

IN THE
Supreme Court of the United States

CLEMENTE PROPERTIES, INC., ET AL.,
Petitioners,
v.

HON. PEDRO PIERLUISI-URRUTIA, Governor of
Puerto Rico, in his official and individual capacity as
representative of the Commonwealth of Puerto Rico;
EILEEN M. VÉLEZ-VEGA, Secretary of the Department
of Transportation and Public Works, in her official
and individual capacity; FRANCISCO PARÉS ALICEA,
Secretary of the Department of the Treasury, in his
official and individual capacity; RAY J. QUIÑONES-
VÁZQUEZ, Secretary of Sports and Recreation,
in his official and individual capacity; PUERTO RICO
CONVENTION CENTER DISTRICT AUTHORITY,
Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the First Circuit**

**RESPONDENTS PEDRO PIERLUISI-URRUTIA;
EILEEN M. VÉLEZ-VEGA; FRANCISCO PARÉS-
ALICEA; RAY J. QUIÑONES-VÁZQUEZ'S
BRIEF IN OPPOSITION**

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COUNTER QUESTION PRESENTED

1. Whether the First Circuit correctly held that the challenged statutory program did not effect a categorical *per se* taking of Petitioners' asserted trademark rights.

2. Whether the First Circuit correctly held that Puerto Rico enjoys sovereign immunity and that the Lanham Act does not unequivocally abrogate that immunity.

3. Whether this case is an appropriate vehicle for resolving the constitutional and statutory questions presented.

PARTIES TO THE PROCEEDING

The parties to the proceedings are correctly identified in the Petition.

CORPORATE DISCLOSURE STATEMENT

No corporate disclosure is required under Rule 29.6 because Respondents are governmental entities and public officials, and no nongovernmental corporation or publicly held corporation is a party to this action.

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The petition should be denied because it does not satisfy this Court's standards for certiorari review. *See* Sup. Ct. R. 10. Petitioners principally seek review of two issues: whether the Takings Clause's categorical *per se* framework applies to trademarks and other intangible property, and whether Puerto Rico enjoys sovereign immunity or, alternatively, whether Congress abrogated that immunity in the Lanham Act. Pet. i–ii.¹ Neither question warrants this Court's review.

First, Petitioners identify no conflict among the federal courts of appeals or with any decision of this Court. Rather, the First Circuit resolved both questions by applying settled Takings Clause and sovereign-immunity principles to the particular statutory program challenged here. Pet. App. at 53a–83a.

Second, the petition overstates the breadth of the First Circuit's decision. Contrary to Petitioners' characterization, the First Circuit did not hold that intangible property is categorically excluded from Fifth Amendment protection, nor did it establish a new rule governing Puerto Rico's sovereign immunity. Instead, the court resolved the issues presented by applying existing precedent to the facts of this case. Pet. App. 53a–83a.

Third, this case presents substantial concerns as to whether the petition is the correct vehicle to address the questions raised by Petitions. Here, the First Circuit *assumed*, without deciding, that Petitioners

¹ Respondents will refer to the Petition for a Writ of Certiorari as "Pet." and the Petition's Appendix as "Pet. App.".

possessed a constitutionally protected property interest and resolved the Takings Clause claim on narrower grounds. The sovereign immunity issues likewise rest on multiple independent grounds, including binding circuit precedent, Petitioners' failure to preserve certain arguments below, statutory interpretation, and application of this Court's settled sovereign-immunity jurisprudence. In addition, the judgment below is mixed: the First Circuit affirmed dismissal of Petitioner's Takings Clause and official-capacity Lanham Act claims, while reinstating certain individual-capacity Lanham Act claims for further proceedings. Pet. App. 1a-94a. These circumstances make this case an unsuitable vehicle for resolving the broad constitutional questions Petitioners seek here.

Because the petition identifies no conflict warranting review, presents no important unsettled question of federal law, and provides an unsuitable vehicle for resolving the questions presented, the petition for writ of certiorari should be denied.

COUNTER-STATEMENT OF THE CASE

A. Introduction

This case arises from a temporary legislative program enacted by the Government of Puerto Rico authorizing commemorative automobile license plates and annual vehicle registration tags honoring the late Roberto Clemente, one of Puerto Rico's most celebrated athletes and public figures. The legislation directed that proceeds from the sale of the commemorative plates and tags be used exclusively to support the Roberto Clemente Sports District and other legislative designated public purposes. Pet. App. 96a-98a.

