No. 2026-

IN THE

SUPREME COURT OF THE UNITED STATES

KOREAN CLAIMANTS,

Petitioners,

v.

DOW SILICONES CORPORATION; DEBTOR'S REPRESENTATIVES; CLAIMANTS' ADVISORY COMMITTEE; FINANCE COMMITTEE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit Case Nos. 25-1373 and 25-1616

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This petition arises from a decades-long mass tort settlement administered under federal court supervision in which over 2,600 South Korean nationals received formal approval of their claims against Dow Corning Corporation for personal injuries caused by silicone gel breast implants—yet received nothing, or far less than they were owed. The Settlement Facility imposed an address confirmation requirement that proved impossible for Korean Claimants to satisfy, denied premium payments to all Korean Claimants and basic payments plus premium payments to some Korean Claimants, and refused all meaningful communication with their counsel. When Petitioners sought judicial scrutiny of the Claims Administrator's conduct and neutrality, the district court refused without briefing, and the Sixth Circuit affirmed in three pages. Subsequently, the district court terminated and dissolved the positions assigned for the settlement facility, and the Sixth Circuit affirmed in three pages. The questions presented are:

1. Whether a federal court discharges its duty to supervise a court-administered mass tort settlement when it permanently extinguishes the formally approved claims of more than 2,600 foreign nationals—relying exclusively on declarations submitted by the claims administrator whose neutrality is disputed, refusing without briefing a claimant-funded independent audit, and never independently examining whether the administrative process that produced 100% denial of an identifiable national group complied with due process

and the equal-treatment requirement of 11 U.S.C. § 1123(a)(4).

2. Whether due process requires, consistent with *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), that a federally supervised settlement program provide notice of proceedings permanently extinguishing foreign nationals' approved claims in a language and through channels reasonably accessible to those claimants—rather than exclusively through an English-language domestic electronic filing system that foreign nationals cannot access.

PARTIES TO THE PROCEEDINGS

Petitioners are the Korean Claimants who participated in Dow Corning Bankruptcy settlement program, received the settlement identification from the settlement facility, and are more than 2,600 Korean nationals.

Respondents are Dow Silicones Corporation, the Debtor's Representatives, the Claimants' Advisory Committee, the Finance Committee.

RELATED PROCEEDINGS

In Re: Settlement Facility-Dow Corning Trust, Settlement Facility Matters, No.00-MC-00005, United States District Court Eastern District of Michigan. Order Denying Motions to Stay Pending Appeal and Motion for An Audit (ECF No.1853) entered on April 1, 2025.

In Re: Settlement Facility-Dow Corning Trust, Korean Claimants v. Dow Silicones Corporation, et al. No. 25-1373, United States Court of Appeals for the Sixth Circuit. Order entered on January 13, 2026.

In Re: Settlement Facility-Dow Corning Trust, No.00-MC-00005, United States District Court Eastern District of Michigan Southern Division. Notice and Order Terminating and Dissolving Positions Assigned (ECF No.1864) entered on June 4, 2025.

In Re: Settlement Facility-Dow Corning Trust, Korean Claimants v. Dow Silicones Corporation, et al. No. 25-1616, United States Court of Appeals for the Sixth Circuit. Order entered on January 13, 2026.

In Re: Settlement Facility-Dow Corning Trust, Settlement Facility Matters, No.00-MC-00005, United States District Court Eastern District of Michigan. Order Granting Motion to Terminate Funding Pursuant to Section 2.01(c) of the Funding Payment Agreement and to Terminate the Settlement Facility (ECF No.1796) (ECF No.1827) entered on December 30, 2024.

In Re: Settlement Facility-Dow Corning Trust, Korean Claimants v. Dow Silicones Corporation, et al. No.

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JURISDICTION

This petition seeks review of two judgments of the United States Court of Appeals for the Sixth Circuit arising from the same underlying bankruptcy proceeding, presented in a single petition pursuant to Rule 12.4 of the Rules of this Court.

The two cases involve identical and closely related questions: both arise from the same administrative conduct by the Dow Corning Settlement Facility, challenge the same unilateral imposition of an address confirmation requirement not authorized by the

confirmed Plan of Reorganization, and present the same constitutional questions under the Due Process Clause, 11 U.S.C. § 1123(a)(4), and *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

Case No. 25-1373 challenges the district court's refusal to examine the Claims Administrator's authority and neutrality; Case No. 25-1616 challenges the termination of Petitioners' settlement positions that resulted directly from the same unauthorized administrative determinations. Resolution of the questions presented in one case necessarily governs the other.

