It is manifestly contrary to the first principles of civil liberty and natural justice, and to the spirit of our constitution and laws ... that any one should be subjected to losses, damages, suits, or actions, from which all others, under like circumstances, are exempted."); *Merrill v. Sherburne*, 1 N.H. 199, 212 (1818) ("[A]n act, which operates on the rights or property of only a few individuals,

[23] Though some founding-era courts refer to "citizens," the Due Process Clause equally protects non-citizens defending themselves in U.S. courts. *Goodyear*, 564 U.S. at 918.

without their consent, is a violation of the equality of privileges guaranteed to every subject.").

By defining "defendant" to refer exclusively to Respondents, 18 U.S.C. § 2334(e)(5), the PSJVTA contravenes the original meaning of the Due Process Clause by subjecting Respondents to "losses, damages, suits, or actions, from which all others, under like circumstances, are exempted." *Holden*, 11 Mass. at 405. The original meaning of due process supports finding the PSJVTA unconstitutional on this basis alone.

IV. The PSJVTA Violates Separation of Powers by Removing a Court's Ability to Decide if a Litigant Consented to Jurisdiction.

The PSJVTA violates separation of powers by usurping the Judiciary's Article III power "'to say what the law is' in particular cases and controversies." *Bank Markazi v. Peterson*, 578 U.S. 212, 225 (2016) (citation omitted). The Constitution "commands that the independence of the Judiciary be jealously guarded." *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 60 (1982) (plurality op.). Congress exceeds its powers and infringes on the Judiciary when it "compel[s] ... findings or results under old law" and "fails to supply any new legal standard effectuating the lawmakers' reasonable policy judgment." *Bank Markazi*, 578 U.S. at 231.

With the PSJVTA, Congress sought to compel the Judiciary to find that certain enumerated activities (which the courts had already found were insufficient for general or specific jurisdiction) must constitute consent, though only for Respondents. Instead of "supply[ing] any new legal standard," therefore, the PSJVTA grafts its own definition in place of pre-

existing constitutional standards for consent to personal jurisdiction. *Ibid.*

Congress cannot "legislatively supersede" decisions "interpreting and applying the Constitution." *Dickerson v. United States*, 530 U.S. 428, 437 (2000). Before the PSJVTA, courts uniformly held that subjecting Respondents to personal jurisdiction in the United States would violate the Due Process Clause, because Respondents neither consented to jurisdiction, nor had minimum contacts with the forum. *See* Pet. App. 136a, *cert. denied*, 584 U.S. 915; *Livnat*, 851 F.3d at 58, *cert. denied*, 586 U.S. 952 (2018); *Klieman*, 923 F.3d at 1130; *Shatsky*, 955 F.3d at 1037-38 (same).

Far from "simply allow[ing] courts to decide disputes among the affected parties" (House Br. 25), the PSJVTA circumvents those constitutional holdings. The Constitution, however, is not "alterable when the legislature shall please to alter it," but is instead "superior paramount law, unchangeable by ordinary means." *City of Boerne*, 521 U.S. at 529 (citation omitted). While Congress may "create[] a new standard for courts to apply" (House Br. 26-27), constitutional holdings cannot be so easily changed.

That the PSJVTA applies only to Respondents requires special caution. The Framers warned of "the danger of subjecting the determination of the rights of one person to the 'tyranny of shifting majorities,'" and thus "vested the executive, legislative, and judicial powers in separate branches "to prevent the recurrence of such abuses." *Chadha*, 462 U.S. at 961-62 (Powell, J., concurring). Separation of powers ensured "that a legislature should not be able unilaterally to impose a substantial deprivation on one person." *Ibid.* The founders "knew that when

political actors are left free not only to adopt and enforce written laws, but also to control the interpretation of those laws, the legal rights of 'litigants with unpopular or minority causes or ... who belong to despised or suspect classes' count for little." *Kisor v. Wilkie*, 588 U.S. 558, 612-13 (2019) (Gorsuch, J., concurring).

