No. 25-1256

IN THE

Supreme Court of the United States

PETRÓLEOS DE VENEZUELA, S.A., AND PDVSA PETRÓLEO, S.A.,

Petitioners,

v.

HELMERICH & PAYNE INTERNATIONAL DRILLING CO.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The D.C. Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Second Hickenlooper Amendment's prohibition on applying the act-of-state doctrine in a case in which any party asserts a "claim of title or other rights to property * * * based upon" an expropriation in violation of international law, 22 U.S.C. § 2370(e)(2), includes "property" that has not entered the United States.

PARTIES TO THE PROCEEDING

Petitioners Petróleos de Venezuela, S.A., and PDVSA Petróleo, S.A., were defendants in the district court and appellants in the court of appeals.

Respondent Helmerich & Payne International Drilling Co. was plaintiff in the district court and appellee in the court of appeals. The stock ticker symbol of its parent, Helmerich & Payne, Inc., is HP.

The Bolivarian Republic of Venezuela and Helmerich & Payne de Venezuela, C.A., were previously parties in the district court but were dismissed during earlier stages of the proceedings and were not parties to the appeal below.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, undersigned counsel states that Helmerich & Payne International Drilling Co. is a wholly-owned subsidiary of Helmerich & Payne, Inc. (NYSE: HP), a publicly traded corporation. BlackRock, Inc., a publicly traded company (NYSE: BLK), stated in filings with the Securities and Exchange Commission that it beneficially owns more than 10 percent of the stock of Helmerich & Payne, Inc.

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BRIEF IN OPPOSITION

Respondent Helmerich & Payne International Drilling Co. respectfully submits that the petition for a writ of certiorari should be denied.

INTRODUCTION

Petitioners seek this Court's review on a narrow question of statutory interpretation that the courts of appeals have been called to address only twice in the last four decades. Under the act-of-state doctrine, U.S. courts generally may not second-guess the validity of a foreign state's governmental acts in its own territory. In the Second Hickenlooper Amendment (the "Amendment"), however, Congress significantly narrowed the act-of-state doctrine by prohibiting its application in any case where any party claims "rights to property" based on an expropriation in violation of international law. 22 U.S.C. § 2370(e)(2). The D.C. Circuit has long held that the Amendment's unadorned phrase "rights to property" covers any claim to property expropriated in violation of international law, wherever the property may be found. The court of appeals unanimously reaffirmed that rule in the decision below. Its decision is sound, and Petitioners identify no valid basis for this Court's intervention.

Respondent Helmerich & Payne International Drilling Co. ("H&P") once owned a thriving oil drilling business in Venezuela—its Venezuelan subsidiary, Helmerich & Payne de Venezuela, C.A. ("H&P-Venezuela"). But in 2010, Venezuela nationalized H&P-Venezuela. It took all of H&P-Venezuela's

property: the oil rigs, the real property, and all associated property and improvements. Venezuela's national hydrocarbon company, Petróleos de Venezuela, S.A. ("PDVSA"), and PDVSA's subsidiary PDVSA Petróleo, S.A.—Petitioners here—then assumed control of H&P-Venezuela's business, leaving H&P-Venezuela with no revenue, no meaningful assets, and no operations in Venezuela.

In 2011, H&P sued Petitioners for taking its property in violation of international law. Petitioners then spent nearly fifteen years litigating their purported sovereign immunity from suit. They now largely change tack. Petitioners do not seek this Court's review of the D.C. Circuit's principal holding that they lack sovereign immunity under the FSIA's expropriation exception. Nor do Petitioners seek review of the D.C. Circuit's rejection of their *secondary*, personal-jurisdiction defense. Instead, Petitioners have winnowed their case to only a tertiary merits question: whether the Second Hickenlooper Amendment bars application of the act-of-state doctrine for takings of property that have not entered the United States. After relegating the act-of-state defense to the last pages of their briefs below, Petitioners surface as the basis for this Court's review a four-decades-old split of authority on a supposedly "exceptionally important" issue concerning the Amendment's scope.

That narrow statutory issue does not warrant this Court's review. Petitioners' identified split rests on the D.C. Circuit's longstanding disagreement with the thinly reasoned, decades-old decisions of two federal courts of appeals and of two state courts in those circuits. Those 1970s- and 1980s-era cases blue-penciled a territorial limitation to the Amendment's covered property rights based on nothing but "statements from congressional hearings." Pet. App. 24a-25a. None of the relevant courts have applied Petitioners' cited decisions in decades, and if called to do so, none would likely reaffirm such a limitation invented in a bygone era of statutory interpretation. For its part, the D.C. Circuit parted ways with those courts in 1984. As Petitioners thus concede, "the tension" between the D.C. Circuit and other courts existed well "before the decision below." Pet. 22. Any split is both shallow and stale.

The question presented is also insufficiently important to merit this Court's review. Indeed, the question presented is almost entirely academic. It matters only in the rare situation where: (1) the plethora of other barriers to suits based on the expropriation of property located abroad have been overcome; (2) the other requirements for application of the Second Hickenlooper Amendment are satisfied; *and* (3) no other exception to the act-of-state doctrine applies. The question whether the Amendment applies to property located abroad largely proved immaterial even in the cases comprising Petitioners' split. Decades of experience under the D.C. Circuit's rule thus belie Petitioners' extravagant assertion that the decision below will make the United States a "world court" for expropriation claims. Pet. 5.

And even if this Court were inclined to review the issue, this case is a poor vehicle. The court of appeals reached the question presented after finding pendent appellate jurisdiction in an interlocutory appeal from the denial of sovereign immunity. Reaching the merits would first require this Court to review that finding. Even if the question presented were otherwise worthy of review, this Court should reach it only in a case that presents it cleanly after final judgment.

Nor is there any error for this Court to correct. The D.C. Circuit's unanimous decision properly construed the Amendment's text to apply to any claim to a property right expropriated in violation of international law, regardless of where that property is located at the time of suit. As this Court observed just last year, a "limitation" for property with "a commercial nexus to the United States" is simply "not found in the Second Hickenlooper Amendment." *Republic of Hungary* v. *Simon*, 604 U.S. 115, 122 (2025). The Amendment's legislative history supplies no basis for judicially adding a limitation that appears nowhere in its text.

The Court should deny the petition.

STATEMENT

A. Venezuela And Petitioners Expropriate H&P-Venezuela

Respondent Helmerich & Payne International Drilling Co. is a U.S.-based energy company. Pet. App. 5a-6a. H&P-Venezuela is H&P's wholly-owned Venezuelan subsidiary. *Id.* at 6a.

