No. 2025-1160

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

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

Respondent's Brief in Opposition confirms rather than answers the questions presented. Respondent devotes the majority of its thirty-five pages to disputed facts — precisely the approach that demonstrates why these questions require this Court's resolution. When the courts below rely on contested factual assertions to dismiss constitutional due process and equal treatment claims without a developed record, that is not a reason to deny certiorari; it is a reason to grant it.

Three themes run through Respondent's opposition, and each is mistaken.

First, Respondent repeatedly insists that the address verification procedures were "facially neutral" and "applied equally to all claimants." Opp. at 17-19. But the constitutional violation lies in the selective enforcement of the heightened direct-confirmation mandate — a requirement applied to Korean claimants as a national group while no comparable requirement was imposed on any other identifiable group of foreign claimants, regardless of comparable mail-return rates.

Second, Respondent argues all notice arguments are waived. But the Order Terminating Positions — one of only two orders under review — was a separate order entered June 4, 2025. Petitioners timely appealed, and the Sixth Circuit addressed the notice argument on the merits. It is squarely before this Court.

Third, Respondent contends that the district court's supervisory obligations were satisfied by an independent audit whose independence Petitioners directly disputed below, and whose findings the district court adopted without briefing on Petitioners' Motion to Audit. When a federal court supervising 2,600 foreign nationals' claims credits the declarations of an interested administrator, denies without response to a motion challenging that administrator's neutrality, and terminates all claims without independent factual inquiry, a due process question arises that this Court has not addressed.

These constitutional questions — what process is due to foreign nationals before a federal court extinguishes their claims; whether § 1123(a)(4) prohibits discriminatory enforcement of facially neutral requirements; and how much independent verification a supervising court must undertake before crediting an interested administrator — will govern future international mass tort proceedings. This Court’s guidance is warranted.

ARGUMENT

I. RESPONDENT CONFLATES FACIAL NEUTRALITY WITH EQUAL APPLICATION — THE CONSTITUTIONAL VIOLATION LIES IN THE DISCRIMINATORY ENFORCEMENT OF THE ADDRESS MANDATE, NOT ITS TEXT

Respondent's entire response to Petitioners' first question rests on a single proposition: the Closing Orders' address requirement applied "equally to all claimants." Opp. at 17. That proposition, even if true as to the Orders' text, does not answer the constitutional question presented. The relevant inquiry is not whether the rule's text was neutral, but whether it was enforced neutrally.

In *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), this Court established that "though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand," the equal protection guarantee is violated. *Id.* at 373-74. Section 1123(a)(4) requires functional “same treatment”, which is violated when an administrator selectively enforces requirements against one national group exclusively. 11 U.S.C. § 1123(a)(4).

A. The "Uniform Application" Finding Is Conclusory and Unsupported by Record Citation

Respondent quotes the Sixth Circuit’s statement that the mandate was applied “uniformly to other claimants whenever ‘more than a negligible percentage of mail… ha[d] been returned as undeliverable.’” Opp. at 20 (quoting *In re Settlement Facility Dow Corning Trust*, No.24-1653, 2025 WL 488635, at *3). But that statement is a legal conclusion unsupported by record citation. Neither the Sixth Circuit's opinion nor Respondent's brief identifies a single non-Korean claimant group subjected to the same categorical mandate.

Respondent dismisses this as an assertion Petitioners "cannot cite anything in the record to support." Opp. at 20. But the burden runs to Respondent: records of other groups' claims processing are uniquely in Respondent's possession. The district court terminated the program without compelling production of that data or independently examining it — a failure that is itself a component of Petitioners' third question.

The record confirms differential treatment. Korean claimants were required to confirm addresses directly even when represented by counsel; others could confirm through counsel. *Id.* at *3. When Korean claimants' mail was returned, the mandate was escalated. Respondent documents no comparable escalation for any other group. Respondent's assertion to the contrary is conclusory.