Congress was created "to prescribe general rules" while "the application of those rules to individuals in society would seem to be the duty of other departments." *Fletcher v. Peck*, 10 U.S. 87, 136 (1810). When Congress overstepped this power, it was not making "law" as the founders understood that term. *Regents of Univ. of Md. v. Williams*, 9 G. & J. 365, 366 (1838) ("An act which only affects … a particular person … and has no relation to the community in general, is rather a sentence than a law."); *Merrill*, 1 N.H. at 212 (laws "must in *substance* be of a legislative character," including that they "be rules prescribed for civil conduct to the whole community, and not … concerning a particular person'"). The PSJVTA's targeted deprivation of Respondents' rights violates these longstanding separation of powers principles. *See* Chapman & McConnell, 121 Yale L.J. at 1722.

V. Plaintiffs Mischaracterize the Factual Record Regarding Respondents' Alleged U.S. Activities.

Before this Court, Plaintiffs inaccurately assert it is "uncontested" that Respondents engaged in various non-UN related activities in the United States "after the statutory trigger date," thereby satisfying the activities prong. Pls. Br. 44. That is false. As explained below, Respondents have consistently contested Plaintiffs' allegations that they engaged in any non-UN related activities in the United States

after the trigger date. The courts below did not resolve those factual disputes, nor did they address the related, statutory questions of what types of activities constitute "official business of the United Nations," "meetings with [government] officials," or "ancillary" activities—which a court cannot consider when assessing jurisdiction under the PSJVTA. *See* 18 U.S.C. § 2334(e)(3).

To purportedly trigger "deemed consent" to personal jurisdiction under the activities prong, Plaintiffs alleged (and Respondents provided jurisdictional discovery regarding) various activities allegedly conducted by Respondents while physically present in the United States. No court has ever found that these activities were sufficient to trigger jurisdiction under the activities prong.

Plaintiffs' first factual claim is that Respondents allowed "notaries in the United States to certify documents" for use in Palestine. *See* Pls. Br. 11, 15, 44-45; Gov't Br. 4, 14 (characterizing this as "providing consular services"). But the activities of state-licensed notaries, independently hired by American citizens, cannot constitute activities *of Respondents* sufficient to satisfy the activities prong.

The only evidence cited by Plaintiffs is an affidavit claiming that the website of the PLO's (long-shuttered) Washington, D.C. office listed Arabic-speaking notaries in 2018. Pls. Br. 11 (citing JA 149-52 (the affidavit)). When Plaintiffs' counsel contacted those notaries *before* the enactment of the PSJVTA in December 2019, the notaries offered to send notarized documents "to either Canada or Mexico for certification" by a PLO consulate. *Ibid.* As noted above, however, the PLO closed its D.C. office in 2018. Nothing in the affidavit demonstrates that the alleged

"consular" activities by private notaries continued after the PSJVTA's trigger date.

Depositions of the state-licensed notaries confirmed that Respondents had not authorized or controlled their U.S. activities. *See* JA 343-48 (summarizing the evidence on this issue). The state-licensed notaries denied having any authority to act on behalf of Respondents or receiving any compensation from them. JA 475, 513-515, 553-57, 560-61, 577-81 (notary deposition testimony). They explained in significant detail that Americans hire them to notarize documents and then send them to the PLO's Canadian or Mexican consulates for authentication—precisely because Respondents cannot, and do not, perform consular operations in the United States. *Ibid.* They testified that Respondents had no authority to control or limit their actions, and they never (even before the PSJVTA) provided services on behalf of Respondents. *Ibid.* In no way were they "agents" acting for Respondents. *Ibid.*

Plaintiffs' remaining factual allegations (*see* Pls. Br. 11, 15, 44-45) involve the following activities:

- posting "communications in English" on the PLO's semi-official news website, including "translations of numerous speeches given by Palestinian representatives at the United Nations"; JA 140-41, 410-14 (allegations);
- posting messages on websites, Twitter accounts, and Facebook accounts run by Respondents' UN mission; JA 137-40, 142-45, 414-18 (allegations);
- maintaining the physical office of Respondents' UN mission in New York City; JA 418-19;

- participating in a press conference with an Israeli politician to discuss a significant Security Council meeting; JA 137 (allegations); and
- Palestine's UN ambassador explaining that young Palestinian-Americans "lobby" Congress to support the Palestinian people and to take "more of a balanced and just position;" *compare* Pls. Br. 11, 15, 44 *with* JA 911 (transcript of his actual remarks).

