No. 25-213

IN THE
Supreme Court of the United States

ATLAS TURNER, INC.,

Petitioner,

v.

DONNA B. WELCH, individually and as Personal Representative of the Estate of Melvin G. Welch, and PETER D. PROTOPAPAS, in his capacity as Receiver for Atlas Turner, Inc.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of South Carolina

REPLY BRIEF FOR PETITIONER

CHRISTOPHER E. MILLS
Counsel of Record
SPERO LAW LLC
557 East Bay Street
#22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law
Counsel for Petitioner

RULE 29.6 STATEMENT

The corporate disclosure statement included in the petition for a writ of certiorari remains accurate.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

REPLY BRIEF FOR PETITIONER

This Court should resolve the significant judicial disagreement regarding a court's authority to exercise direct control—*i.e.*, in rem jurisdiction—over a defendant's property located outside the court's territorial bounds. The South Carolina Supreme Court held that the Receiver has "exclusive jurisdiction" over Atlas Turner's contractual insurance rights—wherever they are located—based on the trial court's finding of specific personal jurisdiction over Atlas Turner. Pet. App. 26a. That conclusion violates fundamental due-process protections meant to avoid the types of conflicts that South Carolina's receivership practices have generated among sovereigns, with U.K. and Canadian courts, as well as the Third Circuit, sharply rebuking South Carolina's jurisdictional overreach. *See* Pet. 27-31; Nat'l Union Br. 14.

Welch's and the Receiver's primary response is that this Court supposedly lacks jurisdiction. But the South Carolina Supreme Court definitively concluded that the trial court has in rem jurisdiction over out-of-state "Insurance Assets owned by Atlas Turner that may cover Mr. Welch's injuries." Pet. App. 26a. The Receiver is currently exercising that jurisdiction, inflicting a present injury on Atlas Turner that cannot be undone no matter how the remaining issues are resolved.

Respondents' other arguments are equally unavailing. They contend that the South Carolina Supreme Court did not decide the question presented. But that court plainly held—relying (mistakenly) on federal authorities—that the trial court's finding of specific personal jurisdiction over Atlas Turner means the company's "insurance policies and proceeds may

be . . . placed in [its] exclusive *in rem* jurisdiction." Pet. App. 26a (citing *SEC v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830, 840 (5th Cir. 2019)). Nor was the court's resolution of that federal question limited to "assets . . . located in South Carolina" or an application of "in personam" jurisdiction over Atlas Turner's contractual insurance rights. Welch Opp. 18, 21. The South Carolina Supreme Court's holding is territorially boundless and addresses "exclusive *in rem* jurisdiction" over property. Pet. App. 26a.

That holding implicates a clear split. Three state supreme courts have held, contrary to the decision below (and an Eleventh Circuit decision), that personal jurisdiction over a defendant does *not* permit a court to exercise in rem jurisdiction over the defendant's out-of-state property. Respondents offer only legally irrelevant factual differences. Welch even cites a case that suggests the divide is deeper than Atlas Turner realized.

This Court should grant review to put an end to South Carolina's "'astonishing'" receivership practices, Pet. 28, and to provide a definitive answer to this fundamental jurisdictional question.

I. THIS COURT HAS JURISDICTION TO RESOLVE THE QUESTION PRESENTED.

Respondents assert that this Court lacks jurisdiction to resolve the question presented because the South Carolina Supreme Court's decision purportedly is not final. Their argument ignores the ongoing constitutional injury to Atlas Turner.

The South Carolina Supreme Court conclusively determined that Atlas Turner's "Insurance Assets," though located "'beyond the territorial jurisdiction of

the court,'" "are within South Carolina's exclusive jurisdiction" under the Receivership Order. Pet. App. 23a, 26a. The court held that "[t]he Receiver stands in the company's shoes" and "has the right and duty to collect and accumulate [its] property and assets." *Id.* at 23a, 27a.