Petitioner PDVSA is Venezuela's wholly-owned, state-run energy company. Pet. App. 6a. Petitioner PDVSA Petróleo is PDVSA's direct, wholly-owned subsidiary and is "in charge" of oil "production" in Venezuela. Pet. App. 6a, 48a n.5.

For decades, H&P-Venezuela contracted with PDVSA to provide oil well drilling services. Pet. App. 6a. To perform those services, H&P-Venezuela maintained a host of tangible assets in Venezuela: high-power drilling rigs, real property, motor vehicles, maintenance equipment, water and oil storage tanks, pumps, and other movable and immovable property. *Id.* at 6a, 37a.

In 2007, "PDVSA began defaulting on its contractual obligations to [H&P-Venezuela], racking up some $90 million in unpaid invoices for drilling services." Pet. App. 6a. In response, H&P "announced that it would wind down its Venezuelan operations," and H&P-Venezuela "began to disassemble its rigs." *Ibid.* When PDVSA demanded that H&P-Venezuela resume drilling operations, H&P offered, among other solutions, to let PDVSA purchase H&P-Venezuela's rigs. *Id.* at 45a-46a. PDVSA refused. See *id.* at 46a.

Instead, Venezuela and Petitioners took H&P-Venezuela for themselves. In 2010, "PDVSA employees and the Venezuelan National Guard blockaded the drilling operations of [H&P-Venezuela] to prevent removal of the rigs." Pet. App. 6a. PDVSA announced it had "nationalized 11 drilling rigs" belonging to H&P-Venezuela and would "operat[e]" them itself. *Ibid.* The Venezuelan National Assembly then "issued an official declaration recommending that the property be expropriated," *ibid.*, and then-President Hugo Chávez followed suit, issuing an Expropriation Decree that authorized the "forceful acquisition" of all of H&P-Venezuela's "movable and immovable assets." *Id.* at 35a-36a. Speaking at H&P-Venezuela's blockaded premises, PDVSA's President (who was also Venezuela's Minister of Energy and Petroleum) proclaimed that "President Chávez was 'taking control over this drill company which has been nationalized by the revolution.'" *Id.* at 36a.

Through those actions, Venezuela and Petitioners "took the 'entire business' of [H&P-Venezuela] to operate it 'as a state-owned enterprise,'" leaving H&P-Venezuela with no "usable property" or "revenue-generating business." Pet. App. 13a (citation omitted).

B. The D.C. Circuit Affirms The District Court's Denial Of Petitioners' Motion To Dismiss

In 2011, H&P commenced this action against Petitioners, seeking relief for the uncompensated expropriation of H&P-Venezuela's business.

To overcome Petitioners' immunity to suit under the Foreign Sovereign Immunities Act ("FSIA"), H&P invoked the FSIA's expropriation exception. Pet. App. 2a. That exception authorizes suit against a foreign state or its agency or instrumentality when "rights in property taken in violation of international law are in issue." 28 U.S.C. § 1605(a)(3). It applies when the property or its proceeds are either: (1) "present in the United States"; or (2) "owned or operated by" a state "agency or instrumentality" that is "engaged in a commercial activity in the United States." *Ibid.* H&P invoked the second of these alternatives, which expressly applies to the expropriation of property even when it is *not* "present in the United States." *Ibid*.

Over the next fifteen years, Petitioners filed—and the parties litigated—two motions to dismiss based on the FSIA and the act-of-state doctrine, culminating in this appeal.

1. Petitioners' first motion to dismiss challenged the district court's subject-matter jurisdiction under the FSIA's expropriation exception on facial grounds. It argued that H&P's allegations, taken as true, did not state a violation of international law. See *Helmerich & Payne Int'l Drilling Co.* v. *Bolivarian Republic of Venezuela*, 784 F.3d 804, 810 (D.C. Cir. 2015).

This Court considered that motion in *Bolivarian Republic of Venezuela* v. *Helmerich & Payne International Drilling Co.*, 581 U.S. 170 (2017). That decision construed the expropriation exception to require H&P at the jurisdictional stage to demonstrate—not just make a "nonfrivolous, but ultimately incorrect, argument"—that "property was taken in violation of international law." *Id.* at 173-174. On remand, the D.C. Circuit held that H&P satisfied this requirement by adequately alleging that Petitioners unlawfully expropriated not only H&P-Venezuela's assets, but H&P-Venezuela "itself"—the entire company. *Helmerich & Payne Int'l Drilling Co.* v. *Bolivarian Republic of Venezuela*, 743 F. App'x 442, 443, 454 (D.C. Cir. 2018). The court of appeals then remanded for the district court to determine whether Petitioners had "in fact committed" the "wholesale nationalization" of H&P-Venezuela that H&P alleged in its complaint. *Id*. at 455.[1]

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[1] Petitioners' first motion to dismiss also resulted in the dismissal of co-plaintiff H&P-Venezuela's takings and breach-of-

2. After jurisdictional discovery, Petitioners filed a renewed motion to dismiss challenging the application of the expropriation exception on factual grounds. Pet. App. 9a. Petitioners also disputed the district court's "personal jurisdiction over PDVSA" and argued that H&P's "claims are barred by the act-of-state doctrine." *Id.* at 29a. The district court denied the motion, finding that Petitioners expropriated H&P's property in violation of international law and rejecting each of Petitioners' remaining arguments. *Id.* at 26a-74a.

Invoking "the collateral-order doctrine," Petitioners appealed the district court's denial of sovereign immunity under the FSIA's expropriation exception. Pet. App. 10a. The court of appeals exercised pendent appellate jurisdiction over Petitioners' arguments based on personal jurisdiction and the act-of-state doctrine. *Id.* at 11a. In a unanimous opinion written by Judge Katsas, the D.C. Circuit affirmed "across the board." *Id.* at 2a.

As to the act-of-state doctrine specifically, the D.C. Circuit held that the Second Hickenlooper Amendment barred application of the act-of-state doctrine to H&P's claims. Pet. App. 22a. In doing so, the court of appeals rejected two grounds offered by Petitioners for limiting the Amendment's scope.