As Respondents argued below (*see, e.g.,* JA 340-57, 362-77, 443-48; *Fuld* C.A. Def. Br. 23 n.2, 46-48 & n.20), none of these activities triggers the activities prong. Posting in English on the PLO's news site is not an activity "in the United States." The other activities do not trigger consent to jurisdiction based on the plain language of the PSJVTA, which expressly provides that a court may *not* consider "official business of the United Nations," Respondents' UN mission office, meetings with U.S. and foreign government officials, and "personal and official" activities "ancillary" to such activities. 18 U.S.C. §§ 2334(e)(3)(A)-(F). The statute's rule of construction also explicitly treats Respondents' UN mission ("exempted by paragraph (3)(A)") as *outside* of the United States, though it states that any other office "shall be considered to be in the United States." *Id.* § 2334(e)(4).

By excluding UN-related work and diplomacy from consideration, the PSJVTA mirrors established law. The UN Headquarters Agreement ("UNHQA") guarantees "invitees" of the UN, including the PLO, basic rights of "entry, access and residence" in the UN Headquarters District in New York. *PLO*, 695 F. Supp. at 1465-68. As such, "the UN Headquarters is not really United States territory at all, but is rather

neutral ground over which the United States has ceded control," and Palestine's UN mission is thus not in the United States. *Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44, 51 (2d Cir. 1991).

Under the UNHQA, the United States is "obligat[ed] … to refrain from impairing the function of the PLO Observer Mission to the United Nations," which falls outside U.S. "jurisdiction." *PLO*, 695 F. Supp. at 1465-68, 1471. Courts have thus long held that UN-related activities conducted by Respondents cannot "properly be considered as a basis of jurisdiction." *See Klinghoffer*, 937 F.2d at 51; U.S. Brief 6, *Klieman v. Palestinian Auth.*, No. 15-7034 (D.C. Cir. Feb. 15, 2019) (same). The United States cannot take away any right granted to Respondents by the United Nations without impairing its antecedent obligations under the UNHQA. *Ibid.*

Plaintiffs argue that Respondents engaged in non-UN-related activities whenever their UN mission discussed "grievances against the Government of Israel." JA 303. This allegation ignores the fact that discussion of the Israeli-Palestinian conflict is omnipresent at UN organs[24] and by UN missions on social media.[25]

---

[24] *See*, *e.g.,* Meetings Coverage, GA/12325 (António Guterres: "If there is a hell on earth, it is the lives of children in Gaza") (May 20, 2021); G.A. Res. No. A/C.4/73/L.18 (Nov. 14, 2018) (condemning "the excessive use of force by the Israeli occupying forces against Palestinian civilians, resulting in the death and injury of civilians").

[25] *See, e.g.,* Twitter: @UKUN_NewYork ("What hope is there for 2-state solution when communities are simply removed from the map?") (Oct. 14, 2016); @FranceONU (Feb. 24, 2020) ("No further settlements. No colonization."); @Turkey_UN (Apr. 23, 2020) ("All illegal settlement and demolition activities must stop.").

Moreover, Palestine's UN mission is a member of the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP). The mission's official mandate is to "participate[] in the work of … the Committee" as part of its observer status. [26] The Committee officially "focuses its activities on diplomatic efforts and initiatives to support … an end to the Israeli occupation" and to "mobilize the international community to stay steadfast in its support for the inalienable rights of the Palestinian people."[27] "Through its activities," the Committee raises "awareness of the political, human rights and humanitarian developments on the ground" and seeks "to mobilize the broadest possible international support."[28]

As Judge Daniels recognized in *Sokolow*, speech about the Israeli-Palestinian conflict is an inherent part of a UN mission's official business (and the CEIRPP's mandate). He explained "there are a lot of things that you do to engage in UN business," including "persuad[ing] other members of the UN of your position" and finding "public support for that position." JA 216-17. A UN mission also must communicate "why you're taking that position at the UN and why that's a legitimate position to take." *Ibid.* Respondents provided detail showing the activities of

---

These examples, and those below, were before the trial courts and are roughly contemporaneous with Plaintiffs' allegations.

