No. 25-1160

IN THE

Supreme Court of the United States

KOREAN CLAIMANTS,

Petitioners,

v.

DOW SILICONES CORPORATION, et al.,

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 REHEARING

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GROUNDS FOR REHEARING

Pursuant to Supreme Court Rule 44.2, Petitioners respectfully submit that rehearing is warranted because the Court *overlooked* four controlling points of federal constitutional and statutory law material to the decision.

INTRODUCTION

This case involves approximately 2,600 Korean nationals whose personal injury claims — arising from their use of Dow Corning breast implants — were submitted to a court-supervised settlement program established under the Dow Corning Chapter 11 Plan of Reorganization. After twenty years of proceedings, the district court terminated the Settlement Facility and dissolved all administrative positions without providing translated notice to the Korean Claimants. The Sixth Circuit affirmed both the denial of Korean Claimants' Motion to Audit the Claims Administrator (Case No. 25-1373) and the Order Terminating Positions (Case No. 25-1616) in a pair of three-page unpublished orders issued on January 13, 2026. Petitioners applied to this Court for consolidation of the two separately issued Sixth Circuit decisions into a single petition. This Court granted that application, and the consolidated Petition was docketed as No. 25-1160. This Court denied certiorari on June 15, 2026.

The denial of certiorari in this consolidated Petition left unresolved four questions of federal constitutional and statutory law that the Petition presented, and that the Sixth Circuit's unpublished orders disposed of without analysis. Rehearing is warranted under Rule 44.2 because the Court overlooked points of law material to the decision — not because Petitioners seek to reargue the merits of certiorari, but because specific controlling questions were presented in this Court’s own consolidation and were not addressed on the merits of either consolidated case. Those questions will continue to affect future international mass tort proceedings absent this Court’s guidance.

The factual predicate for three of the four overlooked questions is not contested: (a) Korean Claimants are Korean nationals who do not read or speak English; (b) neither the Motion to Terminate nor the Order Terminating Positions was translated into Korean or served individually on any of the 2,600 Korean Claimants; (c) the address verification requirement that formed the basis for denying Korean Claimants' claims was applied to Korean Claimants as a group in a manner not documented as applied to any other foreign national group; and (d) the Sixth Circuit's discharge ruling used the word "*seemingly*" rather than "clearly" or "definitively," signaling that the scope of the discharge as applied to Korean Claimants' specific circumstances remains an open legal question.

ARGUMENT

I. THE COURT OVERLOOKED A CONTROLLING QUESTION OF FEDERAL CONSTITUTIONAL LAW: WHETHER DUE PROCESS PERMITS A FEDERAL COURT TO PERMANENTLY EXTINGUISH THE CLAIMS OF 2,600 FOREIGN NATIONALS WITHOUT TRANSLATED NOTICE OF THE TERMINATION PROCEEDINGS.

The Sixth Circuit held that service on Petitioners' English-speaking counsel via the Electronic Case Filing system satisfied due process notice requirements for proceedings that permanently extinguished the rights of 2,600 Korean-speaking individuals. *Korean Claimants v. Dow Silicones Corp.*, No. 25-1616, 2026 WL 523137, at *2 (6th Cir. Jan. 13, 2026). The court reached this conclusion without engaging the controlling framework established in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), and *Jones v. Flowers*, 547 U.S. 220 (2006).

Mullane requires that notice be "reasonably calculated, under all the circumstances, to apprise interested parties" of proceedings affecting their rights. 339 U.S. at 314 (emphasis added). The "all the circumstances" standard is contextual and requires courts to account for the specific characteristics of affected parties. *Jones* held that when the government knows its primary notice mechanism is likely to fail, due process requires consideration of other reasonable steps. 547 U.S. at 234.

The relevant circumstances here are not in dispute: Petitioners are Korean nationals who do not read English. The Order Terminating Positions was filed only in English. It permanently dissolved the administrative entities through which Petitioners had the only avenue for claim review. The district court had itself acknowledged the language barrier in 2017 by requiring that notice to Korean Claimants be translated into Korean on request — yet no translated notice was provided for the most consequential proceeding in the program's history.

The Sixth Circuit did not analyze these circumstances under *Mullane* or *Jones*. It held simply that because the Order Terminating Positions "implemented" the prior Termination Order, "there was no need for any additional notice to the claimants, let alone individual notice." 2026 WL 523137, at *2. This holding does not engage the constitutional question of whether ECF service on English-speaking counsel satisfies *Mullane*'s "all the circumstances" standard when the affected parties are 2,600 non-English-speaking foreign nationals whose rights are being permanently extinguished.