First, the D.C. Circuit rejected Petitioners' contention that the Amendment "does not cover claims

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contract claims, see Pet. App. 28a-29a. The district court later dismissed co-defendant Venezuela from the suit, see *id.* at 29a, leaving only H&P's takings claims against Petitioners.

for damages," and instead covers only "dispute[s] regarding ownership," such as a quiet title claim. Pet. App. 22a. The court of appeals reasoned that the Amendment covers any claim asserting "rights to property," 22 U.S.C. § 2370(e)(2), which in ordinary parlance encompasses a claim for damages for the taking of property. Pet. App. 22a. By contrast, Petitioners' proposed limitation, the D.C. Circuit explained, "would be wildly implausible in this context" because governments are permitted to take private property under international law so long as they pay just compensation. *Id.* at 22a-23a (citing Restatement (Third) of Foreign Relations Law § 712(1) cmt. c (1987)).

Second, addressing the question presented here, the court of appeals declined to engraft on the Amendment the additional atextual requirement Petitioners advocate here—that the expropriated property or its proceeds must enter the United States. Pet. App. 24a-25a. Quoting this Court's recent decision in *Republic of Hungary* v. *Simon*, 604 U.S. 115, 122 (2025), the court of appeals explained that this "domestic 'limitation' * * * simply is 'not found in the Second Hickenlooper Amendment,'" which "contains no such reference to the United States." *Id.* at 24a. The D.C. Circuit acknowledged that "some older cases have read a domestic-nexus requirement into the Amendment" based on legislative history, but the court found those cases' reliance on "statements from congressional hearings" unpersuasive. *Id.* at 24a-25a. Finally, the court of appeals rejected Petitioners' reliance on the presumption against extraterritoriality, explaining that "the Second

Hickenlooper Amendment restricts courts from applying the act-of-state doctrine, which applies *only* to acts committed by foreign sovereigns within their own territories." *Id.* at 25a (emphasis added). That sufficed "to rebut the presumption against extraterritoriality." *Ibid.*

Petitioners requested rehearing en banc on the question presented here, but the D.C. Circuit denied rehearing without any judge calling for a response. Pet. App. 74a.

REASONS FOR DENYING THE PETITION

Petitioners ask this Court to review their last-gasp argument to the lower courts—that the Second Hickenlooper Amendment does not apply to expropriation cases that involve property located outside of the United States. Petitioners relegated that argument to the end of their briefs below for good reason: It has no footing in the text of the statute, and its only support stems from decades-old cases that interpreted the statute based solely on its legislative history. The split is stale and shallow. The issue rarely arises and is not otherwise important enough to justify this Court's review. And this case, which arises in an interlocutory posture under an unsettled exercise of the court of appeals' pendent appellate jurisdiction, is a poor vehicle in any event.

I. Any Circuit Split Is Stale, Superficial, And May Resolve Itself

Petitioners contend that the decision below "solidified" a 4-1 split between the D.C. Circuit and the Second Circuit, Fifth Circuit, Supreme Court of Texas, and New York Court of Appeals. Pet. 22. In reality, any such split has existed for four decades without consequence in any other case. And none of the courts Petitioners list on their side of the split would now follow the outdated mode of statutory interpretation that led them astray forty years ago, particularly given this Court's intervening statements in *Republic of Hungary* v. *Simon*, 604 U.S. 115 (2025). There is thus no reason for this Court to weigh in on a stale, largely academic disagreement that would resolve itself if (as Petitioners assert, Pet. 34) the issue is likely to recur.

1. The D.C. Circuit's rejection of Petitioners' proposed territorial limitation on the Second Hickenlooper Amendment was nothing new. Pet. App. 24a. A handful of decades-old cases had embraced such a limitation based on the legislative history alone, but the D.C. Circuit rejected it over forty years ago.

a. Petitioners cite five decisions from the Second and Fifth Circuits and state courts within those circuits for their purported split of authority. From the Second and Fifth Circuits, they cite *Banco Nacional de Cuba* v. *First National City Bank of New York*, 431 F.2d 394 (2d Cir. 1970), *Empresa Cubana Exportadora De Azucar y Sus Derivados* v. *Lamborn & Co.*, 652 F.2d 231, 237 (2d Cir. 1981), and *Compania de Gas de Nuevo Laredo, S. A.* v. *Entex, Inc.*, 686 F.2d 322, 327 (5th Cir. 1982). From the Supreme Court of Texas, and New York Court of Appeals, they cite *United Mexican States* v. *Ashley*, 556 S.W.2d 784 (Tex. 1977), and *Perez* v. *Chase Manhattan Bank, N.A.*, 463 N.E.2d 5, 10 (N.Y. 1984).

Petitioners' leading case—the Second Circuit's decision in *Banco Nacional*—relied exclusively on "legislative history" to invent a territorial limitation on the Amendment's scope. 431 F.2d at 399-402. Contrary to Petitioners' assertion, the Second Circuit did not "conside[r] the [Amendment's] language"—much less "extensively." Pet. 17. Instead, based on a lengthy rendition of hearings and floor statements, it held that "Congressmen and others were quite concerned about the problem peculiarly related" to a "thieves' market" in the United States for property that had been expropriated in violation of international law. 431 F.2d at 400.

Each of the other decades-old cases cited by Petitioners, in turn, merely adopted the *Banco Nacional* rule without additional analysis. The Fifth Circuit stated that *Banco Nacional* had "analyzed the [A]mendment's legislative history and concluded that Congress intended it to be limited to cases" where the "assets were subsequently located in the United States." *Compania de Gas*, 686 F.2d at 327. The Texas Supreme Court similarly observed that other "[c]ourts have narrowly construed the Amendment" as applicable only to property in the United States. *Ashley*, 556 S.W.2d at 786. And the New York Court of Appeals merely cited *Banco Nacional* for the proposition that the Amendment "does not apply" to "expropriated property that remains in the confiscating country." *Perez*, 463 N.E.2d at 10.

The most recent of these decisions, *Perez*, is 42 years old. In the ensuing four decades, no appellate or district court in the Second or Fifth Circuit or the Texas or New York state courts has cited Petitioners' cases for Petitioners' proposed territorial rule or otherwise applied that rule in any case.[2]

b. For its part, the D.C. Circuit has rejected Petitioners' proposed territorial limitation since its 1984 decision in *Ramirez de Arellano* v. *Weinberger*, 745 F.2d 1500 (D.C. Cir. 1984). In *Ramirez*, the *en banc* D.C. Circuit "reject[ed]" the "suggestion that the word 'property' in the [Amendment] must invariably be limited to expropriated personal property located in the United States." 745 F.2d at 1541 n.180. The court acknowledged that "[i]t may be that a primary purpose of the statute was to prevent invocation of the act of state doctrine when property expropriated in a foreign country subsequently makes its way into the United States," but the text Congress actually enacted did not cover only that "sole situation." *Ibid.* Thus, as Petitioners acknowledge, "[e]ven before the decision below," the Restatement (Fourth) of Foreign Relations Law recognized that the D.C. Circuit had disagreed with the decisions of "[s]ome courts" limiting the Amendment to seizures of property found in the United States at the time of suit. Pet. 22 (alteration in original).