The Receiver is currently exercising that exclusive jurisdiction, "before" and independent of any "judgment." Pet. App. 29a. That jurisdiction is meaningful even if the Receiver never locates any unexhausted insurance policies. According to the Receiver, the "Insurance Assets" within his jurisdiction, *id.* at 26a, are not limited to Atlas Turner's insurance policies but also include "proceeds" from insurers' "b[uy] out [of] their policies," Receiver Opp. 8. The Receiver has reported that Atlas Turner "maintains the remaining cash from those buyout transactions in a bank account in Canada," which he is seeking to locate by subpoenaing an auditing firm. Receiver's Report on Current Receiverships 42, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Common Pleas, 5th Cir. July 11, 2025). And, tellingly, although the Receiver purportedly "anticipates the receivership will be dissolved in the near future," Receiver Opp. 8, he has never reported as much to the South Carolina courts or taken steps to effectuate dissolution.

This Court has jurisdiction because the Receiver's ongoing authority to "exercise[ ] power and control over [Atlas Turner's] assets," Pet. App. 17a, inflicts "'a here-and-now injury'" on Atlas Turner, *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 191 (2023), that is "'dissociated from'" and "wholly unrelated to" the issues left to be decided in state court, *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 478, 480 (1975); *see Loc. No. 438 Constr. & Gen. Laborers' Union v. Curry*, 371 U.S. 542, 548-

50 (1963) (Court had jurisdiction to review state-court temporary injunction "wholly separate from and independent of the merits" that imposed immediate harm the state court had no jurisdiction to inflict). No subsequent judgment in this case, for either party, could "negate[ ] the effect of" that present injury. *Moore v. Harper*, 600 U.S. 1, 17 (2023); *see Radio Station WOW v. Johnson*, 326 U.S. 120, 126 (1945) ("judgment directing immediate delivery of physical property is reviewable" despite state-court accounting on remand). Regardless of the outcome of this litigation (including any appeal that Atlas Turner pursues on personal jurisdiction), Atlas Turner will have been deprived—as a matter of law—of "power and control" over its contractual insurance rights and insurance proceeds for as long as the receivership remains in place. Because "the effect of" that ongoing harm—dating back more than two years already—cannot be "negated" by a subsequent state-court ruling, *Moore*, 600 U.S. at 17, this Court has jurisdiction now.

Respondents' cases provide a helpful contrast to this case. In *Jefferson v. City of Tarrant*, 522 U.S. 75 (1997), the question was whether a state-law damages provision applies in a § 1983 suit. *Id.* at 78-80. This Court held that it lacked jurisdiction over the interlocutory appeal because the plaintiff might lose on the merits, negating any damages issues. *Id.* at 82. *Doe v. Facebook, Inc.*, 142 S. Ct. 1087 (2022), was similar: ruling for the defendant on its personal-jurisdiction defense would obviate its statutory merits defense. *Id.* at 1088-89 (Thomas, J., statement respecting denial of certiorari).

This case is different. Whether Atlas Turner ultimately wins or loses the underlying personal-injury

suit, the Receiver will have been imbued with "exclusive jurisdiction" over Atlas Turner's "Insurance Assets," Pet. App. 26a, from the date of appointment through the date of dissolution, in violation of due process. This Court has jurisdiction to put an end to that ongoing, irremediable constitutional injury.

II. THE QUESTION PRESENTED, WHICH HAS SPLIT THE LOWER COURTS, IS SQUARELY AT ISSUE.

Respondents suggest that the South Carolina Supreme Court did not pass on the question presented, that the court's decision does not implicate that question, and that the division of authority it deepened is illusory. Those objections are baseless.