As to Case No. 25-1373, the Sixth Circuit issued its unpublished order affirming the district court's denial of Petitioners' Motion for an Audit of the Claims Administrator's Neutrality and Independence on January 13, 2026. App. A. The same panel denied rehearing en banc by order filed February 17, 2026. App. B. This Court has jurisdiction under 28 U.S.C. § 1254(1). As to Case No. 25-1616, the Sixth Circuit issued its unpublished order affirming the district court's Notice and Order Terminating and Dissolving Positions Assigned on January 13, 2026. App. D. The same panel denied rehearing en banc by order filed February 17, 2026. App. E. This Court has jurisdiction under 28 U.S.C. § 1254(1).

This petition is filed pursuant to Rule 12.4 of the Rules of this Court and meets its conditions and is timely filed within 90 days of the denial of rehearing en banc on February 17, 2026 under Rule 13.1 and Rule 13.3. of the Rules of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

CONSTITUTIONAL PROVISIONS AT ISSUE

The Fifth Amendment of the Constitution states:

> 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 limbs; 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.

Section 1 of the Fourteenth Amendment of the Constitution states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISION AT ISSUE

11 U.S. Code § 1123(a)(4) states:

> Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall provide the same treatment or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest.

STATEMENT OF THE CASE

A. Background of the Dow Corning Bankruptcy and Settlement

Dow Corning Corporation entered Chapter 11 bankruptcy proceedings in May 1995, confronting an overwhelming volume of products liability claims from women across the United States and internationally who alleged serious bodily injury caused by defective silicone gel breast implants. Following years of complex litigation and negotiation, the United States Bankruptcy Court for the Eastern District of Michigan confirmed an Amended Joint Plan of Reorganization, effective June 1, 2004. That Plan—which binds the reorganized debtor and all creditors by operation of 11 U.S.C. § 1141(a)—established the Settlement Facility–Dow Corning Trust (SF-DCT) as the primary mechanism for processing and distributing payments to eligible personal injury claimants.

The Plan's operational architecture was elaborate. The Settlement Facility Agreement (SFA) created a Claims Administrator charged with "oversee[ing] the processing and payment of Claims by the Settlement Facility" and required to possess specific professional qualifications and maintain strict independence from the debtor. The SFA specified that the Claims Administrator "shall be independent," Art. 4.02(a), and enumerated eight conditions in Art. 4.02(c) disqualifying a person from independent service—including any current or prior employment relationship with the debtor, any equity interest in the debtor, or any retention as an investment banker, financial advisor, or attorney for the debtor. The Claims Administrator was further required under SFA Annex

A, Clause 7.01(c), to "institute proceedings to assure consistency of processing and of application of criteria in determining eligibility" and to "ensure fairness in processing of claims and appeals."

The district court retained supervisory jurisdiction over "controversies and disputes regarding interpretation and implementation of the Plan," with authority to resolve any disputes arising from the SF-DCT's administration. That retained jurisdiction was the structural mechanism through which federal courts guaranteed the legality and fairness of the settlement administration. It was not an optional resource to be invoked only at the court's discretion; it was the constitutional and statutory guarantee that rendered the settlement binding on all parties, including claimants who had no practical alternative to participating in the settlement structure.

The Funding Payment Agreement (FPA) between Dow and the Settlement Facility specified in Section 2.01(c) that Dow's obligation to fund the trust would continue until "all Allowed Claims in each of Classes 5 through 19 and all other obligations of the Settlement Facility and the Litigation Facility have been paid, all Claims filed have been liquidated and paid or otherwise finally resolved, and no new timely Claims have been made." Dow committed to contribute up to a maximum of approximately $2.35 billion to fund the settlement. In practice, Dow contributed only approximately $1.89 billion—a shortfall of roughly $460 million from the maximum agreed amount. This outcome was financially beneficial to Dow precisely because thousands of international claimants, including all Korean Claimants, were denied payment through administrative procedures whose validity was never independently examined.

B. The Korean Claimants' Approved Claims and the Address Confirmation Barrier

Over 2,600 South Korean nationals submitted timely, properly documented claims to the SF-DCT for personal injuries resulting from silicone gel breast implants manufactured or distributed by Dow Corning. These claims were reviewed by the Claims Administrator and the Appeals Judge and formally approved in accordance with the Plan's procedures. Approval meant that the Claims Administrator had determined the claimant met the eligibility criteria for one or more payment categories. These approved claims constituted cognizable property interests under settled law.

Despite formal approval, not a single Korean Claimant received full payment of her approved settlement benefits. Approximately 1,400 Korean Claimants received only partial payment—the basic disease payment—while their premium payments were denied. Approximately 400 Korean Claimants received neither basic nor premium payment. The remaining Korean Claimants' claims were never fully processed. The Settlement Facility's own records reflected an aggregate default balance owed to Korean Claimants of $6,064,350—a debt permanently extinguished without payment.