Petitioners—Clemente Properties, Inc., related corporate entities, and members of Roberto Clemente's

family—claim ownership of federally registered trademarks and related rights associated with Roberto Clemente’s name, image, and likeness. They brought this action against the Government of Puerto Rico, various of its officials in their official and individual capacities, and the Puerto Rico Convention Center District Authority, alleging violations of the Lanham Act, the Takings Clause, and Puerto Rico law. Pet. App. 96a–100a.

B. Background

In 2021, the Puerto Rico Legislative Assembly enacted Joint Resolutions Nos. 16-2021 and 17-2021 authorizing commemorative license plates and annual vehicle registration tags honoring Roberto Clemente. The following year, Act No. 67-2022 expanded and further implemented the commemorative program established by the Joint Resolutions. The legislation directs that the additional fees and voluntary contributions generated through the commemorative plates and registration tags be deposited into the Roberto Clemente Sports District Fund, administered by the Puerto Rico Department of the Treasury, for the exclusive benefit of the Department of recreation and sports and other legislative designated public purposes. Pet. App. 6a-9a, 98a.

Petitioners allege that the Government’s use of Roberto Clemente’s name, likeness, and related imagery infringes their trademark rights and effects an uncompensated taking of private property in violation of the Fifth Amendment. They further assert claims under the Lanham Act and Puerto Rico law. Pet. App. 10a, 99a–100a.²

² On July 28, 2026, we requested an extension of time, through

C. Proceedings Below

The district court granted Respondents' motions to dismiss and entered judgment dismissing all federal claims. As relevant here, the district court held that: (1) the Puerto Rico and the official-capacity defendants were entitled to sovereign immunity because the Lanham Act neither abrogated Puerto Rico's immunity nor permitted the official-capacity claims to proceed (Pet. App. 113a-129a); (2) Petitioners failed to state a viable Lanham Act claim (Pet. App. 129a-142a); (3) the individual-capacity defendants were entitled to qualified immunity because Petitioners failed to identify clearly established law placing reasonable officials on notice that implementing the challenged statutory program violated the Lanham Act or the Constitution (Pet. App. 151a-155a); (4) Petitioners failed to state a Takings Clause claim (Pet. App. at 143a-148a); and (5) after dismissing all federal claims, the court declined to exercise supplemental jurisdiction over the remaining Puerto Rico-law claims. Pet. App. 160a.

The First Circuit affirmed in part and vacated in part. As relevant here, it affirmed dismissal of Petitioners' Takings Clause claim (Pet. App. at 53a-64a), held that Puerto Rico enjoys sovereign immunity and that the Lanham Act does not abrogate that immunity. Pet. App. 65a-83a. Further, it affirmed dismissal of all Lanham Act claims against the Government and the official-capacity defendants, as well as Petitioners' false-advertising claim under 15 U.S.C. § 1125(a)(1)(B). Pet. App. 12a-83a.

and including August 28, 2026, to file our response. The motion was granted on July 30, 2026.

The First Circuit, however, vacated the dismissal of Petitioners' Lanham Act claims under 15 U.S.C. §§ 1114(1), 1125(a)(1)(A), and 1125(c) against certain Government officials, in their individual capacities, and remanded those claims for further proceedings. Pet. App. 83a-87a, 90a. Respondents' petition for panel rehearing and rehearing *en banc* was denied. Pet. App. 164a-165a. Proceedings on the remanded claims remain pending in the district court.

D. Misstatements of Fact or Law in the Petition

Pursuant to Supreme Court Rule 15(2), Respondents respectfully identify the following material misstatements of fact or law that bear directly on the *certiorari* inquiry under Rule 10. Several of Petitioners' asserted grounds for review rest on characterizations of the First Circuit's decision that do not accurately reflect the opinion below.