A. Respondents' preservation concerns are unfounded. Welch Opp. 14-15; Receiver Opp. 11-14. This Court's "traditional rule" "precludes a grant of certiorari only when 'the question presented was not pressed or passed upon below.'" *United States v. Williams*, 504 U.S. 36, 41 (1992). That test is "disjunctive, permitting review of an issue" that "has been passed upon." *Id.*

The South Carolina Supreme Court plainly passed upon the question presented. *See* Pet. 7-8. That court described the relevant question as whether the trial court had "jurisdiction to appoint a Receiver because [Atlas Turner] neither owns nor possesses any property within the borders of South Carolina." Pet. App. 21a. The court answered yes: Because the trial court "has personal jurisdiction" over Atlas Turner, the Receiver "may do whatever the corporation could do in relation to its property, for it is in his possession," even though "'the res is beyond the territorial jurisdiction of the court.'" *Id.* at 22a-23a. As support, the court relied on cases from this Court and

lower federal courts. Pet. App. 22a-24a, 26a (citing, *e.g.*, *Massie v. Watts*, 10 U.S. (6 Cranch) 148, 158-63 (1810); *Muller v. Dows*, 94 U.S. 444, 449 (1876); *Booth v. Clark*, 58 U.S. (17 How.) 322, 332 (1854); *Palmer v. Texas*, 212 U.S. 118, 125 (1909); *City of Jamestown v. Pa. Gas. Co.*, 1 F.2d 871, 878 (2d Cir. 1924); *Citronelle-Mobile Gathering, Inc. v. Watkins*, 934 F.2d 1180, 1188 (11th Cir. 1991); *Stanford*, 927 F.3d at 840).

Welch concedes (at 15) that the South Carolina Supreme Court relied on federal precedent, but nonetheless insists the court decided only "a matter of state law." That argument has multiple problems. First, the section of the court's opinion addressing "Jurisdiction to Appoint a Receiver" is separate from the section discussing "Appointment of Receiver under S.C. Code Ann. § 15-65-10(5) (2005)"—the relevant state-law provision. *Compare* Pet. App. 17a, *with id.* at 21a.

Second, in upholding the Receiver's jurisdiction over Atlas Turner's out-of-state property, the South Carolina Supreme Court relied on federal decisions addressing the constitutional limits on a court's authority over persons and property, which "'flow[ ] . . . from the Due Process Clause'" of the Fourteenth Amendment. *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 11 (2025) (ellipsis in original). Indeed, one of this Court's most recent personal-jurisdiction decisions discusses *Massie v. Watts* as an early example of courts' "recogniz[ing]" constraints on "a tribunal's competence" imposed by "the 'territorial limits' of the sovereign that created it." *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 128-29 (2023) (plurality); *see Pennoyer v. Neff*, 95 U.S. 714, 723 (1877) (relying on *Massie*).

Finally, even if there were some uncertainty regarding whether the decision below turned on state or

federal law, this Court has been clear that any such ambiguity must be resolved in favor of federal grounds. *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983).

B. The South Carolina Supreme Court's decision squarely implicates the split in authority regarding a court's ability to exercise in rem jurisdiction over a defendant's out-of-state property based on its personal jurisdiction over the defendant.

Respondents argue otherwise, asserting that Atlas Turner's contractual insurance rights are located in South Carolina (Welch Opp. 17-18, 21-23; Receiver Opp. 14-17) and that the South Carolina Supreme Court approved the exercise of in personam, rather than in rem, jurisdiction (Welch Opp. 18-21; Receiver Opp. 18-28). Both arguments distort the decision below.

First, the South Carolina Supreme Court's jurisdictional holding rests on the premise that Atlas Turner's property is outside South Carolina. The court's jurisdictional analysis responds to Atlas Turner's argument that "it neither owns nor possesses any property within the borders of South Carolina." Pet. App. 21a. The court never disputed that as a factual matter. Instead, it deemed that fact irrelevant legally: "Because equity has jurisdiction over the defendant, 'it is immaterial that the res is beyond the territorial jurisdiction of the court.'" *Id.* at 23a (quoting *Jamestown*, 1 F.2d at 878). Underscoring its extraterritorial focus, the court discussed a scenario where a person's "bank is located in another jurisdiction" and relied on cases where courts' jurisdiction affected "foreign" property. *Id.* at 23a-24a.