The administrative mechanism that produced this outcome was the address confirmation requirement. The Claims Administrator—pointing to the fact that a number of letters sent to Korean addresses had been returned as undeliverable—imposed a requirement that Korean Claimants individually confirm their current residential addresses before any checks would be issued. This requirement was imposed on Korean Claimants as

a group. No comparable requirement was applied to any other national group of foreign claimants, notwithstanding that mail delivery failures are a common occurrence in international correspondence across all countries.

The Korean Claimants, through their Attorney on Record (AOR), made sustained and documented efforts to satisfy the address confirmation requirement. The AOR compiled and submitted address information for the claimants. The AOR made repeated written requests to the Claims Administrator for clarification of exactly what format of confirmation would be accepted, what documentation would satisfy the requirement, and what specific deficiencies remained outstanding for each claimant. These written inquiries went largely unanswered or were met with generic, non-responsive replies.

Compounding the impossibility of compliance was the Claims Administrator's systematic refusal to engage directly with the AOR. When the AOR—who had represented Korean Claimants in the Dow Corning settlement for more than two decades, from 1994 onward—requested in-person meetings at the SF-DCT's office in Houston to address the Korean Claimants' compliance issues, the Claims Administrator refused every such request. The Claims Administrator directed the AOR to communicate instead with her private attorney, Karima Maloney, Esq.. Ms. Maloney communicated only that "the situation has not changed and a meeting could not occur." The practical effect of this arrangement was that the administrative officer with plenary authority over the claims refused to meet with the representative of the claimants affected, substituting instead a communications channel that had no authority to exercise any of the Claims

Administrator's powers or to resolve any of the substantive compliance questions the AOR sought to address.

The result of the address confirmation requirement, as applied, was a 100% denial rate for premium payments and substantial denial of base payments across the entire Korean Claimant population. No court has ever explained how a procedural requirement intended to verify addresses could rationally produce uniform payment denial for every one of more than 2,600 claimants whose claims had been individually approved on the merits. The statistical impossibility of this outcome—100% denial across a group of over 2,600 individually approved claimants—is itself powerful evidence that the requirement was not administered as a genuine verification mechanism but rather as a pretext for wholesale denial.

C. Documented Misconduct: The Claims Administrator's False Declarations

Petitioners do not rest on statistical inference alone. Over the course of numerous motions before the district court, the Claims Administrator—Kimberly Smith-Mair, who had been promoted internally from the position of Operations Manager within the SF-DCT without formal legal education or a license for law practice—submitted more than ten sworn declarations addressing the Korean Claimants' compliance and the Settlement Facility's treatment of their claims. These declarations formed the near-exclusive factual foundation upon which the district court resolved every contested factual question adverse to the Korean Claimants, and upon which the Sixth Circuit affirmed those resolutions.

Petitioners identified in their Sixth Circuit briefs specific statements in the Claims Administrator's declarations that were demonstrably false in light of the Settlement Facility's own records:

First: The Claims Administrator declared that the Settlement Facility issues Notification of Status letters only after reviewing a disease claim and only if the claimant has submitted medical records relevant to the disease review process, and that the Settlement Facility would not have issued those letters if no medical records had been provided. The AOR demonstrated from the Settlement Facility's own records that Notification of Status letters for 109 claimants had in fact been issued to Korean Claimants who did not the predicate medical records the Claims Administrator described. The declaration was false.

Second: The Claims Administrator declared that none of the Korean Claimants had ever contacted the Settlement Facility after receiving their Notification of Status letters. The AOR personally documented that he had contacted the SF-DCT and requested meetings with the Claims Administrator on numerous occasions over the course of many years. Each request was refused. The declaration was false.

Third: The Claims Administrator declared that with respect to Exhibit 1 of Exhibit B to her declaration(ECF No.1807-1), she had found that 38 claims contained fraudulent records. However, the AOR established that the AOR had eliminated from Exhibit 1 all claimants who had received notices of exclusion due to POM (Proof of Manufacturer) deficiencies—the very category the declaration purported to analyze—with the result that there

was not a single claimant remaining in the exhibit whom the SF-DCT had determined to contain fraudulent records. The declaration falsely attributed fraudulent conduct to a group from which all such claimants had already been removed.
Fourth: The Claims Administrator declared that all of the claims submitted by Korean Claimants had been resolved. The AOR established from the Settlement Facility's records that there was no claimant in Classes 6.1 and 6.2—which included Korean Claimants—who had received a notification of status letter as required by the SFA. The Claims Administrator's statement that all Korean Claimant claims had been resolved was therefore contradicted by the Settlement Facility's own records.
Fifth: In her declaration submitted in support of the Motion to Terminate Funding, the Claims Administrator stated that she, "along with various staff and consultants, and in conjunction with Independent Assessor, conducted a due diligence process for the purpose of assuring that all timely claims in Classes 5, 6, 6.1, 6.2, 7, 9, 10, 10.1 and 10.2 have been processed and have received a notification of status letter as required by the SFA." (RE.1796-7, Pg ID:#42625-42627). This declaration was false: there was no claimant in Classes 6.1 and 6.2 who received the requisite notification of status letter.