1. The Petition Overstates the First Circuit's Takings Clause Holding.

Petitioners repeatedly assert that the First Circuit held that the Takings Clause's *per se* framework categorically does not apply to trademarks or other intangible property. *See, e.g.*, Pet. 1–2, 17–24. The First Circuit made no such holding. Rather, it expressly assumed, without deciding (see P. App. 54–55a), that Petitioners possessed a cognizable property interest in their asserted trademarks and resolved the appeal on the narrower ground that the challenged statutory program did not constitute a categorical taking under the circumstances presented. Pet. App. 54a–64a. Petitioners therefore seek review of a rule the First Circuit did not announce.

2. The Petition Overstates the First Circuit's Sovereign-Immunity Holding.

The Petition likewise portrays the decision below as establishing a broad rule insulating Puerto Rico from Lanham Act liability. *See* Pet. 24–33. It did not. Applying binding circuit precedent, the First Circuit reaffirmed that Puerto Rico enjoys sovereign immunity comparable to that of the States, rejected Petitioners' constitutional theories, and concluded that the Lanham Act does not unequivocally express Congress's intent to abrogate that immunity. Pet. App. 65a–83a. Petitioners' reliance on questions this Court expressly reserved and on dissenting opinions (Pet. 26) does not alter the basis of the First Circuit's decision.

3. The Petition Misconstrues the Existence of Conflicts Warranting Review.

The Petition repeatedly asserts conflicts among this Court's precedent, the federal courts of appeals, and other courts. *See* Pet. 2, 12–16. The cited authorities, however, involve materially different property interests, statutory schemes, or sovereign-immunity questions and do not establish the type of square conflict contemplated by Rule 10. *See* Pet. App. 58a–64a, 71a–82a. Nor do Petitioners identify any decision of another federal court of appeals reaching a contrary result on materially indistinguishable facts.

4. The Petition Overstates the Breadth and Significance of the Questions Presented.

Finally, the Petition frames the questions presented at a level of generality divorced from the issues actually decided below. The First Circuit neither announced a categorical rule excluding trademarks or other intangible property from the Takings Clause protection nor established a new rule governing

Puerto Rico’s sovereign immunity. Rather, it applied settled precedent to the particular statutory program at issue. Pet. App. 53a–83a. The Petition therefore seeks review of broader constitutional questions than those actually decided below.

REASONS FOR DENYING THE PETITION

Supreme Court Rule 10 makes clear that certiorari is “rarely granted” to review the misapplication of settled law or the asserted erroneous application of law to the facts of a particular case. This case presents precisely that circumstance. The First Circuit did not announce a new rule governing trademarks, intangible property or Puerto Rico’s sovereign immunity. Rather, it applied settled Takings Clause and sovereign-immunity principles to the unique statutory program challenged here. As to the Takings Clause, the court expressly assumed, without deciding, that Petitioners possessed a cognizable property interest (Pet. App. 55a, 63a) and concluded only that the challenged legislation did not create the type of categorical taking recognized by this Court’s precedent. Pet. App. 55a–64a. Petitioners identify no conflict among the lower courts or with any decision of this Court, and this case presents multiple vehicle problems that make it an unsuitable vehicle for resolving the broad constitutional questions they now seek to present.

Other arguments do not cure the threshold Rule 10 defects. None identifies a decision of another federal court of appeals holding that alleged governmental infringement of trademark or similar intangible rights constitutes a categorical taking. Instead, those arguments invite the Court to unnecessarily extend existing takings doctrine to circumstances not addressed by the decisions on which Petitioners rely—including by

treating alleged governmental interference with intangible rights as the equivalent of physical appropriation. Such arguments do not establish that the decision below conflicts with this Court's precedent or with the decision of another court of appeals. Nor do they overcome the vehicle problems resulting from Petitioners' deliberate decision to pursue only a categorical takings theory below.

I. The Petition Does Not Warrant Review of the Alleged *Per Se* Takings Question

A. This case is not an appropriate vehicle for resolving the broad constitutional question presented.

Petitioners contend that this case presents an "excellent vehicle" for deciding whether the Takings Clause's *per se* framework applies to trademarks and other intangible property. Pet. 23–26. It does not. The First Circuit did not decide the broad constitutional question Petitioners seek to present, making this case an unsuitable vehicle for certiorari review. See Sup. Ct. R. 10.