Petitioners halfheartedly suggest that *Ramirez*'s rejection of a territorial limitation is "dicta." Pet. 21. But *Ramirez*'s rejection of a domestic-nexus

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[2] The Texas Supreme Court favorably cited *Ashley* in *Hunt* v. *Coastal States Gas Producing Co.*, 583 S.W.2d 322 (Tex. 1979), but *Hunt* was "limit[ed]" to "consideration" of a separate statutory requirement—that the "asserted claim must be a claim of title or other right to property," and not a "contractual right." *Id.* at 325-326.

requirement was necessary to its conclusion that fact issues regarding application of the Amendment precluded dismissal on act-of-state grounds at the motion-to-dismiss stage. 745 F.2d at 1541-1543 & n.180. And the D.C. Circuit dispelled any doubt about the law of the circuit in *Agudas Chasidei Chabad of United States* v. *Russian Federation*, 528 F.3d 934, 953 (D.C. Cir. 2008), squarely holding that the Hickenlooper Amendment "bars application" of the act-of-state doctrine to expropriated property abroad.

Petitioners' fallback claim (Pet. 21) that *Ramirez*'s vacatur on other grounds renders it nonprecedential would startle the D.C. Circuit, which has held (in an earlier decision in this case) that "*Ramirez* continues to have force." *Helmerich & Payne Int'l Drilling Co.* v. *Bolivarian Republic of Venezuela*, 784 F.3d 804, 816 (D.C. Cir. 2015), *vacated on other grounds*, 581 U.S. 170 (2017). Under settled circuit precedent, "[w]hen the Supreme Court vacates a judgment of [the D.C. Circuit] without addressing the merits of a particular holding in the panel opinion, that holding continue[s] to have precedential weight, and in the absence of contrary authority, we do not disturb it." *United States* v. *Adewani*, 467 F.3d 1340, 1342 (D.C. Cir. 2006) (quotation marks and citation omitted). That is why the district court here found *Ramirez* binding. See Pet. App. 69a-72a.

2. The stale decisions supposedly supporting Petitioners' proposed limitation also rest on an outdated and superficial mode of reasoning. The courts that decided them would likely resolve the question presented differently if it arose today. The fact that those courts have had no occasion to do so is

itself reason to doubt Petitioners' claims about the issue's importance. And if the issue is indeed sure to recur (as Petitioners assert, Pet. 34), the split may resolve itself.

a. As explained, *Banco Nacional* (and its progeny) relied exclusively on "legislative history" for its contrived limitation on the Amendment's scope. 431 F.2d at 399-402. But this Court has since shunned *Banco Nacional*'s atextual approach to statutory interpretation.

It is firmly established that "[i]n statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself." *Food Marketing Institute* v. *Argus Leader Media*, 588 U.S. 427, 436 (2019). Legislative history cannot "be used to 'muddy' the meaning of 'clear statutory language.'" *Ibid.* (quoting *Milner* v. *Department of Navy,* 562 U.S. 562, 572 (2011)). And the "excerpts from committee hearings and scattered floor statements by individual lawmakers" on which *Banco Nacional* relied are "among the least illuminating forms of legislative history." *Advocate Health Care Network* v. *Stapleton*, 581 U.S. 468, 481 (2017) (citation omitted). Today, statutory "interpretation must be driven by analysis of the statute rather than psychoanalysis of Congress." *FS Credit Opportunities Corp.* v. *Saba Capital Master Fund, Ltd.*, 146 S. Ct. 1546, 1559 (2026) (quotation marks and citation omitted). Tellingly, therefore, the most recent support Petitioners can draw for their reliance on legislative history is over fifty years old. Pet. 27 n.6 (citing *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976)).

The courts on Petitioners' side of the split may no longer abide the "old-time devotion to legislative history" that this Court has repeatedly rejected. *Saba Capital Master Fund*, 146 S. Ct. at 1558. In the modern era, each of those courts has overruled statutory precedents that were out of step with the statute's text. See, *e.g.*, *United States* v. *Bedi*, 15 F.4th 222, 230 (2d Cir. 2021) (overruling a statutory decision "structured * * * around a single sentence in a statement offered by * * * one of the bill's sponsors in the House"); *Hamilton* v. *Dallas County*, 79 F.4th 494, 497 (5th Cir. 2023) (overruling a "decades-old, atextual precedent"); *In re Hyde*, 933 N.E.2d 194, 198 (N.Y. 2010) (overruling precedent that "seems to have ignored the plain meaning of the statute"); *Ferreira* v. *Butler*, 575 S.W.3d 331, 337 (Tex. 2019) (overruling precedent that was "not based on the statutory text"). This Court's intervention may thus be unnecessary to resolve any residual disagreement in the lower courts.

b. This Court's intervening precedent also supplies ample basis for the lower courts to reconsider their prior precedents. Just two Terms ago, this Court explained that the expropriation exception uses "language nearly identical to that of the Second Hickenlooper Amendment," except that the expropriation exception contains "a limitation * * * not found in the Second Hickenlooper Amendment: While the amendment permits claims based upon (or traced through) a confiscation or other taking, the expropriation exception requires that stolen property, or property exchanged for such property, have a commercial nexus to the United States." *Simon*, 604 U.S. at 122 (quotation marks and citations omitted).

The D.C. Circuit noted this Court's observation as additional support for its plain-text reading of the Hickenlooper Amendment. Pet. App. 24a.

The Second and Fifth Circuits—and the state supreme courts that have followed their lead—would likewise give *Simon* significant weight. See *United States* v. *Hightower*, 950 F.3d 33, 36 (2d Cir. 2020) (explaining that a prior decision is not binding "when an intervening Supreme Court decision casts doubt on [the] controlling precedent" (alteration and citation omitted)); *Stokes* v. *Southwest Airlines*, 887 F.3d 199, 204 (5th Cir. 2018) (similar); *People* v. *Ortega*, 227 N.E.3d 302, 308 (N.Y. 2023) (similar); *Trahan* v. *Trahan*, 626 S.W.2d 485, 487 (Tex. 1981) (similar). The Court should not grant review without affording the courts on Petitioners' side of the split an opportunity to reconsider their prior decisions in light of *Simon* and modern interpretive principles.