Welch suggests that the South Carolina Supreme Court limited the Receiver's authority to "'claims *in South Carolina's* jurisdiction,'" thereby "provid[ing] the very geographic hook that Atlas argues is constitutionally required." Welch Opp. 17 (quoting Pet. App. 27a). Not so. Under the South Carolina Supreme Court's expansive holding, "*any* Insurance Assets owned by Atlas Turner that may cover Mr. Welch's injuries"—even those located "outside the court's territorial jurisdiction"—are purportedly "within South Carolina's exclusive jurisdiction." Pet. App. 22a, 26a (emphasis added). Limiting the Receiver's authority to "claims in South Carolina's jurisdiction" thus imposes no territorial limits at all.

Second, the South Carolina Supreme Court clearly understood the trial court to be exercising in rem jurisdiction in appointing the Receiver "to marshal and collect—to receive—[Atlas Turner's] assets." Pet. App. 16a. The court held that Atlas Turner's "Insurance Assets are within South Carolina's *exclusive* jurisdiction." Pet. App. 26a (emphasis added). Exclusivity is a hallmark of in rem jurisdiction—and only in rem jurisdiction. The "well-established rule" for an "in rem" action is that the "court—whether state or federal—which first acquires jurisdiction draws to itself the *exclusive* authority to control and dispose of the res." *Kline v. Burke Constr. Co.*, 260 U.S. 226, 235 (1922) (emphasis added). Where jurisdiction is "in personam," by contrast, "both a state court and a federal court having concurrent jurisdiction may proceed with the litigation." *Penn Gen. Cas. Co. v. Pennsylvania ex rel. Schnader*, 294 U.S. 189, 195 (1935). As the Fourth Circuit recognized in reviewing another of the South Carolina trial court's receiverships, "the state court has exclusive jurisdiction over the assets of the receivership" because "'when one court is exercising *in*

rem jurisdiction of a *res*, a second court will not assume *in rem* jurisdiction over the same *res*.'" *Protopapas v. Travelers Cas. & Sur. Co.*, 94 F.4th 351, 358 (4th Cir. 2024) (quoting *Marshall v. Marshall*, 547 U.S. 293, 311-12 (2006)).

The cases on which the South Carolina Supreme Court relied to support "South Carolina's exclusive jurisdiction" confirm that the receivership operates in rem. Pet. App. 26a. One applied the first-in-time exclusivity rule unique to in rem jurisdiction, *Palmer*, 212 U.S. at 129, and the other involved an explicit exercise of "the court's exclusive *in rem* jurisdiction," *Stanford*, 927 F.3d at 840.

The in rem nature of the receivership stems from the fact that the Receiver was appointed "to collect and accumulate [Atlas Turner's] property and assets." Pet. App. 27a. Judicial action that "affects the interests of all persons in designated property" is "in rem." *Hanson v. Denckla*, 357 U.S. 235, 246 n.12 (1958). For that reason, it is a settled principle of South Carolina law that "[t]he administration of a receiver is a proceeding in rem." *Buist v. Williams*, 62 S.E. 859, 861 (S.C. 1908).

In sum, the decision below squarely tees up the question presented.

C. That question is the subject of deepening lower-court disagreement. At least three courts have held that in personam jurisdiction over a defendant does *not* permit a court to exercise in rem jurisdiction over the defendant's out-of-state property, while at least two courts have held that it *does*. Pet. 11-16.

Welch maintains (at 25) that there is no disagreement because the three cases that conflict with the decision below did not "involve receiverships." But that

is irrelevant to the jurisdictional question because the Receiver is "an officer of the court" and his authority therefore turns on the *court's* jurisdictional reach. Pet. App. 16a. Indeed, the fact that courts exercise in rem jurisdiction in a variety of settings only underscores the importance of the question presented. *See* Pet. 18.