These misrepresentations were not peripheral to the proceedings. The district court's Order of April 1, 2025 (ECF No.1827) cited and relied upon the Claims Administrator's declarations as the authoritative factual record on the Korean Claimants' compliance.

The Sixth Circuit, in affirming the termination of Dow's funding obligations (Case No. 25-1004), specifically found that accusations of bias against the Claims Administrator "lack any record support"—a finding that was itself derived entirely from the Claims Administrator's declarations, without any independent evidentiary examination. The en banc court's brief order in Case No. 25-1373 likewise disposed of the audit motion without engaging the specific documented misrepresentations Petitioners had identified.

D. The Structural Conflict of Interest and Absence of Checks and Balances

The problems with the Claims Administrator's conduct did not arise in a vacuum. The settlement's administrative structure contained significant structural features that undermined the independence the Plan nominally required. The Claims Administrator and the Appeals Judge—the two internal decision-makers whose determinations were final and unreviewable by claimants—were both members of the Finance Committee, the body charged with operating and running the Settlement Facility. The same institutional actors who decided claims also operated the administrative body that those decisions served. There were no meaningful checks and balances in the Settlement Facility's internal appeals system: a claimant who appealed an adverse decision by the Claims Administrator would have that appeal reviewed by personnel operating within the same institutional structure, accountable to the same Finance Committee.

The nominally independent oversight mechanism—the Claro Group—was equally compromised. The Claro Group was retained to assess the Claims

Administrator's independence and was paid by the Settlement Facility that the Claims Administrator operated. John Wills of the Claro Group regularly attended periodic conferences convened by the district court judge, meetings that included the Claims Administrator herself and members of the Claimants' Advisory Committee. Through these regular interactions, Wills became personally acquainted with the Claims Administrator before he was called upon to assess her independence. His declaration that the Claims Administrator was an independent and neutral person was thus the product of a prior relationship formed in the very institutional context whose independence he was purporting to evaluate.

The Claims Administrator's institutional history further complicated her independence. She had been promoted to the Claims Administrator position from the role of Operations Manager within the SF-DCT itself. She had no formal legal education and held no license for law practice, notwithstanding that her responsibilities required extensive legal and procedural judgment on matters directly affecting the financial interests of thousands of claimants. Dow Silicones Corporation, the reorganized debtor, had the most direct financial interest in minimizing payments to claimants—particularly to the large Korean Claimant population. An administrator with strong institutional ties to the internal operations of the Settlement Facility, without independent professional credentials, and overseen by an independence auditor paid by the facility itself, was structurally vulnerable to exactly the kind of influence the Plan's independence requirements were designed to prevent.

E. Proceedings Below

On March 23, 2025, Petitioners filed a Motion for an Order to Audit the Neutrality and Independence of the Claims Administrator (ECF No. 1852), explicitly offering to bear all costs of the audit. The district court denied the Motion on April 1, 2025 (ECF No. 1853) without requiring any response from opposing parties, ruling that "[n]othing in the Plan documents provide for such an audit" and that the Korean Claimants were not authorized to challenge the Claims Administrator's decisions.

On November 2024, Dow moved to terminate its funding obligations under the FPA. The district court granted the motion on December 30, 2024, finding the Korean Claimants' claims were "otherwise finally resolved" within the meaning of FPA § 2.01(c), notwithstanding that no Korean Claimant had been paid. The Sixth Circuit affirmed that termination order in Case No. 25-1004 on April 10, 2025; this Court denied certiorari on October 14, 2025 (*In re Settlement Facility Dow Corning Tr.*, No. 25-1004, 2025 WL 1081772 (6th Cir. 2025, cert. denied)).

On June 4, 2025, the district court issued a Notice and Order Terminating and Dissolving Positions Assigned (ECF No. 1864), permanently dissolving the Claims Administrator position, the Appeals Judge, the Finance Committee, and all settlement administration positions. The Sixth Circuit affirmed that dissolution order in Case No. 25-1616 on January 13, 2026—the same day it affirmed the denial of the audit motion in Case No. 25-1373. The Sixth Circuit panel in Case Nos. 25-1373 and 25-1616 disposed of the appeal in an unpublished order of three pages, without engaging the specific documented misrepresentations identified by

Petitioners and without independent analysis of the constitutional due process issues raised. Petitioners petitioned for rehearing en banc; the petition was denied on February 17, 2026.