[26] Annual Report, CEIRPP, UN Doc. A/75/35, ¶ 31, at: https://bit.ly/43dTvRi.

[27] Programme of Work for 2020, CEIRPP, UN Doc. A/AC.183/2020/1 (Feb. 7, 2020), at: https://bit.ly/3DdiDNB.

[28] *Ibid.*

their UN mission were exactly the same as those of other UN missions. *Sokolow* D.Ct. #1021 at 12-20.

The PSJVTA expressly provides that a court cannot consider Respondents' official UN business, meetings with government officials, and "any personal or official activities conducted ancillary" to such activities. 18 U.S.C. § 2334(e)(3)(F). As Respondents have consistently argued throughout these cases, Plaintiffs have never succeeded in explaining why the conduct alleged in their complaints (meeting, press conferences, social media posts, etc.) are not official UN business or diplomatic activities, or "activities conducted ancillary" to such official business.[29]

Moreover, Plaintiffs forfeited their arguments regarding Respondents' activities in the court of appeals. Plaintiffs' opening briefs barely mentioned the details of the purported activities. *Sokolow* C.A. Pls. Br. 11; *Fuld* C.A. Pls. Br. 48. Plaintiffs' reply briefs asked the court to forego deciding the activities predicate altogether. *Sokolow* C.A. Pls. Reply 35 n.3; *Fuld* C.A. Pls. Reply 26 n.7. Nor do Plaintiffs raise, even now, any argument that official acts of Respondents' UN mission and staff do not constitute "official business" of the UN, or that the alleged activities are not "ancillary" to such official business. The parties submitted hundreds of pages to the trial courts regarding the activities prong,[30] but Plaintiffs addressed almost none of it on appeal—even though

---

[29] Plaintiffs submitted depositions of the UN ambassador and his staff. *See* JA 620-912. Yet they failed to find a single action outside of their official UN duties, much less outside of "UN-related undertakings and 'ancillary' conduct." Pet. App. 15a n.4, 68a n.7, 220a n.1.

[30] *See, e.g., Fuld* D.Ct. #30, 42 & 47 and *Sokolow* D.Ct. #1018, 1023, 1027, 1035, 1039 & 1066.

Respondents maintained that none of their alleged activities triggered the activities prong. *Fuld* C.A. Defs. Br. 23 n.2, 46-48 & n.18-20. Accordingly, Plaintiffs have no basis to assert that it is "uncontested" Respondents engaged in conduct satisfying the activities prong.

Resolution of these open issues would require a remand, in addition to the resolution of a host of other unresolved issues. *See* Resp. BIO 27-29.

CONCLUSION

This Court should affirm the decisions below.

Respectfully submitted,

February 28, 2025

GASSAN A. BALOUL
Counsel of Record
MITCHELL R. BERGER
SQUIRE PATTON BOGGS (US) LLP
2550 M Street, NW
Washington, D.C. 20037
Telephone: (202) 457-6000
gassan.baloul@squirepb.com

Counsel for Respondents

APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX

1. U.S. Const. Amend. V provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. 18 U.S.C. 2334 (2018 & Supp. IV 2022) provides:

Jurisdiction and venue

(a) GENERAL VENUE.—Any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district where any plaintiff resides or where any defendant resides or is served, or has an agent. Process in such a civil action may be served in any district where the defendant resides, is found, or has an agent.

(b) SPECIAL MARITIME OR TERRITORIAL JURISDICTION.—If the actions giving rise to the claim occurred within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of this title, then any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district in which any

plaintiff resides or the defendant resides, is served, or has an agent.