Welch further asserts (at 25) that the Washington and Montana Supreme Courts' decisions are distinguishable because they involved a "direct[ ]" "change to property rights held in rem." But so does this case—the South Carolina Supreme Court authorized the Receiver to "exercise[ ] power and control over [Atlas Turner's] assets and property." Pet. App. 17a.

Finally, Welch contends (at 25-26) that *State v. Western Union Financial Services, Inc.*, 208 P.3d 218 (Ariz. 2009), is consistent with the decision below. But there, just as here, the trial court attempted to exercise "in rem jurisdiction" over out-of-state property. *Id.* at 222, 226. The Arizona Supreme Court rejected that attempt under the Due Process Clause, *id.* at 219, whereas the South Carolina Supreme Court permitted it, Pet. App. 21a-26a.

Respondents also argue that the decision below is consistent with a long line of other authorities. Welch Opp. 24; Receiver Opp. 18, 29. With one potential exception, however, those decisions fit within a clear framework: A court can order a defendant over whom it has personal jurisdiction to take actions with respect to the defendant's extraterritorial property, but cannot itself exercise *direct* control over such property. *See* Pet. 22-23.

The lone possible outlier is *Hotel 71 Mezz Lender LLC v. Falor*, 926 N.E.2d 1202 (N.Y. 2010). There, the

New York Court of Appeals affirmed the pre-judgment attachment of the defendants' property. It explained that, although attachment "operates only against the property of the defendant, not on his/her person," a "court with personal jurisdiction over a [defendant] has jurisdiction over that individual's tangible or intangible property, *even if the situs of the property is outside New York*." *Id.* at 1207-08 (emphasis added). The court ultimately concluded that "the situs of [the] defendants' property is in New York," *id.* at 1210-11, which distinguishes that case from this one. But *Hotel 71*'s endorsement of jurisdiction over extraterritorial property only deepens the divide on the question presented.

III. THE QUESTION PRESENTED IS EXCEPTIONALLY IMPORTANT.

The question presented is undeniably important. It affects multiple active South Carolina receiverships. And it affects cases in a variety of other in-rem settings, too. As the *amici* highlight, the type of cross-border assertion of jurisdiction at issue here threatens conflict among sovereigns, Nat'l Union Br. 7-18; ATRA Br. 8-12, and "exacerbate[s] forum shopping problems," Chamber Br. 16-19.

Respondents acknowledge the state trial court's other receiverships, but nonetheless deem them "irrelevant." Receiver Opp. 31-35; *see* Welch Opp. 26-27. The South Carolina Supreme Court did not agree. It went out of its way to condemn a U.K. court's "injunction against the Receiver"—issued in the Cape receivership proceeding—calling it "[s]hocking" for a U.K. court to enjoin a foreign receiver's attempt to seize control of a U.K. company. Pet. App. 25a. That dismissive treatment of the U.K. opinion hardly suggests

that the South Carolina Supreme Court "takes concerns about comity seriously." Welch Opp. 27. And it makes clear that a ruling for Atlas Turner—reinforcing the fundamental limits on state courts' jurisdiction over property—would affect those other proceedings too.

This Court should grant review to ensure that "'States, through their courts, do not reach out beyond the limits imposed on them'" by extending their jurisdiction to property in other States and nations—thereby trenching on other States' jurisdiction and on the federal government's "exclusive authority '[i]n international relations and with respect to foreign intercourse and trade.'" *Fuld*, 606 U.S. at 14-15 (brackets in original).

CONCLUSION

The petition should be granted.

Respectfully submitted.

CHRISTOPHER E. MILLS
Counsel of Record
SPERO LAW LLC
557 East Bay Street
#22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

Counsel for Petitioner

December 22, 2025