REASONS FOR GRANTING THE WRIT

Preliminary Note Regarding Prior Certiorari Proceedings. This Court denied certiorari in Case No.25-1004, which concerned solely the termination of Dow Silicones Corporation's funding obligations under the FPA. The constitutional questions now presented were neither raised nor decided in that proceeding. Case No.25-1004 addressed whether Korean Claimants' unpaid claims were "otherwise finally resolved" within the meaning of FPA § 2.01(c)—a contract interpretation question concerning the conditions precedent to the termination of Dow's funding obligation. The present petition presents three distinct constitutional questions that were not before the Court in Case No.25-1004: *first*, whether the address confirmation requirement, as applied exclusively to Korean Claimants, violated due process and 11 U.S.C. § 1123(a)(4)'s equal-treatment mandate; *second*, whether the courts below satisfied their supervisory obligations under *Amchem* and *Devlin* by relying exclusively on the declarations of the Claims Administrator whose conduct was at issue; and *third*, whether English-only ECF and website notice satisfies the *Mullan* standard for foreign national claimants. None of these questions were presented in, or resolved by, the prior proceeding. The denial of certiorari in Case No.25-1004 therefore has no preclusive effect on the constitutional questions now presented, and this Court's

prior denial does not reflect any judgment on the merits of the questions raised herein.

I. The Address Confirmation Requirement, Applied as an Absolute Payment Bar to All Korean Claimants, Presents a Critical Unresolved Due Process Question

A. The Question Has Not Been Decided by This Court or Any Circuit. No court has squarely addressed whether a court-supervised settlement administrator may impose a procedural requirement that functions as a categorical payment bar for an entire national class of approved claimants, without the supervising court examining whether that requirement was administered in compliance with due process and federal statutory equal-treatment requirements. The Sixth Circuit disposed of the question by finding that the Claims Administrator's practices were supported by the record—a finding that relied entirely on the Claims Administrator's own declarations and that no court verified independently. The constitutional question whether that process satisfied due process was never addressed on the merits.

B. The Property Interest at Stake Is Substantial. Claimants who received formal approval from the Claims Administrator had a cognizable property interest in their approved settlement payments. Under the Plan, the approval determination was a binding administrative finding. The Settlement Facility's own records acknowledged a default balance of $6,064,350 owed to Korean Claimants. Permanent extinguishment of this vested property interest without payment, and without the opportunity to contest the administrative process that produced the denial, implicates the core

concerns of procedural due process identified in *Mathews v. Eldridge*, 424 U.S. 319 (1976): the private interest affected is substantial, the risk of erroneous deprivation through the challenged procedures is high (as demonstrated by the documented false declarations), and the administrative burden of providing a more reliable process—such as the audit Petitioners requested at their own expense—is minimal.

C. The Equal-Treatment Violation Is Manifest. 11 U.S.C. § 1123(a)(4) requires that a confirmed bankruptcy plan provide identical treatment to each member of a class. The Sixth Circuit has recognized that the Claims Administrator "has no authority to deviate from the Plan's claims resolution procedures." *Korean Claimants v. Claimants' Advisory Comm.*, 813 F. App'x 211(6th Cir. 2020). Yet no court has examined whether the address confirmation requirement—applied exclusively to Korean Claimants and resulting in 100% denial of premium payments—constituted precisely such an unauthorized deviation. The unrebutted evidence in the record is that no other foreign national group was subjected to a comparable mandate. This selective application cannot be reconciled with § 1123(a)(4)'s demand for equal treatment.

D. The Significance for Future International Claimants Is Substantial. The address confirmation issue is not unique to this case. As United States corporations operate globally and their products are used worldwide, mass tort settlements will increasingly involve significant populations of international claimants. If courts permit settlement administrators to impose facially neutral but practically impossible requirements on identifiable international groups—and

if supervising courts will not examine whether those requirements were legitimately administered—the equal-treatment guarantee of § 1123(a)(4) is nullified for the very claimants who are most structurally disadvantaged in accessing American administrative processes. This Court's guidance is needed.

II. The Courts Below Failed to Exercise the Supervisory Oversight That This Court's Precedents in *Amchem* and *Devlin* Require

A. The Supervisory Obligation Is Affirmative, Not Passive. In *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997), this Court held that district courts have a duty to independently examine the fairness and adequacy of class action settlements, with heightened attention to whether named representatives and class counsel adequately represent the interests of all class members—particularly subgroups with potentially divergent interests. This Court further recognized in *Devlin v. Scardelletti*, 536 U.S. 1, 10 (2002), that nonnamed class members with objections to a settlement must have a meaningful avenue for appellate review, precisely because class counsel's interests may not align with those of all class members. The principles of *Amchem* and *Devlin* apply with full force to mass tort settlement trusts administered under court supervision.