B. Section 1123(a)(4) Is Violated by Differential Enforcement, Not Only by Differential Plan Language

Respondent argues that § 1123(a)(4)'s equal treatment requirement is satisfied because "[t]he Closing Orders outlining the address requirement did not differentiate among claimants in any way." Opp. at 23. This argument misreads the statute. Section 1123(a)(4) requires that a plan "provide the same treatment for each claim or interest of a particular class." The question is not whether the plan text differentiates; it is whether claimants received the same treatment in practice. A plan that requires equal treatment is violated when its administrator selectively enforces ancillary requirements in a manner that burdens one national group exclusively.

The provision's operative phrase — "the same treatment for each claim" — is functional, not textual: it asks whether claimants *received* the same treatment, not whether the plan's words apply to them equally. Respondent's contrary reading would allow a plan administrator to enforce requirements against one national group while waiving them for others, so long as the plan text did not explicitly authorize the disparity. The question of whether § 1123(a)(4) reaches discriminatory enforcement of facially neutral requirements is unresolved in the courts of appeals. This Court should resolve it.

C. The Factual Disputes Respondent Raises Confirm the Need for Certiorari

Respondent disputes the factual record — that over half the claims received base payments, 405 were filed after the deadline, and the $6 million figure includes ineligible claims. Opp. at 20-23. Even accepting these characterizations, they do not answer the legal question presented.

Petitioners do not claim every disputed claim was eligible. The constitutional violation lies in the differential enforcement of the direct-confirmation mandate — claims that would have been processed under the uniform standard were denied because of a heightened requirement applied only to Korean claimants. Even one such denial raises an equal treatment violation under § 1123(a)(4).

The district court never held an evidentiary hearing on the enforcement disparity question. It accepted the Claims Administrator's declarations without independent verification. The Sixth Circuit affirmed in an unpublished three-page order that does not engage the specific enforcement data. That procedural history — not the underlying facts — is why certiorari is appropriate.

II. THE DUE PROCESS NOTICE VIOLATIONS ARE PROPERLY BEFORE THIS COURT AND PRESENT QUESTIONS OF RECURRING IMPORTANCE

A. The Argument Regarding the Order Terminating Positions Is Not Waived

Respondent contends that Petitioners' notice arguments are waived because they were not raised in the proceedings related to the Motion to Terminate. Opp. at 25. This argument conflates two distinct proceedings that generated two distinct orders.

The Motion to Terminate was filed on November 15, 2024, and resulted in the Termination Order of December 30, 2024. Petitioners appealed that order, and this Court denied certiorari. That proceeding is not before this Court in the current Petition.

The Order Terminating Positions — which is one of two orders expressly identified in this Petition — was a separate order entered on June 4, 2025, months after the Termination Order. It dissolved the positions of the Claims Administrator, the Finance Committee, and the Independent Assessor. Petitioners appealed on June 11, 2025, arguing that individualized notice — including translated notice — was constitutionally required before an order permanently dissolving the administrative infrastructure that had processed their claims. The

Sixth Circuit addressed that argument on the merits and rejected it. *Korean Claimants v. Dow Silicones Corp.*, No. 25-1616, 2026 WL 523137, at *2. That ruling is properly before this Court.

Respondent cannot simultaneously argue (a) that the Order Terminating Positions merely implemented the Termination Order requiring no additional notice, and (b) that notice arguments about the Order Terminating Positions are waived for not being raised during Termination Order proceedings. If the Order was genuinely distinct — which is why it generated a separate appeal — arguments specific to that order were properly raised in that appeal.

B. ECF Service on English-Speaking Counsel Does Not Satisfy *Mullane* When Claimants Are Foreign Nationals Whose Rights Are Being Permanently Extinguished

The constitutional standard for notice in civil proceedings is established by *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Notice must be "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." *Id.* at 314. The "all the circumstances" language requires courts to consider the specific characteristics of the affected parties, including language barriers and limited access to legal proceedings.

Respondent argues that service on counsel via ECF satisfies *Mullane* because counsel has "the right but the obligation to inform his clients of the process." Opp. at 27-28. This argument proves too much. If service on counsel always satisfies the constitutional notice requirement in represented-party proceedings, then *Mullane*'s "reasonably calculated" standard collapses into a simple rule: serve counsel, and due process is satisfied. But *Mullane* itself recognized that the adequacy of notice is contextual — that what suffices to apprise one party may be constitutionally inadequate for another.