The three-factor framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976), confirms that translated notice was constitutionally required. The private interest — permanent extinguishment of claims totaling approximately $6,064,350 — is substantial. The risk of erroneous deprivation is high when claimants cannot understand the proceedings terminating their rights. The burden of providing translated notice to a defined group of 2,600 individuals is modest relative to the magnitude of what was extinguished.

This question recurs in every international mass tort settlement conducted in United States federal courts. The Sixth Circuit's holding — that ECF service on counsel satisfies due process for foreign national claimants regardless of the language barrier — will govern future proceedings absent this Court's correction. The Court overlooked this controlling question in denying certiorari.

II. THIS COURT GRANTED PETITIONERS' APPLICATION TO CONSOLIDATE CASE NOS. 25-1373 AND 25-1616, THEREBY BRINGING TWO INDEPENDENT CONSTITUTIONAL QUESTIONS BEFORE THE COURT; THE DENIAL OF CERTIORARI DID NOT ADDRESS EITHER QUESTION ON THE MERITS.

Petitioners applied to this Court for consolidation of Case No. 25-1373 and Case No. 25-1616, which the Sixth Circuit had issued as separate decisions on January 13, 2026. This Court granted that application. That grant was not a ministerial act: by consolidating the two cases, this Court acknowledged that both questions — the audit denial question and the Order Terminating Positions question — were independently before the Court and warranted joint consideration. The denial of certiorari on June 15, 2026 disposed of both without addressing either on its merits.

The question presented in Case No. 25-1373 — which this Court consolidated into the present Petition — is whether a supervising district court may, consistent with due process, deny without briefing a motion challenging the neutrality of a court-appointed administrator whose declarations formed the sole basis for terminating the claims of 2,600 foreign nationals.

This question arises from the district court's summary denial of Korean Claimants' Motion to Audit the Claims Administrator. The Sixth Circuit disposed of it by holding that the Plan did not afford claimants an independent right to audit the Claims Administrator. *Korean Claimants v. Dow Silicones Corp.*, No. 25-1373, 2026 WL 522958, at *1 (6th Cir. Jan. 13, 2026).

The question presented in Case No. 25-1616 — the second case this Court consolidated into the present Petition — is independent and distinct. It arises from a separate order, the Order Terminating Positions entered June 4, 2025, which dissolved the Claims Administrator, Finance Committee, and Independent Assessor as distinct administrative entities. The constitutional question it presents is whether an order permanently dissolving administrative positions that processed the claims of 2,600 non-English-speaking foreign nationals requires individualized and translated notice to those claimants, independent of whatever notice was provided for the prior Termination Order. The Sixth Circuit disposed of this question not on its constitutional merits but by applying the law-of-the-case doctrine. 2026 WL 523137, at *1. That procedural disposition left the underlying constitutional question unaddressed.

These are two distinct constitutional questions. The first asks whether a supervising court may credit an interested administrator's declarations without independent examination when those declarations form the sole basis for terminating 2,600 foreign nationals' claims. The second asks what notice is constitutionally required — under *Mullane and Jones* — before a federal court permanently dissolves the administrative infrastructure that processed those claimants' rights. Neither question was answered on its merits by the Sixth Circuit. Neither was addressed on its merits in the denial of certiorari. This Court's grant of consolidation brought both questions formally before the Court. Rehearing is warranted to address what the denial overlooked: the merits of each independent constitutional question that this Court's own consolidation order placed before it.

The law-of-the-case rationale employed by the Sixth Circuit in Case No. 25-1616 is particularly illustrative of what was overlooked. The Sixth Circuit applied prior holdings to bar the notice and translation argument on the ground that the claims had been "fully resolved" — without ever engaging the constitutional question of whether the process by which they were "resolved" complied with *Mullane*. The use of law-of-the-case to bypass a constitutional notice question that was never directly addressed — and that this Court's own consolidation grant brought formally before the Court — is precisely the kind of overlooked legal error that Rule 44.2 rehearing is designed to remedy.