The district court in this case exercised what might be characterized as passive supervision: it responded to motions filed by the parties and resolved them by reference to the declarations submitted—overwhelmingly by the Claims Administrator—without independently examining the underlying factual record. When Petitioners asked the court to commission

independent verification of the Claims Administrator's conduct, the court refused without even requiring Respondents to respond. This is the antithesis of the active, independent scrutiny that *Amchem* and *Devlin* require. A court that supervises a mass tort settlement but that will not independently examine allegations of administrator's misconduct—even when the movants offer to bear all costs of the examination—has not fulfilled the supervisory role that makes the court's imprimatur on the settlement legitimate.

B. The Consequences of Passive Supervision Are Demonstrated by This Record. The record of this case illustrates precisely why passive supervision is inadequate. Every key factual finding adverse to the Korean Claimants was based on the Claims Administrator's declarations. The Claims Administrator had every financial and institutional incentive to present the Settlement Facility's conduct in the most favorable light. The AOR identified specific, documented misrepresentations in those declarations. Yet the district court credited the declarations without seeking any independent verification, and the Sixth Circuit affirmed on the same basis. The result was the permanent extinguishment of 2,600 approved claims by administrative action that was never independently reviewed.

C. The Sixth Circuit's Application of Law-of-the-Case Was Error. The Sixth Circuit in Case No. 25-1373 implicitly treated earlier panel findings—themselves based on the Claims Administrator's declarations—as precluding any further examination of the Claims Administrator's conduct. This application of the law-of-the-case doctrine is inappropriate where the

foundational factual findings are themselves alleged to have been based on fraudulent representations. The doctrine of law-of-the-case is designed to promote judicial efficiency and consistency; it is not designed to immunize fraudulent fact-finding from future scrutiny. Applying the doctrine in this context effectively means that once a court has relied on a biased administrator's declarations, no subsequent court may examine whether those declarations were false. That result cannot be squared with *Amchem*'s demand for substantive judicial oversight.

D. The Absence of Appeal Rights from Administrative Decisions Does Not Excuse Judicial Oversight. The district court and Sixth Circuit reasoned that because the Plan does not permit claimants to appeal the Claims Administrator's individual claim determinations to the court, claimants also lack standing to seek a neutral audit of the administrator's conduct. This reasoning conflates two distinct types of judicial review. An individual challenge to a specific claim determination is different in kind from a structural audit of whether the administrator is operating consistently with the Plan's independence and neutrality requirements. The Plan's preclusion of individual claim appeals was designed to prevent administrative overload; it was not designed to prevent courts from examining whether the administrator is neutral and independent as the Plan requires. As the Ninth Circuit recognized in *Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208 (9th Cir. 2009), "final and unappealable" clauses in a settlement agreement do not grant a claims administrator absolute immunity from judicial review. The court in *Proctor* established that a supervising court retains the

inherent authority—and indeed, the obligation—to intervene when there is evidence of an abuse of discretion or structural misconduct that undermines the settlement integrity.

The Sixth Circuit's restrictive interpretation creates a Circuit Split in principle with the Ninth Circuit. While the Ninth Circuit acknowledges that administrative finality cannot shield systemic bias, the Sixth Circuit here used that finality as a shield to ignore documented false declarations and a 100% denial rate for an entire national class. This Court's intervention is necessary to resolve whether a "finality" provision can constitutionally function as a license for an administrator to operate without any judicial check or balance.

E. The Denial of the Audit Motion Without Briefing Was Independently Erroneous. When the Korean Claimants filed their Motion for an Audit and explicitly offered to bear all costs, the district court denied the motion without requiring any response from Respondents. The Claims Administrator had submitted over ten sworn declarations to the district court; the district court relied on those declarations in resolving every motion the Korean Claimants filed. The request for an independent audit was, at minimum, a motion that warranted substantive briefing before disposition. The denial without briefing precluded development of a record that might have supported the relief sought—and now, with the Settlement Facility dissolved, that record can never be developed.

III. The Notice Provided to International Claimants Was Constitutionally Inadequate Under *Mullane*

A. *Mullane*'s Standard Applied to International Claimants. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950), this Court held that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." The Court further held that notice must be "such as one desirous of actually informing the absentee might reasonably adopt," and that where the means of notification are known to be inadequate to reach the intended recipients, due process requires better methods if they are reasonably available.

The *Mullane* standard has particular force when a court applied to proceedings affecting the property rights of foreign nationals who cannot be expected to monitor domestic electronic filing systems or English-language websites. *Mullane* recognized that due process is not satisfied by notice that the party giving it knows is unlikely to achieve its purpose. The Settlement Facility knew that Korean Claimants were South Korean nationals residing in the Republic of Korea, that most did not read English, that none had registered for ECF notifications, and that correspondence with them had a significant rate of undeliverability. These facts were known at the time the termination and dissolution proceedings were initiated.