Instead, the First Circuit resolved the appeal on the narrower ground that Puerto Rico's commemorative license plate and vehicle registration tag program did not effect the type of governmental appropriation giving rise to a categorical taking under this Court's precedents. Pet. App. 55a-64a.

The narrow posture of the case is further illustrated by Petitioners' own litigation choices before the First Circuit. Petitioners themselves confined the appeal to a single theory of recovery, expressly declining to characterize their claim as a non-categorical taking or to address the factors governing regulatory takings under *Penn Central Transportation Co. v. New York*

City, 438 U.S. 104, 124 (1978). Pet. App. 55a-56a n.29. They further conceded that their asserted property interests are **intangible, not physical**, and did not challenge the district court's determination that the legislation at issue did not deprive them of all economically beneficial use of those asserted interests. Pet. App. 56a-57a. In addition, as the First Circuit observed, Petitioners failed to preserve any other basis for their Takings Clause claim. Pet. App. 64a n.33. Those strategic choices substantially narrowed the issues before the First Circuit and correspondingly narrowed the court's decision.

Those concessions and litigation choices foreclosed traditional theories of physical and total regulatory takings, leaving only the fact-specific question whether the challenged statutory program effected a categorical taking under the particular circumstances presented. The First Circuit therefore resolved only the narrow theory Petitioners chose to pursue and did not announce any categorical rule exempting trademarks or other intangible property from Fifth Amendment protection. To the contrary, the First Circuit carefully confined its analysis to the issues before it and distinguished this Court's decisions involving classical physical appropriation of property. Pet. App. 58a-64a.

In fact, Petitioners expressly declined to pursue a noncategorical regulatory takings theory under *Penn Central*, and the court of appeals deemed any other basis for their Takings Clause claim waived. Pet. App. 55a-56a n.29, 64a n.33.

Petitioners therefore ask this Court to decide a constitutional question the First Circuit deliberately declined to answer considering Petitioners' own procedural failings. Because the judgment below rests

on the application of settled takings principles to the particular statutory program at issue—and not on the categorical rule Petitioners attribute to the First Circuit—this case is not an appropriate vehicle for resolving the question presented. *See* Sup. Ct. R. 10.

B. The First Circuit’s decision does not conflict with decisions of this Court or any other court of appeals.

Petitioners principally contend that the First Circuit deepened confusion among the lower courts regarding whether the Takings Clause’s categorical framework applies to trademarks and other intangible property. Pet. 12–16. This assertion mischaracterizes both the decision below and the authorities upon which Petitioners rely. The First Circuit expressly considered those authorities and explained why none involved the type of governmental conduct or property interests presented here. Pet. App. 57a–64a. Petitioners therefore identify no conflict within the meaning of Supreme Court Rule 10.

As an initial matter, the asserted conflict rests on a false premise. The First Circuit did **not** hold that trademarks or other intangible property are categorically exempt from the Fifth Amendment or from the takings analysis. Rather, it expressly assumed, without deciding, that Petitioners possessed a cognizable property interest protected by the Takings Clause, while rejecting only Petitioners’ contention that the alleged trademark infringement should be analyzed under the same categorical principles governing classic physical appropriations of property. *See* Pet. App. at 55a, 63a–64a (acknowledging that the Takings Clause protects intangible as well as tangible property, but declining to extend the categorical physical-takings framework to the circumstances presented).

Nor did the First Circuit disregard the authorities Petitioners invoked. To the contrary, it carefully analyzed and distinguished those principal decisions on which Petitioners rely. Pet. App. 57a–64a. The court explained that *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1003–1004 (1984), analyzed an alleged taking of trade secrets under the regulatory-takings framework; *Horne v. Department of Agriculture*, 576 U.S. 350, 361–366 (2015), involved the government’s physical appropriation of tangible personal property; and *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021), concerned a compelled physical invasion of real property. Pet. App. 58a–64a. None addressed whether the Government’s commemorative license plate and vehicle registration tag program constituted the type of governmental appropriation giving rise to a categorical taking of asserted trademark rights.