The circumstances here distinguish routine ECF service from constitutionally adequate notice. Petitioners are Korean nationals who do not read English. The Order Terminating Positions was filed only in English and permanently dissolved the administrative entities through which Petitioners had any remaining avenue for claim review. And critically, the district court had in 2017 expressly acknowledged the language barrier by requiring that notice to Korean claimants be translated. The same barrier that justified translation in 2017 justified it in 2025.

Respondent cites *Jones v. Flowers*, 547 U.S. 220 (2006), and *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), as inapposite. Opp. at 28. But *Jones* is directly on point in one crucial respect: this Court held that when the government is aware that its primary notice mechanism has failed to reach the intended recipient, due process requires that it "consider[s] whether there are other reasonable steps it could have taken." *Jones v. Flowers*, 547 U.S. 220 at 234. Here, the government actor — the district court — knew that its 2017 general notice required Korean translation to reach the claimants effectively. The court took no such step in 2025. That omission raises a *Jones* problem.

The broader due process framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976), also supports Petitioners. The private interest — permanent extinguishment of claims Petitioners believed to be approved — is substantial. The risk of erroneous deprivation is high when claimants cannot understand the proceedings terminating their rights. And the burden of providing translated notice to a defined group of 2,600 individuals is modest.

C. The District Court's Own 2017 Commitment to Translated Notice Creates a Legitimate Expectation That Due Process Protects

Respondent acknowledges that in 2017, the district court authorized a notice to all 143,000 claimants that included a provision making Korean translation available upon request. Opp. at 27. Respondent does not dispute that Korean claimants relied on and made use of that translated notice. Respondent argues only that no comparable translated notice was required in 2025.

The 2017 notice created a legitimate expectation of continued translation where the language barrier was known. Due process protects reliance on established procedures. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985). When a court administering a long-running settlement establishes a practice of translated notice and then abandons it for the most consequential proceeding in the program's history, due process questions arise. The question whether such an established practice creates a protected expectation is one of first impression that will recur in every mass tort settlement involving foreign nationals.

III. THE DISTRICT COURT'S FAILURE TO INDEPENDENTLY VERIFY THE CLAIMS DATA IS A COGNIZABLE LEGAL ERROR FULLY PRESERVED

BELOW

A. The Motion to Audit Directly Raised the Supervisory Question and Was Denied Without Briefing

Respondent argues that Petitioners' challenge to the district court's reliance on the Claims Administrator's declarations was not raised below and is therefore waived. Opp. at 32. This is factually incorrect.

On March 23, 2025, Petitioners filed the Motion to Audit the Claims Administrator. ECF 1852. That motion argued that the Claims Administrator was biased, that her declarations contained material misrepresentations, and that the district court could not resolve the termination dispute based solely on those declarations without independent verification. The court denied the motion without briefing, ECF 1853, and the Sixth Circuit affirmed. *Korean Claimants v. Dow Silicones Corp.*, No. 25-1373, 2026 WL 522958 (6th Cir. Jan. 13, 2026). That ruling is directly before this Court.

Respondent argues the specific framing of the supervisory question was not raised below. Opp. at 29. But the substance — that the district court could not rely exclusively on the Claims Administrator’s declarations given her disputed neutrality — was precisely the argument made in the Motion to Audit and rejected by the courts below. The framing of an argument does not determine preservation; its substance does.

B. An Independent Auditor Whose Independence Is Itself Disputed Does Not Satisfy a Court's Supervisory Duty

Respondent argues the Claro Group's independent audit satisfies any supervisory obligation. Opp. at 31. But Petitioners specifically challenged the Claro Group's independence below, documenting a relationship between the principal auditor and the Claims Administrator arising from the engagement itself — the same relationship that compromised the declarations also compromised the audit.