This case presents a direct constitutional tension with this Court's notice jurisprudence. Under *Mullane*, notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action. Where the State becomes aware that its chosen method of notice has failed, it must take additional reasonable steps before extinguishing a

protected property interest. *Jones v. Flowers*, 547 U.S. 220 (2006). Here, the Settlement Facility acknowledged that mailed notice did not result in confirmed delivery for thousands of claimants. Yet no additional reasonable steps were required before their vested claims were permanently terminated. Instead, publication on a website for a limited period was deemed sufficient. Under *Jones*, knowledge of failed notice triggers a constitutional obligation to do more. The permanent extinguishment of accrued claims following known notice deficiencies cannot be reconciled with this Court's precedent. This case therefore presents not merely a fact-specific dispute, but a structural constitutional question concerning the minimum procedural safeguards required before mass termination of vested property interest.

Under *Jones v. Flowers*, when the government (or a court-supervised entity) learns that its notice has failed, it must take "additional reasonable steps".The Settlement Facility was explicitly aware that mailed notices to Korea were returned as undeliverable, yet it defaulted to English-only website postings—a method it knew was ineffective for this specific population. Geography and language cannot constitutionally determine the sufficiency of procedural safeguards; providing "notice" that is known to be inaccessible is the functional equivalent of providing no notice at all.

B. The Notice Actually Provided Was Inadequate. Notice of the termination proceedings was provided exclusively through: (1) electronic filing in the ECF system, accessible only to registered ECF users with access to PACER; (2) an English-language website maintained by the Settlement Facility; and (3) documents served on counsel of record in the United

States proceedings. No Korean-language notice was prepared or distributed. No notice was transmitted through Korean government channels, Korean newspapers, Korean legal organizations, or Korean consumer advocacy groups. Korean Claimants who had been designated as having "bad address" status—meaning letters sent to their addresses had been returned—were "notified" through a posting on the Settlement Facility's English-language website, which they had no practical way to access.

This notice scheme failed *Mullane*'s requirements on multiple dimensions. First, it was not "reasonably calculated" to reach foreign nationals with no connection to the domestic ECF system and no reason to monitor an English-language website. Second, better means of notification were readily available: the AOR was known, his contact information was on file, and he was actively participating in the proceedings. Notice through the AOR to his clients—or direct mailing to the claimants' known Korean addresses, even if some were returned—would have been more likely to achieve actual notice than a website posting. Third, the language barrier compounded the inadequacy: even a Korean claimant who somehow accessed the ECF system or the Settlement Facility's website would have been unable to understand the significance of the proceedings without translation.

C. The Dissolution Order Cannot Derive Constitutional Validity from the Termination Order. The Sixth Circuit in Case No. 25-1616 reasoned that the dissolution order merely "implemented" the earlier termination order, and that because the termination order was final, the dissolution order could not be challenged on the same grounds. But this reasoning

fails at the constitutional level: if the termination proceedings were themselves conducted without adequate notice to Korean Claimants, no subsequent order predicated on the termination can claim constitutional validity merely by reference to it. A due process violation at the foundational proceeding cannot be laundered through subsequent proceedings that purport to implement its results.

D. The Growing Importance of International Notice Standards. The question of what constitutes constitutionally adequate notice for foreign nationals in United States court proceedings is recurring with increasing frequency as American litigation affects parties across the globe. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), recognized that a court cannot bind absent class members without providing them with adequate notice and an opportunity to be heard. The *Shutts* principle applies with equal or greater force to foreign nationals, who face additional structural barriers to participation in domestic proceedings. This Court's guidance on the specific obligations of federally supervised settlement programs to provide accessible, language-appropriate notice to international claimants is needed and important.

The constitutional concern is heightened in the transnational context of modern mass-tort settlements. International claimants are foreseeable participants in large-scale American settlement facilities. Their claims arise under U.S.-supervised processes and are administered within the jurisdiction of federal courts. Yet the procedure below effectively imposed a reduced form of procedural protection once foreign addresses were labeled "unconfirmed." Domestic claimants were more likely to receive meaningful follow-up notice

through accessible domestic channels. Foreign claimants, by contrast, were subjected to constructive website publication despite prior acceptance of their addresses by the Settlement Facility. Geography cannot constitutionally determine the sufficiency of procedural safeguards when vested property interests are at stake. As transnational participation in American mass-tort settlements increases, the constitutional adequacy of notice mechanisms for foreign claimants presents a recurring and nationally significant issue warranting this Court's review.