Petitioners likewise rely on Judge Selya’s separate concurrence in *Philip Morris, Inc. v. Reilly*, 312 F.3d 24 (1st Cir. 2002) (*en banc*). (Pet. 15). That reliance is misplaced. A separate concurring opinion does not constitute the holding of the court and therefore cannot create the square conflict contemplated by Rule 10. *See Maryland v. Wilson*, 519 U.S. 408, 412–13 (1997) (explaining that statements “contained in a concurrence” do not “constitute[] binding precedent”). In any event, the First Circuit considered *Philip Morris*, including Judge Selya’s concurrence, but concluded that Petitioners identified no authority requiring the extension of the categorical physical-takings framework to the alleged trademark infringement presented here. Pet. App. 63a–64a ((citing *Philip Morris*, 312 F.3d at 51 (Selya, J., concurring))).

The remaining authorities cited by Petitioners fare no better. Pet. 16. None involved the commemorative

government license plates and vehicle registration tags pursuant to duly enacted legislation, and none held that such governmental action effects a categorical taking of trademark rights. *See, e.g., King v. United States*, 151 F.4th 1348, 1359-1360 (Fed. Cir. 2025) (involving the alleged destruction of vested contractual pension rights resulting from federal legislation, not the alleged governmental use of trademarks in a commemorative licensing program); *Jim Olive Photography v. University of Houston System*, 624 S.W.3d 764, 764 (Tex. 2021) (alleged copyright infringement under materially different legal and factual circumstances); Pet. App. 61a. At most, those decisions illustrate that courts apply settled Takings Clause principles to different forms of property; they do not establish conflicting rules governing the issues presented here.

Accordingly, Petitioners identify no square conflict with any decision of this Court or another federal court of appeals. Their disagreement is instead with the First Circuit’s application of settled Takings Clause principles to the particular statutory program at issue. Such fact-bound disagreement does not warrant this Court’s discretionary review.

C. The First Circuit applied settled takings principles to the particular facts of this case.

The Petition ultimately seeks review of what it characterizes as the First Circuit’s refusal to extend this Court’s categorical takings jurisprudence to trademarks and other intangible property. Pet. 17–22; *see also* Pet. App. at 57a, 63a. The First Circuit neither held that trademarks fall outside the protection of the Takings Clause nor created a categorical exemption for intangible property. Rather, assuming without

deciding that Petitioners possessed a cognizable property interest, it applied settled takings principles to conclude that the challenged statutory program did not effect the type of categorical taking recognized in this Court's precedent. Pet. App. 55a–64a.

The First Circuit's analysis began from a premise favorable to Petitioners. It expressly assumed, without deciding, that Petitioners possessed a cognizable property interest protected by the Fifth Amendment. Pet. App. 55a. The court further recognized that the Takings Clause protects intangible as well as tangible property and expressly disclaimed any holding that trademark infringement can never constitute a compensable taking. Pet. App. 63a. It rejected only Petitioners' invitation to make "the conceptual leap" that alleged trademark infringement should automatically be governed by the same categorical rules applicable to classic physical appropriations of property. *Id.*

The First Circuit also correctly distinguished the two narrow categories in which this Court applies categorical takings rule. (Pet. App. 55a–56a). Physical takings occur through condemnation or physical appropriation, while *Lucas* recognizes a categorical regulatory taking only where government action deprives an owner of all economically beneficial use of property. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015–17 (1992); Pet. App. 55a–56a. Petitioners conceded that their asserted interests are intangible rather than physical and did not challenge the district court's conclusion that the challenged legislation left them with economically beneficial use of those interests. Pet. App. 56a–57a. Accordingly, neither established categorical theory applied, and the First Circuit properly addressed only Petitioners'

remaining contention that the alleged trademark infringement should be treated as the equivalent of a physical appropriation.

Petitioners’ principal reliance on *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984), is misplaced. The First Circuit cited *Monsanto* as further support for preserving the distinction between physical and non-physical takings, observing that this Court analyzed the trade-secret claim there under the *Penn Central* framework rather than as a categorical physical taking. Pet. App. 64a. That observation accurately reflects *Monsanto*, where this Court described the takings inquiry as an “ad hoc, factual” one guided by “the character of the governmental action, its economic impact, and its interference with reasonable investment-backed expectations.” 467 U.S. at 1005 (quoting *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978)). Nor could Petitioners now invoke *Monsanto* as support for a non-categorical regulatory-taking theory that they expressly declined to pursue before the First Circuit. The court therefore deemed any such argument waived. Pet. App. 55a–56a n.29, 64a n.33.