3. Implicitly recognizing that the reasoning of *Banco Nacional* and its progeny cannot be defended in today's jurisprudential landscape, Petitioners press a hodgepodge of new purportedly textual arguments. That late-breaking attempt to refresh the split only cements the need for further percolation.

Petitioners purport, for example, to identify parallels between the Amendment's text and "the particular result" in *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964)—the case that inspired the Amendment's enactment, and in which the expropriated property happened to enter the United States. Pet. 23-24. Petitioners introduce "[t]he Amendment's letter-of-credit exception" as structural evidence of "the Amendment's limited scope." *Id.* at 26. And they contend for the first time to this Court that H&P's claim is not "based upon" a taking, as the Amendment's text requires. *Id.* at 30.

As explained below, Petitioners' new arguments lack merit. See pp.29-35, *infra*. But the dispositive point for present purposes is that Petitioners presented none of these arguments to the D.C. Circuit, which had no occasion to pass on them. See Pet. App. 22a-25a. No other court has addressed them either. None of Petitioners' supposedly textual arguments supplied the *ratio decidendi* for any of the decisions in the split. The lower courts should be afforded the opportunity to consider these new arguments in the first instance.

II. The Question Presented Is Insufficiently Important To Merit This Court's Review

Regardless of any narrow disagreement among old courts-of-appeals cases, the question presented is insufficiently important to merit review. Petitioners fret that the decision below will open the floodgates to expropriation claims in U.S. courts. But the D.C. Circuit has adhered to its construction of the Amendment for over four decades. Not even a trickle—much less a flood—of expropriation suits has ensued. The question presented arises infrequently, and Petitioners' purported foreign policy concerns are vastly overstated.

A. The Question Presented Rarely Arises Or Controls The Outcome Of Litigation

The question presented has seldom arisen, much less proved outcome determinative. As noted, courts in the Second and Fifth Circuits, New York, and Texas have not applied Petitioners' proposed territorial limitation since Petitioners' precedents forty years ago. And since the D.C. Circuit rejected that limitation in *Ramirez*, courts in the D.C. Circuit have found the Second Hickenlooper Amendment applicable to claims concerning property located outside of the United States only twice: in this case and in *Agudas Chasidei Chabad*, 528 F.3d 934. Given the numerous obstacles that must be hurdled for the territorial-limitation issue to arise, that paucity of caselaw is unsurprising. For the same reason, even in the cases supposedly comprising the split, the issue has rarely proven dispositive.

1. Jurisdictional barriers bar most suits involving expropriated property located abroad before the act-of-state doctrine ever comes into play. As Petitioners acknowledge (Pet. 34), litigants need a "jurisdictional hook" to bring such cases in the first place. But U.S. courts will only rarely have subject-matter and personal jurisdiction over those suits.

a. As this case and Petitioners' cases illustrate, the typical defendant in an expropriation lawsuit is a foreign state or its agency or instrumentality. *E.g.*, *Banco Nacional*, 431 F.2d at 395; *Empresa Cubana*, 652 F.2d at 233; *Ashley*, 556 S.W.2d at 784; *Agudas Chasidei Chabad*, 528 F.3d at 939. But the FSIA's expropriation exception—the predominant font of jurisdiction in such actions—screens out most claims involving property located abroad. The expropriation exception applies only where the expropriated property or its proceeds are: (1) "present in the United States"; or (2) "owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States." 28 U.S.C. § 1605(a)(3). When the property is located abroad, therefore, the FSIA permits suit only in the limited circumstance where the property is owned or operated by a foreign agency or instrumentality with a nexus to the United States.

Even when that nexus is present, moreover, the D.C. Circuit has held that such suits can proceed only against the state agency or instrumentality that owns the property. See *De Csepel* v. *Republic of Hungary*, 859 F.3d 1094, 1107 (D.C. Cir. 2017) So, the question presented can arise only in a case against an agency or instrumentality that owns or operates the expropriated property and engages in commercial activity in the United States.

That requirement ultimately defeated jurisdiction in *Agudas*. Other than this case, *Agudas* is the only D.C. Circuit decision in the 40 years since *Ramirez* to address the Second Hickenlooper Amendment's application to property located abroad. 528 F.3d at 953. But 16 years *after* the court addressed that issue, the suit was dismissed for lack of subject-matter jurisdiction under the FSIA. *Agudas Chasidei Chabad of United States* v. *Russian Federation*, 110 F.4th 242, 250-251 (D.C. Cir. 2024), *cert. denied*, 146 S. Ct. 1586 (2026). The D.C. Circuit held that the expropriation exception did not apply because the property was not present in the United States and the defendant—Russia—was a foreign state, not a state agency or instrumentality, and the agency or instrumentality that "owned or operated" the property was not a defendant. *Ibid*.

b. Other jurisdictional hurdles should have prevented the question presented from arising in two of Petitioners' cases as well.

In *Ashley*, which predated the FSIA, the Texas Supreme Court held that the district court "lacked jurisdiction" over claims against the government of Mexico because "the doctrine of sovereign immunity * * * bar[red] [the] suit." 556 S.W.2d at 785, 787. Application of the act-of-state doctrine was thus unnecessary. The result likely would have been the same today under the FSIA's expropriation exception because the property was located abroad, *id.* at 786, and (as in *De Csepel* and *Agudas*) the defendant was a foreign state (the government of Mexico), and an agency or instrumentality that owned or operated the property was not a defendant.

Similarly, in *Empresa*, the Second Circuit noted but declined to reach another potential jurisdictional barrier. The act-of-state issue arose in connection with counterclaims asserted against a Cuban state-owned company (Cubazucar) in response to a suit brought not by that entity, but by Cuba itself. 652 F.2d at 233. Even setting aside the act-of-state doctrine, therefore, to overcome Cubazucar's immunity and prevail on its counterclaims, the defendant had to establish that Cubazucar was "Cuba's alter ego." *Id.* at 237. Given this Court's admonition in the FSIA context that "piercing the corporate veil" is a "rare exception," *Dole Food Co.* v. *Patrickson*, 538 U.S. 468, 475 (2003), the suit would have likely stalled even absent Petitioners' proposed limitation on the Second Hickenlooper Amendment.

c. Even in the rare expropriation suit brought against a private party, the defendant must still be subject to personal jurisdiction in the United States. These requirements—and the dearth of cases implicating the question presented—refute Petitioners' hyperbolic contention that the decision below will "transform the U.S. judiciary" into a "world court" for expropriation claims. Pet. 34.