IV. The Questions Presented Are of Recurring National Importance and Warrant This Court's Review

A. The Scale and Significance of the Wrong. The immediate stakes in this litigation are substantial. Over 2,600 women in the Republic of Korea participated in a United States court-supervised settlement that formally approved their claims and promised them compensation for serious personal injuries. They received nothing, or a fraction of what they were owed. The Settlement Facility acknowledged a default balance of $6,064,350 owed to Korean Claimants by its own records. The administrative structure that denied them payment has now been permanently dissolved, with the court's approval, before any independent examination of whether the administration was conducted fairly. The mechanism through which these claims were extinguished—reliance by the supervising court on the self-serving declarations of the administrator whose conduct was at issue—is one that this Court should examine.

B. The Questions Will Recur. Mass tort

settlements involving international claimants are not an isolated phenomenon. American manufacturers, pharmaceutical companies, and technology companies operate globally, and their products cause injuries worldwide. As those injuries give rise to mass tort litigation in American courts, the settlements that resolve such litigation increasingly affect foreign national claimants in significant numbers. Each of the questions presented in this petition—the adequacy of notice to international claimants, the equal-treatment rights of foreign national claimant groups, and the scope of judicial supervisory obligations in settlements affecting international populations—will recur in future proceedings. The absence of clear guidance from this Court creates uncertainty for lower courts and leaves international claimants without reliable constitutional protection.

C. The Sixth Circuit's Resolution Is Inadequate to Provide Guidance. The Sixth Circuit disposed of Petitioners' appeal in an unpublished, unreported order of three pages that addresses none of the constitutional dimensions of the case. The order acknowledges only that the Plan does not expressly provide for a claimant-initiated audit of the administrator, without examining whether the Plan's independence and neutrality requirements implicitly authorize such relief, without addressing whether the documented misrepresentations in the administrator's declarations warranted independent judicial examination, and without engaging the due process and equal-treatment claims Petitioners raised. An unpublished order that avoids the constitutional questions is not adequate guidance for the courts and administrators that will face these issues in future settlements.

The Sixth Circuit disposed of this complex, decades-long dispute involving 2,600 vested property interests in a mere three-page unpublished order. By failing to engage with documented misrepresentations in the Claims Administrator's declarations, the courts below converted their supervisory role into a passive rubber-stamp of administrative action. Such judicial abdication ignores the mandate of *Amchem* and *Devlin*, which requires courts to serve as active fiduciaries for absent class members who are structurally disadvantaged. Absent this Court's guidance, lower courts supervising mass-tort settlement facilities may increasingly rely on digital publication alone to terminate vested claims after acknowledged notice deficiencies, particularly where affected individuals reside abroad. Clarification of the constitutional minimum is necessary to ensure uniform protection of property interests in federally supervised settlement structures.

D. The Structural Lessons of This Case Require Attention. The present case reveals a structural pathology in the administration of court-supervised mass tort settlements: the supervising court relied exclusively on the declarations of the administrator whose conduct was at issue, applied the law-of-the-case doctrine to treat those reliance-based findings as settled, and then dissolved the administrative structure that would have allowed independent verification—leaving no remedy for claimants whose approved claims were extinguished by what the record suggests was a systematically biased administrative process. This Court's intervention is necessary to establish that this sequence of events does not satisfy the constitutional requirements applicable to court-supervised proceedings that permanently extinguish the property

rights of thousands of claimants.

E. International Relations Considerations. This case has implications beyond the immediate parties. The Korean Claimants are nationals of the Republic of Korea, a close ally and major trading partner of the United States. The permanent extinguishment, without independent review, of the approved settlement claims of more than 2,600 Korean nationals—through an administrative process that the claimants contend was systematically biased and dishonest—raises concerns that extend beyond domestic law.

As noted in the petition, the Republic of Korea is a close ally. The permanent extinguishment of 2,600 approved claims without independent review undermines the international community's confidence in the fairness of U.S. court-supervised proceedings. This case reveals a structural failure where courts rely on self-serving declarations of an administrator to dissolve the very facility that could prove that administrator's bias.

American courts' treatment of foreign national claimants in domestic settlement proceedings is a matter of legitimate concern to the governments of affected countries and to the broader international community's confidence in the American legal system.

CONCLUSION

The petition for a writ of certiorari should be granted. The questions presented—whether an address confirmation requirement that functions as an absolute payment bar for a national class of approved international claimants satisfies due process and 11 U.S.C. § 1123(a)(4); whether courts discharge their supervisory obligations under *Amchem* and *Devlin* by relying exclusively on the declarations of the administrator whose conduct is at issue; and whether English-only ECF notice satisfies *Mullane*'s requirements for foreign national claimants—are important, recurring, and unresolved. The proceedings below disposed of these questions without engaging their constitutional dimensions, in an unpublished order that provides no guidance to future courts or administrators. The permanent extinguishment of 2,600 approved claims without independent judicial review is precisely the outcome that this Court's supervisory precedents were designed to prevent. The writ should issue.

Respectfully submitted,

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