The structural significance of this Court's consolidation grant is further underscored by the composition of the Sixth Circuit panels that decided every successive appeal in this litigation. Each of the five Sixth Circuit decisions bearing on Korean Claimants' rights — *In re Settlement Facility Dow Corning Trust*, No. 23-1936 (Nov. 7, 2024); *id.*, No. 24-1653 (Feb. 13, 2025); *id.*, No. 25-1004 (Apr. 10, 2025); *Korean Claimants v. Dow Silicones Corp.*, No. 25. 1373 (Jan. 13, 2026); and *id.*, No. 25-1616 (Jan. 13, 2026) — was decided by the identical three-judge panel: Chief

Judge Sutton, Judge Readler, and Judge Bloomekatz, Circuit Judges (See the Appendix). When the same panel that authored the prior decisions also decided — in 25-1373 and 25-1616 — that those prior decisions had "fully resolved" all Korean Claimants' rights, the law-of-the-case doctrine functioned not as an instrument of independent review but as a mechanism of self-insulation. The panel was, in effect, ruling that its own prior decisions were unreviewable. This Court's consolidation of the two cases brought those constitutional questions before a tribunal capable of examining them without that structural constraint. The denial of certiorari without addressing either question on the merits left that examination undone.

III. THE COURT OVERLOOKED A RECURRING QUESTION OF NATIONAL IMPORTANCE: WHETHER 11 U.S.C. § 1123(a)(4)'S EQUAL TREATMENT MANDATE IS VIOLATED BY DISCRIMINATORY ENFORCEMENT OF FACIALLY NEUTRAL PLAN REQUIREMENTS AGAINST AN IDENTIFIABLE NATIONAL GROUP.

Section 1123(a)(4) of the Bankruptcy Code requires that a plan provide "the same treatment for each claim or interest of a particular class." The question whether this provision is violated by discriminatory *enforcement* of facially neutral plan requirements — as distinguished from facially discriminatory plan language — has not been addressed by this Court and is unresolved in the courts of appeals.

This Court established in *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), that a law fair on its face violates the equal protection guarantee when it is "applied and administered by public authority with an evil eye and an unequal hand." *Id.* at 373-74. The same principle governs equal treatment requirements in federal statutes, including § 1123(a)(4). Whether the *Yick Wo* principle applies to the equal treatment mandate of the Bankruptcy Code is a question the Sixth Circuit did not address — and that this Court has never resolved.

The Sixth Circuit's holding that the address verification requirement was applied "uniformly" to Korean Claimants is a legal conclusion unaccompanied by record citation identifying any other foreign national group subjected to the same categorical direct-confirmation mandate. *In re Settlement Facility Dow Corning Trust*, No. 25-1004, 2025 WL 1081772, at *3 (6th Cir. Apr. 10, 2025). Whether the equal treatment mandate of § 1123(a)(4) requires more than a finding of facially neutral plan language — whether it requires actual uniformity of *enforcement* — is a statutory question with nationwide implications for every bankruptcy reorganization plan involving international claimants. This Court overlooked this question in denying certiorari.

The significance of this question extends beyond this case. International mass tort settlements are an increasing feature of United States bankruptcy practice. The question of whether § 1123(a)(4) is satisfied by facially neutral plan language alone, or whether it requires demonstrated uniformity of enforcement against foreign national claimant groups, will govern those proceedings. Under *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75 (1984), unresolved statutory questions are precisely the kind of issues this

Court should address before they generate inconsistent outcomes across circuits.

IV. THE COURT OVERLOOKED THE QUALIFIED CHARACTER OF THE SIXTH CIRCUIT'S DISCHARGE RULING, WHICH USED THE WORD "SEEMINGLY" RATHER THAN MAKING A DEFINITIVE HOLDING AND THEREBY LEFT OPEN A CONTROLLING QUESTION UNDER 11 U.S.C. § 524(a).

The Sixth Circuit's 2024 ruling on the discharge defense stated that Dow Silicones' discharge "*seemingly* would encompass the claims made by the Korean Claimants." *In re Settlement Facility Dow Corning Trust*, No. 23-1936, 2024 WL 4710155, at *4 (6th Cir. Nov. 7, 2024) (emphasis added). The word "seemingly" — rather than "clearly," "definitively," or "conclusively" — is not inadvertent judicial imprecision. It signals that the court did not resolve the discharge question and that the scope of the discharge as applied to Korean Claimants' specific circumstances remains open.

The controlling question the Sixth Circuit left open is significant: whether the discharge injunction under 11 U.S.C. § 524(a), as implemented through a confirmed plan of reorganization, bars equitable remedies — including constructive trust — that arise not from pre-petition debt obligations but from the post-confirmation conduct of a court-supervised settlement facility. Under *Taggart v. Lorenzen*, 587 U.S. 554 (2019), the scope of a discharge injunction is a question of federal law that must be resolved by examining the nature of the obligation at issue, not merely the identity of the debtor. The Sixth Circuit's "seemingly" formulation does not perform that analysis.