2. Even where jurisdiction exists as to the expropriation of property located abroad, the question presented is dispositive only when the act-of-state doctrine applies on its face, no other exception bars its application, and the Second Hickenlooper Amendment would apply absent Petitioners' proposed exception. As Petitioners' remaining cases illustrate, that trifecta rarely occurs.

In *Banco Nacional*, for example, application of the Amendment proved irrelevant because another exception to the act-of-state doctrine independently barred its application. The Supreme Court vacated the Second Circuit's decision on other grounds and ultimately held that the act-of-state doctrine did not apply for reasons unrelated to the Amendment. *First National City Bank* v. *Banco Nacional de Cuba*, 406 U.S. 759, 761-762 (1972).

Conversely, in *Perez*, application of the Amendment was otherwise barred under the domestic takings rule: The New York Court of Appeals principally held that the Amendment "does not apply to confiscations by a foreign State of the property of its own nationals within its borders" because such takings do not violate international law. 463 N.E.2d at 10; see generally *Federal Republic of Germany* v. *Philipp*, 592 U.S. 169, 170-171 (2021). Given that frontline holding, not even Petitioners' cited treatise—the Restatement (Fourth) of Foreign Relations Law—recognizes *Perez* as part of any split. See Pet. 22.

Similarly, in *Compania de Gas*, the Fifth Circuit noted—but ultimately did not reach—two additional barriers to application of the Second Hickenlooper Amendment. See 686 F.2d at 327 n.5 ("We express no opinion on whether the conspiracy claim, based on the act by the Mexican government placing CGNL in receivership amounts to a 'claim of title or other right to property,' or whether there has been a 'confiscation or other taking' within the meaning of the Hickenlooper amendment."). The Amendment may not have applied regardless of Petitioners' proposed limitation.

Other than this case, Petitioners identify only a single example of a pending case potentially raising the Second Hickenlooper Amendment issue presented here—*Watch Tower Bible & Tract Society of Pennsylvania* v. *Russian Federation*, 804 F. Supp. 3d 153 (D.D.C. 2025). The district court dismissed that action for lack of proper service while declining to "reach Defendants' alternative arguments for dismissal." *Id.* at 165. Even if the plaintiffs could rectify the service defect, the defendants have raised a host of other threshold issues—including subject-matter jurisdiction and the domestic takings rule—that may bar that suit at the outset and render any application of the Second Hickenlooper Amendment unnecessary.

Petitioners' preferred rule is thus not only stale, but also largely academic. At most, their precedents may have changed the outcome in a case or two in the early 1980s—if that—and none since, save this case. There is therefore no need for this Court's involvement.

B. The Question Presented Does Not Implicate Foreign Policy Concerns

Petitioners fare no better in pointing to the supposed foreign policy implications of U.S. courts "resolv[ing] a dispute over a foreign state's taking of property that at all times has remained abroad." Pet. 33-34.

To begin with, the Amendment anticipates any potential foreign policy concerns and expressly authorizes courts to apply the act-of-state doctrine if "the President determines that application of the act of state doctrine is required in that particular case by the foreign policy interests of the United States and a suggestion to this effect is filed on his behalf in that case with the court." 22 U.S.C. § 2370(e)(2). The proviso leaves the Executive Branch with ample tools to address any genuine foreign policy concerns in particular cases. *That* is the mechanism by which "the political branches of our government" have chosen to address "sensitive issues of foreign relations." Pet. 35. There is no need for courts to rewrite the statute to confront concerns Congress itself anticipated and addressed.

Petitioners assume (Pet. 33-34) that property that "at all times has remained abroad" is likely to raise uniquely sensitive concerns. But Congress rejected that assumption in the FSIA's expropriation exception by expressly extending jurisdiction in suits against foreign state instrumentalities beyond those in which the expropriated property or its proceeds are located in the United States. 28 U.S.C. § 1605(a)(3). Whether the property or its proceeds have found their way to the United States or remain abroad, a court applying the Amendment may pass on the validity of a foreign state's taking.

Nor is there any real prospect of courts opining on the validity of foreign takings in the abstract. *Contra* Pet. 35. As explained, a court could exercise its power to do so only if an applicable "jurisdictional hook" (*id.* at 34) establishes a sufficient nexus to the United States. See pp.19-21, *supra*; 28 U.S.C. § 1605(a)(3). And, again, decades of experience belie Petitioners' unfounded fears that the D.C. Circuit's established rule will foment international controversy.

III. This Case Is A Poor Vehicle

Even if the question presented otherwise merited this Court's review, this case is a poor vehicle for resolving it.

1. This case arises from the appeal of the district court's denial of a motion to dismiss. Its interlocutory posture alone is a "sufficient ground for the denial" of the petition. *Hamilton-Brown Shoe Co.* v. *Wolf Bros.*

& Co., 240 U.S. 251, 258 (1916). The Court "generally await[s] final judgment in the lower courts before exercising [its] certiorari jurisdiction." *Virginia Military Institute* v. *United States*, 508 U.S. 946, 946 (1993) (Scalia, J., respecting the denial of the petition for writ of certiorari). That established practice promotes judicial efficiency. Issues may narrow, cases may settle, and circumstances may change before final judgment. If a judgment is ultimately entered against the party seeking interlocutory review, it can present all of its arguments to the Court in a single petition. *Virginia Military Institute*, 508 U.S. at 946; see also *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam). Accordingly, "the interlocutory posture of the petition weighs against" this Court's review. *Wilson* v. *Hawaii*, 145 S. Ct. 18, 18 (2024) (Thomas, J., joined by Alito, J., respecting the denial of certiorari); see also, *e.g.*, *National Football League* v. *Ninth Inning, Inc.*, 141 S. Ct. 56, 57 (2020) (Kavanaugh, J., respecting the denial of certiorari) (similar); *Abbott* v. *Veasey*, 580 U.S. 1104, 1104 (2017) (Roberts, C.J., respecting the denial of certiorari) (similar).