Nor do *Horne v. Department of Agriculture*, 576 U.S. 350 (2015), or *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021), compel a different result. As the First Circuit explained, both decisions involved paradigmatic physical appropriations. Pet. App. 57a–60a. In *Horne*, the Government took possession of a portion of a raisins harvest for its own use. 576 U.S. at 361–366. Likewise, *Cedar Point* concerned a government-authorized physical invasion of real property to union organizers through a compelled easement per a California law. 594 U.S. at 147–57. Neither decision suggests that the Government’s commemorative

license plate program constitutes the equivalent of a physical occupation, seizure, or total deprivation of economically beneficial use. The First Circuit therefore correctly concluded that neither decision required extending the categorical physical-takings framework to the circumstances presented here. Pet. App. 57a–61a.

The invocation of the “right to exclude” does not erase this distinction. A trademark law does not confer the same possessory right to exclude that underlies this Court’s physical-takings cases. Unlike a patent or copyright, a trademark is not a “right in gross” permitting its owner to prohibit every reproduction or use of the mark. *Boston Athletic Ass’n v. Sullivan*, 867 F.2d 22, 35 (1st Cir. 1989). Rather, its exclusionary protection operates within the contours of trademark law, including requirements concerning use in commerce and likelihood of confusion. Nor were Petitioners deprived of possession, use, licensing, or enforcement of their asserted right. As the First Circuit observed, Petitioners remain free to exercise whatever exclusionary rights they possess through infringement actions. Pet. App. 60a n.31–62a. *Cedar Point*, by contrast, involved a government-created right of physical access that displaced the landowners’ existing right to exclude others from their land. That fundamental difference—not any categorical disregard for intangible property—explains why the alleged infringement of Petitioners’ trademark rights does not, by virtue of the right to exclude alone, constitute a categorical physical taking.

The same is true of Petitioners’ reliance on decisions defining the nature, scope, and protection of trademark rights. See, e.g., *Hanover Star Milling Co. v. Metcalf*, 240 U.S. 403 (1916) (recognizing trademarks

as property, not addressing takings); *McLean v. Fleming*, 96 U.S. 245 (1877) (protecting trademark against infringement); *Application of Deister Concentrator Co.*, 289 F.2d 496 (C.C.P.A. 1961) (holding that functional product features are not entitled to trademark registration); *Vidal v. Elster*, 602 U.S. 286 (2024) (addressing restrictions on federal trademark registration); Pet. 17-18. Indeed, the First Circuit accepted Petitioners' premise that trademarks may constitute protected property. Pet. App. 55a, 63a. The dispute is not whether trademarks are property, but whether the particular governmental conduct alleged here must be analyzed under the categorical rules governing physical appropriations. None of Petitioners' trademark authorities answer that question.

Nor do the remaining takings authorities cited in the Petition establish otherwise. Pet. 18-19. Each involved the Government's acquisition, occupation, or condemnation of identified property interests. *See, e.g., Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) (permanent public easement across private beachfront property); *Monongahela Navigation Co. v. United States*, 148 U.S. 312 (1893) (condemnation of lock and dam franchise); *United States v. General Motors Corp.*, 323 U.S. 373 (1945) (temporary government occupation of a leased building under a long-term lease); and *West River Bridge Co. v. Dix*, 47 U.S. (6 How.) 507 (1848) (exercise of eminent domain over bridge franchise for public use). While *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 326-327, 341-342 (2002) reaffirmed the limited scope of categorical takings and the continued importance of the *Penn Central* framework. None supports Petitioners' efforts to equate the challenged statutory program with a classical physical taking.

Finally, Petitioners identify no lower-court decision treating alleged trademark infringement as a categorical physical taking. Pet. App. 63a-64a. Judge Selya’s separate concurrence in *Philip Morris* suggested only that certain trade-secret interests might, in an appropriate case, warrant categorical analysis; it did not address trademarks and is not the holding of the court. Pet. App. 64a.