(c) SERVICE ON WITNESSES.—A witness in a civil action brought under section 2333 of this title may be served in any other district where the defendant resides, is found, or has an agent.

(d) CONVENIENCE OF THE FORUM.—The district court shall not dismiss any action brought under section 2333 of this title on the grounds of the inconvenience or inappropriateness of the forum chosen, unless—

(1) the action may be maintained in a foreign court that has jurisdiction over the subject matter and over all the defendants;

(2) that foreign court is significantly more convenient and appropriate; and

(3) that foreign court offers a remedy which is substantially the same as the one available in the courts of the United States.

(e) CONSENT OF CERTAIN PARTIES TO PERSONAL JURISDICTION.—

(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of any civil action under section 2333 of this title, a defendant shall be deemed to have consented to personal jurisdiction in such civil action if, regardless of the date of the occurrence of the act of international terrorism upon which such civil action was filed, the defendant—

(A) after the date that is 120 days after the date of the enactment of the Promoting Security and Justice for Victims of Terrorism Act of 2019, makes any payment, directly or indirectly—

(i) to any payee designated by any individual who, after being fairly tried or pleading guilty, has been imprisoned for committing any act of terrorism that injured or killed a national of the United States, if such payment is made by reason of such imprisonment; or

(ii) to any family member of any individual, following such individual's death while committing an act of terrorism that injured or killed a national of the United States, if such payment is made by reason of the death of such individual; or

(B) after 15 days after the date of enactment of the Promoting Security and Justice for Victims of Terrorism Act of 2019—

(i) continues to maintain any office, headquarters, premises, or other facilities or establishments in the United States;

(ii) establishes or procures any office, headquarters, premises, or other facilities or establishments in the United States; or

(iii) conducts any activity while physically present in the United States on behalf of the Palestine Liberation Organization or the Palestinian Authority.

(2) APPLICABILITY.—Paragraph (1) shall not apply to any defendant who ceases to engage in the conduct described in paragraphs (1)(A) and (1)(B) for 5 consecutive calendar years. Except with respect to payments described in paragraph (1)(A), no court may consider the receipt of any assistance by a nongovernmental organization, whether direct or indi-

rect, as a basis for consent to jurisdiction by a defendant.

(3) EXCEPTION FOR CERTAIN ACTIVITIES AND LOCATIONS.—In determining whether a defendant shall be deemed to have consented to personal jurisdiction under paragraph (1)(B), no court may consider—

(A) any office, headquarters, premises, or other facility or establishment used exclusively for the purpose of conducting official business of the United Nations;

(B) any activity undertaken exclusively for the purpose of conducting official business of the United Nations;

(C) any activity involving officials of the United States that the Secretary of State determines is in the national interest of the United States if the Secretary reports to the appropriate congressional committees annually on the use of the authority under this subparagraph;

(D) any activity undertaken exclusively for the purpose of meetings with officials of the United States or other foreign governments, or participation in training and related activities funded or arranged by the United States Government;

(E) any activity related to legal representation—

(i) for matters related to activities described in this paragraph;

(ii) for the purpose of adjudicating or resolving claims filed in courts of the United States; or

(iii) to comply with this subsection; or

(F) any personal or official activities conducted ancillary to activities listed under this paragraph.

(4) RULE OF CONSTRUCTION.—Notwithstanding any other law (including any treaty), any office, headquarters, premises, or other facility or establishment within the territory of the United States that is not specifically exempted by paragraph (3)(A) shall be considered to be in the United States for purposes of paragraph (1)(B).

(5) DEFINED TERM.—In this subsection, the term "defendant" means—

(A) the Palestinian Authority;

(B) the Palestine Liberation Organization;

(C) any organization or other entity that is a successor to or affiliated with the Palestinian Authority or the Palestine Liberation Organization; or

(D) any organization or other entity that—

(i) is identified in subparagraph (A), (B), or (C); and

(ii) self identifies as, holds itself out to be, or carries out conduct in the name of, the "State of Palestine" or "Palestine" in connection with official business of the United Nations.