This Court's decision in *Law v. Siegel*, 571 U.S. 415 (2014), established that a bankruptcy court's equitable powers under 11 U.S.C. § 105 are broad but must not contravene an explicit Code provision. No explicit provision of the Code bars a constructive trust imposed to remedy post-confirmation unjust enrichment arising from a court-supervised facility's own conduct — as distinguished from a pre-petition debt extinguished by the plan's discharge. The question whether the discharge extends to such post-confirmation equitable obligations is one that *Law v. Siegel* did not resolve and that the Sixth Circuit's qualified ruling leaves unresolved.

The practical consequence of leaving this question unresolved is significant: Korean Claimants have exhausted all appellate avenues. A pending Motion for Equitable Relief before the district court (ECF Nos. 1862, 1884, 1886) seeks constructive trust and accounting remedies based on post-confirmation conduct. The district court's analysis of that motion will necessarily turn on whether the discharge bars such post-confirmation equitable claims — the precise question the Sixth Circuit left open with "seemingly." Without guidance from this Court on the scope of § 524(a) as applied to post-confirmation equitable obligations, the district court and future courts will lack a controlling standard.

This Court's resolution of the discharge question would not be advisory or academic. It would provide the controlling legal framework for the pending district court motion — and, critically, would determine whether 2,600 Korean nationals have any remaining judicial remedy for the non-payment of approximately $6,064,350 in claims that the Settlement Facility's own records acknowledged as pending. The Court overlooked this unresolved question in denying certiorari.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court grant the Petition for Rehearing and, upon rehearing, grant the Petition for a Writ of Certiorari to address the four controlling questions of federal constitutional and statutory law that the Court overlooked in its June 15, 2026 denial.

In the alternative, Petitioners respectfully request that the Court grant rehearing and modify the order of denial to address specifically: (1) whether the Sixth Circuit's discharge ruling — which used the word "seemingly" rather than making a definitive holding — leaves open a controlling question under 11 U.S.C. § 524(a) that should be resolved before the district court addresses the pending Motion for Equitable Relief; and (2) whether the notice provided to 2,600 Korean-speaking foreign nationals — English-language ECF service on their counsel alone — satisfied the constitutional standard of *Mullane* and *Jones* for proceedings permanently extinguishing their rights.

Respectfully submitted,

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(Supreme Court Rule 44.2)

KOREAN CLAIMANTS, Petitioners,
v.
DOW SILICONES CORPORATION, et al., Respondents.

I, Yeon Ho Kim, counsel of record for Petitioners Korean Claimants in the above-captioned matter, hereby certify, pursuant to Supreme Court Rule 44.2, that:

1. The foregoing Petition for Rehearing is restricted to the grounds specified in Supreme Court Rule 44.2 — specifically, that the Court overlooked points of law or fact material to the decision in denying the Petition for a Writ of Certiorari on June 15, 2026. The Petition for Rehearing does not raise any new questions of law or fact not presented in the original Petition for a Writ of Certiorari (No. 25-1160), and does not seek review on any ground other than those specified in Rule 44.2.
2. The foregoing Petition for Rehearing is presented in good faith. It is based on Petitioners' genuine belief that the Court overlooked controlling questions of federal constitutional and statutory law — specifically: (a) whether due process under *Mullane v. Central Hanover Bank & Trust Co.* and *Jones v. Flowers* permits a federal court to permanently extinguish the claims of 2,600 non-English-speaking foreign nationals without translated notice; (b) whether the two constitutionally distinct questions this Court consolidated into No. 25-1160 were addressed on the merits of either; (c) whether 11 U.S.C. §

1123(a)(4)'s equal treatment mandate prohibits discriminatory enforcement of facially neutral plan requirements against an identifiable national group; and (d) whether the Sixth Circuit's qualified discharge ruling — employing the word "seemingly" rather than making a definitive holding — left open a controlling question under 11 U.S.C. § 524(a).

3. The foregoing Petition for Rehearing is not presented for the purpose of delay. Petitioners are approximately 2,600 Korean nationals who have exhausted all other avenues of appellate review. No further appellate proceeding is available to them. The Petition for Rehearing is presented solely for the purpose of bringing to the Court's attention controlling questions of federal law that Petitioners respectfully submit were overlooked in the June 15, 2026 denial of certiorari.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on July 6, 2026, at Seoul, Republic of Korea.

Respectfully submitted,

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