2. The court of appeals' resolution of the act-of-state issue under its pendent appellate jurisdiction makes this case a particularly poor vehicle. See Pet. App. 10a-11a. To reach the merits, the Court would likely have to agree with the D.C. Circuit both (1) that "the act-of-state issue is inextricably intertwined with the sovereign immunity issue" under the FSIA's expropriation exception, and (2) that the intertwined "common question" of "whether the expropriation violated international law" extends the D.C. Circuit's

pendent jurisdiction beyond that limited question to Petitioners' separate question presented. *Ibid*. That thicket of unresolved jurisdictional questions could preclude this Court's resolution of the question presented and counsels strongly against this Court's review in this case. If the Court is inclined to decide the question presented, it should do so in a case that cleanly presents the issue after final judgment.

IV. The Decision Below Is Correct

The Court should also deny review because the D.C. Circuit correctly construed the Second Hickenlooper Amendment. There is thus no "error" for this Court to "correct." Pet. 32.

A. The Second Hickenlooper Amendment's Plain Text Does Not Require Expropriated Property To Enter The United States

The Amendment bars application of the act-of-state doctrine in any "case in which a claim of title or other right to property is asserted by any party"—"including a foreign state" or "a party claiming through such state"—"based upon" a "taking * * * by an act of that state in violation of the principles of international law." 22 U.S.C. § 2370(e)(2).

As the court of appeals unanimously concluded, the Amendment squarely applies here. Petitioners (two "part[ies]" claiming rights "through" Venezuela) have "asserted" a "claim of title or other right to property" (H&P-Venezuela's business and tangible assets) "based upon" their "taking" of that property through an "act of * * * state" (the Expropriation

Decree and resulting judicial proceedings). 22 U.S.C. § 2370(e)(2). That assertion is "in [this] case," *ibid.*, because it is both the action challenged in the complaint and the basis for Petitioners' merits position and act-of-state defense. H&P, too, is "assert[ing]" a "claim" to that same property by arguing that the taking "violat[ed] * * * international law." *Ibid.* Those competing assertions are the central merits issue in the case. The Amendment thus fits this case to the letter.

The Amendment's text includes no domestic-nexus requirement. "[T]he Amendment contains no * * * reference to the United States or any other location." Pet. App. 24a. Instead, Congress's use of "broad, unqualified language" directly "belies" the suggestion that the Amendment is "limited to expropriated personal property located in the United States." *Ramirez*, 745 F.2d at 1541 n.180.

If Congress had intended to include such a limit, it knew how to do so: In the FSIA's expropriation exception, Congress expressly provided that suits against foreign states could proceed under the exception only if one of two jurisdictional nexus clauses is satisfied. The property or its proceeds must be either: (1) "present in the United States"; or (2) "owned or operated by" a state "agency or instrumentality" that is "engaged in a commercial activity in the United States." 28 U.S.C. § 1605(a)(3). The first clause duplicates Petitioners' proposed requirement. But as this Court has observed, no similar "limitation" exists in the Second Hickenlooper Amendment, *Simon*, 604 U.S. at 122, and there is no basis to blue-pencil any such limitation into the statute.

Further, Petitioners' position would eliminate the exception's second jurisdictional nexus clause entirely. If expropriation claims against foreign states could survive dismissal under the act-of-state doctrine only if the property were "present in the United States"—satisfying the first jurisdictional nexus clause—satisfying the "owned or operated" clause would serve no purpose. "Because 'Congress presumably does not enact useless laws,' it makes no sense to read" the Amendment in a way that renders half of the expropriation exception a nullity. *Bowe* v. *United States*, 607 U.S. 13, 38 (2026) (citation omitted).[3]

B. Petitioners' Counterarguments Are Unavailing

Petitioners offer a smattering of counterarguments, but none holds water.

1. Perhaps recognizing that statutory interpretation today must "begin with the text," *Lackey* v. *Stinnie*, 604 U.S. 192, 199 (2025), Petitioners first purport to locate a domestic-nexus requirement in "[t]he Amendment's text," Pet. 23. But Petitioners almost immediately abort any effort to identify any specific text imposing that requirement. Instead, their

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[3] Petitioners suggest that the "owned or operated" clause would remain relevant in an action in which some other "exceptio[n] unrelated to the Amendment" barred application of the act-of-state doctrine. Pet. 32 n.7. But they identify no recognized exception that could reasonably apply to an expropriation claim against a foreign state.

purportedly textual argument turns on the premise that the Amendment's text "closely tracks the facts of *Sabbatino*" and the purposivist inference that the text must therefore be "narrowly aimed at 'permitting adjudication of claims the *Sabbatino* decision had avoided'"—namely, claims where the property at issue entered the United States. *Id.* at 23-24 (alteration and citation omitted).

That is not a textualist argument at all. And it also fails on its own terms. The Amendment's text tracks only *some* of the facts of *Sabbatino*. *Sabbatino* involved a dispute about "title" to unlawfully expropriated property. 376 U.S. at 417. The Amendment likewise covers a "claim of title" that is "based upon" a "taking" in "violation of * * * international law." 22 U.S.C. § 2370(e)(2). But the Amendment is not limited to claims of "title"—unlike in *Sabbatino*, it applies to claims concerning "other right to property." *Ibid.* The Amendment thus expressly extends beyond *Sabbatino*'s facts. In any event, nothing in the text "tracks" (Pet. 24) the only salient fact here—that *Sabbatino* involved property present in the United States. If anything, the Amendment's apparent effort to mirror *other* features of *Sabbatino* makes that omission all the more glaring. Petitioners cannot identify any statutory text to support their domestic-nexus limitation because there is none.

Petitioners also downplay the textual differences between the FSIA's expropriation exception (which expressly includes a domestic-nexus requirement) and the Amendment (which does not). But Petitioners' assertion that the FSIA does not "disturb the act of state doctrine" misses the point. Pet. 32 (quoting *Empresa Cubana*, 652 F.2d at 238 n.11). No one contends the FSIA's enactment impliedly *changed* the Amendment's scope. Rather, the contrast between the FSIA and the Amendment merely confirms what the Amendment's text already made plain: The Amendment includes no domestic-nexus requirement. Cf. *Henson* v. *Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017) ("differences in language * * * convey differences in meaning").