Likewise, *Jim Olive Photography v. University of Houston System*, 624 S.W.3d 764 (Tex. 2021) (holding that alleged unauthorized use of copyrighted aerial photograph was not *per se* taking because it is not an actual “physical control” or “physical occupation” of the property), and *King v. United States*, 151 F.4th 1348 (Fed. Cir. 2025) (alleged taking due to cut of contractual pension benefits did not result in physical taking and was not regulatory taking), involved materially different property interests and governmental action and do not support extending categorical taking doctrine to the circumstances presented here.

Ultimately, Petitioners disagree not with any new rule announced by the First Circuit, but with its application of settled Takings Clause principles to the particular statutory program at issue. Such fact-specific disagreement is precisely the type of asserted error that Supreme Court Rule 10 recognizes as an insufficient basis for certiorari review.

II. The Sovereign Immunity Questions Presented Do Not Warrant Review

A. The First Circuit correctly applied its binding circuit precedent recognizing Puerto Rico’s sovereign immunity.

Petitioners first ask this Court to decide whether Puerto Rico, as a territory rather than a State, enjoys sovereign immunity in federal court. Pet. 26–29. The First Circuit rejected that contention because it is foreclosed by longstanding circuit precedent recognizing that Puerto Rico, as a self-governing territory, possesses sovereign immunity equivalent to that of the States. Pet. App. 66a–67a (citing *Miya Water Projects Netherlands B.V. v. Financial Oversight & Management Board for Puerto Rico*, 138 F.4th 49, 54 (1st Cir. 2025); *Borrás-Borrero v. Corporación del Fondo del Seguro del Estado*, 958 F.3d 26, 33 (1st Cir. 2020); *Toledo v. Sánchez*, 454 F.3d 24, 31 n.1 (1st Cir. 2006)).

The First Circuit explained that this rule is firmly rooted in binding First Circuit precedent that a panel lacks authority to overrule. Pet. App. 67a (citing *United States v. García-Cartagena*, 953 F.3d 14, 27 (1st Cir. 2020)). Indeed, as the court observed, Petitioners expressly acknowledged that their position was contrary to controlling circuit precedent and stated that they sought only to preserve the issue for further review. Pet. App. 67a n.35.

Accordingly, the First Circuit did not undertake an extended analysis to resolve the broader constitutional challenge. Rather, it faithfully applied settled circuit precedent before turning to whether Congress abrogated Puerto Rico’s sovereign immunity under the Lanham Act. Pet. App. 67a. Because the First Circuit also affirmed dismissal of Petitioners’ Takings Clause

claim on the merits, it had no need to address Petitioners' separate argument that the Takings Clause creates an exception to sovereign immunity. *Id.*

Petitioners identify no conflict among the courts of appeals concerning the First Circuit's application of its own binding precedent. At most, they ask this Court to reconsider the continuing validity of that precedent. Such a request does not satisfy this Court's standards for discretionary review under Rule 10.

B. The First Circuit correctly held that the Lanham Act does not unequivocally abrogate Puerto Rico's sovereign immunity.

Petitioners alternatively contend that, even if Puerto Rico enjoys sovereign immunity comparable to that of the States, Congress unequivocally abrogated that immunity through the Lanham Act. Pet. 29–32. The First Circuit correctly rejected that contention after conducting a careful analysis of the Lanham Act and this Court's settled sovereign-immunity precedents. Pet. App. 67a–82a.

The court began with the settled principle that Congress does not abrogate sovereign immunity by implication. Rather, Congress must express its intent to subject a sovereign to suit in language that is “unmistakably clear.” Pet. App. 68a–70a, 78a–79a. Applying that settled framework, the court examined Petitioners' asserted constitutional basis for abrogation and the Lanham Act's text and structure. Pet. App. 70a–82a.

The First Circuit first addressed the constitutional theory Petitioners advanced below—that trademark infringement deprives trademark owners of property without due process of law. Pet. App. 70a–71a & n.38.

Observing that Petitioners appeared to rely on the due-process rationale discussed in *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666 (1999), the court applied this Court’s decisions in *Allen v. Cooper*, 589 U.S. 248 (2020), *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*, 527 U.S. 627 (1999), and *City of Boerne v. Flores*, 521 U.S. 507 (1997). Pet. App. 71a–75a. Assuming, without deciding, that trademarks constitute constitutionally protected property, the court concluded that Petitioners had not established the requisite congruence and proportionality for legislation enacted pursuant to § 5 of the Fourteenth Amendment. Pet. App. 72a–75a. Like patent and copyright infringement, trademark infringement may arise through negligent or innocent conduct, and Petitioners admitted that they “chose” to proceed in federal court while simultaneously asserting claims under Puerto Rico Trademark Law, thereby indicating the likely availability of an adequate state-law remedy that they never contended was constitutionally deficient. Pet. App. 73a–74a.