Respondent dismisses this as bias from mere acquaintance. Opp. at 31. But the concern is more specific: a multi-year engagement created at minimum an appearance of compromised independence. The district court did not address this challenge. The Sixth Circuit disposed of it in a single sentence.

The constitutional question is not whether the Claro Group was in fact biased. The question is whether a district court exercising supervisory jurisdiction over a $2 billion settlement satisfies its oversight duty when it credits an independent audit whose independence was specifically challenged without holding a hearing or making factual findings on the challenge. That question has not been addressed by this Court.

The supervisory question also implicates *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997), which recognized that courts have heightened obligations when supervising settlements that bind absent claimants. Foreign nationals who do not read English and have limited access to the proceedings are the paradigm case. The district court's failure to independently examine the claims data before terminating those claimants' rights is inconsistent with *Amchem*'s supervisory framework.

C. The Law-of-the-Case Doctrine Cannot Insulate

Constitutional Error from Review

The Sixth Circuit applied the law-of-the-case doctrine to bar Petitioners' argument that the Order Terminating Positions was premature because their claims remained pending. *Korean Claimants v. Dow Silicones Corp.*, No. 25-1616, 2026 WL 523137, at *1. Respondent defends this application. Opp. at 34.

But the law-of-the-case doctrine does not prevent this Court from reviewing whether the prior rulings that the Sixth Circuit treated as established law themselves violated due process. If the prior Termination Order was entered based on a constitutionally deficient record — one that relied on the unchallenged declarations of a disputed administrator without independent verification — then applying law-of-the-case doctrine to bar Petitioners' subsequent challenge compounds rather than cures the constitutional error.

Moreover, the law-of-the-case doctrine is subject to established exceptions, including when "there is a need to correct a clear error or prevent manifest injustice." *Entertainment Productions, Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013). Terminating 2,600 claimants' rights on an unverified record, after proceedings conducted without translated notice, raises precisely the manifest injustice concern that justifies departure from the doctrine. The Sixth Circuit did not consider this exception. That failure is itself error.

IV. THIS CASE PRESENTS QUESTIONS OF GENERAL IMPORTANCE THAT WILL RECUR IN INTERNATIONAL MASS TORT SETTLEMENTS

Respondent argues that this case involves only "contract interpretation" and "application of district court orders unique to the Plan" that will not recur. Opp. at 4, 35. This characterization misunderstands the nature of the questions presented.

The questions presented arise from constitutional and statutory provisions applicable across all federal proceedings, not from the specific terms of the Dow Corning Plan. Whether § 1123(a)(4) prohibits discriminatory enforcement of facially neutral plan requirements will arise in every bankruptcy reorganization involving a claims administration process. Whether ECF service on English-speaking counsel satisfies *Mullane* when foreign national claimants' rights are being permanently extinguished will arise in every international mass tort settlement. The question whether a district court's supervisory duty requires independent verification of claims data before crediting an interested administrator's declarations will arise in every supervised settlement of comparable scale.

Respondent notes that the Dow Corning settlement involved 143,000 claimants. Mass tort programs in asbestos, pharmaceutical, and consumer products cases of the past three decades have involved comparable numbers. See, e.g., *In re Combustion Engineering, Inc.*, 391 F.3d 190 (3d Cir. 2004). International claimants are increasingly common participants in these proceedings. The procedural questions presented here — notice, equal treatment, and judicial supervision — will govern those proceedings absent guidance from this Court.

Respondent invokes *Salazar-Limon v. City of Houston*, 137 S. Ct. 1277, 1278 (2017), for the proposition that this Court rarely reviews mere application of settled law. Opp. at 35. But that principle does not apply because the relevant rules are not settled.

The application of *Mullane* to non-English-speaking foreign nationals in administrative settlement proceedings, the scope of § 1123(a)(4) in discriminatory enforcement contexts, and the supervisory obligations of a court overseeing a disputed administrator — none is settled. Certiorari is warranted.

CONCLUSION

This case is not merely about a specific plan; it is a milestone for judicial protection of foreign claimants in international mass torts. For the foregoing reasons, Petitioners respectfully request that the Court grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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