2. Abandoning the facade of textualism, Petitioners openly argue that the same general congressional purpose—to overrule *Sabbatino*—supports their territorial limitation on the Amendment. Pet. 24-25. But that purpose proves nothing. "[S]tatutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale* v. *Sundowner Offshore Services, Inc.*, 523 U.S. 75, 79 (1998). Even if overturning *Sabbatino* were "a primary purpose" of the Amendment, it "was not the *sole* situation in which the amendment was to be activated." *Ramirez*, 745 F.2d at 1541 n.180. "[N]o legislation pursues its purposes at all costs," *Freeman* v. *Quicken Loans, Inc.*, 566 U.S. 624, 637 (2012) (citation omitted), and limiting the Amendment to U.S.-based property would undermine the Amendment's *other* purposes to promote and protect "United States investment in foreign countries," which "characteristically" involves "land, minerals, and large fixed immovables" that cannot be transported from country to country.

Ramirez, 745 F.2d at 1541 n.180. At bottom, "speculation as to Congress' intent * * * cannot replace the actual text Congress enacted." *Bowe*, 607 U.S. at 40 (quotation marks and citation omitted).

3. Petitioners pivot to legislative history, ranging from unenacted draft language to sponsor statements. Such frail "relic[s] from a 'bygone era of statutory construction'" cannot support Petitioners' interpretation in light of the Amendment's "clear statutory language." *Food Marketing Institute*, 588 U.S. at 436-437.

Regardless, Petitioners greatly overread the legislative history. Petitioners make hay of Congress's decision to limit the Amendment's scope to cases featuring a claim or other right "to property," as opposed to an earlier draft's broader application to any "'act of a foreign state'" that "'is alleged to be contrary to international law.'" Pet. 25 (quoting S. Rep. No. 1188, 88th Cong., 2d Sess. 37 (1964)). They suggest that language "evinces an intent to capture only cases in which a claim of title or other right is asserted to specific expropriated property (or its proceeds) that falls within the jurisdiction of a U.S. court." *Id.* at 26. But the natural inference from Congress's decision to limit the Amendment to cases involving a claim or right "to property" is exactly that—to limit the Amendment's applicability to claims involving property, and to exclude other claims (such as contract claims or personal torts). Indeed, the Amendment's conference report states that "[t]he words 'to property'" were added to clarify that "banks, insurance companies, and other financial institutions" can still "us[e] the act of state doctrine as a defense to multiple liability upon any contract * * * in any case where such liability has been taken over or expropriated by a foreign state." S. Rep. No. 170, 89th Cong., 1st Sess. 19 (1965).

Petitioners also argue that the Amendment's exception for "'a claim of title * * * acquired pursuant to an irrevocable letter of credit'" "appears" to have been added "to address banks' concern[s]" about the proper *situs* of a letter of credit. Pet. 26-27. On Petitioners' telling, that purpose shows that "the Amendment's application depends on the location of the expropriated property or its proceeds." *Id.* at 27. But that convoluted argument fails at every step. Neither Petitioners nor the secondary sources they cite identify any primary materials to support their speculation about the letter-of-credit proviso's purpose. See Restatement (Third) of Foreign Relations Law § 444 reporters' note 7 (1987). Petitioners' account of that carveout's purpose is also difficult to square with Congress's decision to expressly limit that carveout to *some* letters of credit—those "of not more than 180 days duration"—and not others based on the letter's duration, not its location. 22 U.S.C. § 2370(e)(2). Regardless, there is no canon of construction that gives controlling effect to the "concern[s]" of "banks," Pet. 26-27. The unenacted intentions of legislators are not the law, *Saba Capital Master Fund*, 146 S. Ct. at 1558, and neither are the mistaken impressions of lobbyists.

That leaves Petitioners to selectively pick through floor statements to divine yet another purported congressional purpose—to forestall a thieves' market in the United States for property expropriated abroad.

Pet. 27. But "scattered floor statements by individual lawmakers"—even bill sponsors—are "among the least illuminating forms of legislative history." *Advocate Health Care Network*, 581 U.S. at 481 (citation omitted). Those statements cannot override the text's plain meaning.

4. Petitioners next turn to a supposed "prevailing understanding among courts and commentators in the years immediately following the Amendment's enactment." Pet. 29. But Petitioners' support for their purported consensus draws entirely from two *dissents*—one from this Court's vacatur of the Second Circuit's judgment in *Banco Nacional* and one from the D.C. Circuit's decision in *Ramirez*. True, Justice Brennan observed in dissent that, in vacating the Second Circuit's judgment on other grounds, he "agree[d] with" leaving the Second Circuit's finding on the Amendment "undisturbed." *Banco Nacional de Cuba*, 406 U.S. at 780 n.5 (Brennan, J., dissenting). But "[b]y no twist of legal imagination can the Supreme Court's reversal (of the Second Circuit's general holding that the act of state doctrine controlled the case) constitute approval of the reasoning relied on by the court of appeals with respect to the meaning of the Second Hickenlooper Amendment." *Ramirez*, 745 F.2d at 1541 n.180. And *Ramirez* itself refutes any suggestion of a "prevailing understanding."

5. With nothing to support a domestic-nexus requirement, Petitioners change the topic and take issue with the Amendment's application to this case writ large: They argue that H&P "is not claiming title * * * 'based upon' a taking," and that Petitioners "have

not 'asserted' *any* affirmative 'claim' for relief." Pet. 30-31 (quoting 22 U.S.C. § 2370(e)(2) and Fed. R. Civ. P. 8).

That argument has nothing to do with whether the Amendment is limited to claims pertaining to property in the United States. Nor did Petitioners raise their new "based upon" theory to the D.C. Circuit, which had no occasion to address it. Because the issue is both waived and outside of the question presented, it is not properly before the Court. See *A. J. T.* v. *Osseo Area Schools, Independent School District No. 279*, 605 U.S. 335, 350 (2025) ("we do not decide issues" that were not "resolved below" and are "outside the questio[n] presented by the petition for certiorari" (citation omitted)).

Regardless, Petitioners' new statutory theory is wrong. H&P's "claim" to damages is "based upon" Petitioners' and Venezuela's taking of their property in violation of international law. And Petitioners too "claim" title to that property, because in ordinary parlance, such a "claim of" rights is not limited to actions seeking to establish those rights, but includes an assertion of an "existing right." Black's Law Dictionary (4th rev. ed. 1968); see *Claim*, Black's Law Dictionary (12th ed. 2024) ("assertion of an existing right"). Every statutory requirement is met.

* * *

At bottom, Petitioners contend that courts should rewrite the Amendment to comport with their reading of the legislative history. The court of appeals correctly declined "to revive that old-time devotion to legislative history," *Saba Capital Master Fund*, 146 S.

Ct. at 1558, and Petitioners identify no ground for this Court's intervention.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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