The First Circuit next considered Petitioners’ argument that Congress’s plenary authority under the Territory Clause, U.S. Const. art. IV, § 3, eliminated the need to satisfy the Fourteenth Amendment framework. Pet. 32; Pet. App. 75a–77a. Relying on *Jusino Mercado v. Commonwealth of Puerto Rico*, 214 F.3d 34 (1st Cir. 2000), the court explained that statutes ordinarily apply equally to Puerto Rico and the States unless the statutory language or compelling policy reasons require otherwise. Pet. App. 75a–76a. Because Petitioners neither acknowledged *Jusino Mercado* nor identified any provision of the Lanham Act or compelling policy reason demonstrating that Congress intended § 1122(b) to apply differently to Puerto Rico than to the States,

the First Circuit concluded that any such argument under § 1122(b) was waived. Pet. App. 76a-77a, 82a.

Petitioners principally rely on § 1122(a), which waives sovereign immunity for the “United States,” together with § 1127’s definition of that term to include territories. Pet. 29–32. The First Circuit carefully considered—and rejected—that reading. Pet. App. 77a–82a. Reading the statute as a whole, the court concluded that Puerto Rico is more naturally addressed by § 1122(b), governing States and state instrumentalities, than by § 1122(a), which concerns the federal government and its instrumentalities. Pet. App. 82a. More fundamentally, even assuming Petitioners’ interpretation was textually plausible, it would not satisfy the exacting clear-statement rule. See *F.A.A. v. Cooper*, 566 U.S. 284, 290–91 (2012) (holding that ambiguity exists where a plausible interpretation preserves sovereign immunity and that such ambiguity must be resolved in favor of the sovereign); *Dellmuth v. Muth*, 491 U.S. 223, 230 (1989) (requiring an unmistakably clear textual expression of congressional intent to abrogate sovereign immunity); *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985) (same). The First Circuit therefore concluded that the Lanham Act falls well short of that demanding standard. Pet. App. 68a–82a.

Petitioners identify no decision of this Court or any court of appeals holding that the Lanham Act unequivocally abrogates Puerto Rico’s sovereign immunity. Instead, they ask this Court to adopt a competing interpretation of the statute and to reject the First Circuit’s application of settled sovereign-immunity principles. Such disagreement over statutory interpretation of the statute does not warrant certiorari under Rule 10.

C. This case is not an appropriate vehicle to revisit Puerto Rico's sovereign immunity.

Even if sovereign immunity questions presented otherwise warranted this Court's attention, this case would present a poor vehicle for resolving them.

As to Petitioners' threshold contention that Puerto Rico is not entitled to sovereign immunity comparable to that of the States, the First Circuit simply applied its binding precedent recognizing such immunity. Pet. App. 65a–67a & n.35. The panel therefore had no occasion to decide the broader constitutional question Petitioners now ask this Court to resolve.

Nor does the Lanham Act issue present the clean legal question Petitioners suggest. The First Circuit's judgment rests on several independent grounds, including its application of this Court's § 5 congruence-and-proportionality jurisprudence, its rejection of Petitioners' Territory Clause theory under *Jusino Mercado*, its conclusion that Petitioners waived any argument that § 1122(b) should apply differently to Puerto Rico than to the States, and its determination that the Lanham Act does not contain the unmistakably clear language required to abrogate sovereign immunity. Pet. App. 71a–82a. Because each of those independent determinations support the judgment, this case is an unsuitable vehicle for resolving the broader constitutional questions Petitioners seek to present.

Accordingly, the Petition presents no clean or dispositive sovereign-immunity question warranting this Court's discretionary review. *See* Sup. Ct. R. 10.

CONCLUSION

Because the decision below faithfully applied this Court's settled precedent, presents no conflict among the lower courts, and provides an unsuitable vehicle for resolving the questions presented, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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