No. 25-

In the Supreme Court of the United States

CANGREJEROS DE SANTURCE CLUB, LLC, *et al.*,

Petitioners,

v.

LIGA DE BÉISBOL PROFESSIONAL DE PUERTO RICO, INC., *et al.*,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

MICHAEL B. KIMBERLY
Winston & Strawn LLP
1901 L Street NW
Washington, DC 20036
(202) 282-5096

CARLOS A. RODRIGUEZ-VIDAL
Goldman Antonetti & Cordova, LLC
P.O. Box 70364
San Juan, PR 00936
(787) 759-4117

JEFFREY L. KESSLER
Counsel of Record
JEFFREY J. AMATO
LAUREN E. DUXSTAD
ROBERT S. PANNULLO
Winston & Strawn LLP
200 Park Avenue
New York, NY 10166
(212) 294-4698
jkessler@winston.com

Counsel for Petitioners

QUESTIONS PRESENTED

Ordinarily, there would be no question that collusion among ostensible adversaries to expel a competitor from a market would give rise to federal antitrust liability. But not when it comes to the business of baseball, which for longer than a century has enjoyed the protection of an illogical, sport-specific antitrust exemption.

The baseball antitrust exemption's genesis is *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922), decided at the height of the *Lochner* era—a time when the Court routinely invalidated economic regulations in favor of its own notion of appropriate public policy. The doctrine has been reaffirmed twice in the years since, in *Toolson v. New York Yankees*, 346 U.S. 356 (1953), and *Flood v. Kuhn*, 407 U.S. 258 (1972). Yet over the same intervening years, the Court has expressly repudiated the exemption's conceptual underpinning (see *Wickard v. Filburn*, 317 U.S. 111 (1942)) and refused to extend its rationale to other professional sports leagues (see *United States v. International Boxing Club of New York*, 348 U.S. 236 (1955); *Radovich v. NFL*, 352 U.S. 445 (1957)). The lower courts, meanwhile, have applied the exemption in highly inconsistent ways, which both commentators and Members of the Court have criticized as aberrational, illogical, and all around indefensible.

Against this backdrop, the questions presented are:

1. Should the Court discard the baseball exemption by overruling *Federal Baseball*, *Toolson*, and *Flood*?

2. If the Court does not overrule *Federal Baseball*, *Toolson*, and *Flood*, should it narrowly construe the baseball exemption as applicable only to the circumstances presented in those cases?

PARTIES TO THE PROCEEDINGS BELOW

Petitioners are Cangrejeros de Santurce Baseball Club, LLC, Santurce Merchandising, LLC, and Thomas J. Axon. Respondents are Liga de Béisbol Profesional de Puerto Rico, Inc., Criollos Management, Inc., RA-12, Inc., Indios de Mayaguez Baseball Club, Inc., Gigantes de Carolina Baseball Club, Inc., Leones de Ponce CF, Inc., Impulse Sports Entertainment Corporation, Juan A. Flores-Galarza (in his official capacity, personal capacity, and as a member of the Conjugal Partnership constituted between him and his spouse), and the Conjugal Partnership so constituted.

CORPORATE DISCLOSURE STATEMENT

Cangrejeros de Santurce Baseball Club, LLC has no parent corporation and no publicly held company owns 10% or more of its shares. Santurce Merchandising, LLC has no parent corporation and no publicly held company owns 10% or more of its shares.

RELATED PROCEEDINGS

United States District Court (D.P.R.):

Cangrejeros de Santurce Baseball Club, et al. v. Liga de Béisbol Profesional de Puerto Rico, et al., No. 3:22-cv-1341 (June 27, 2023)

United States Court of Appeals (1st Cir.):

Cangrejeros de Santurce Baseball Club, et al. v. Liga de Béisbol Profesional de Puerto Rico, et al., No. 23-1589 (July 21, 2025)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Cases—continued

Cases—continued

Statutes

Other authorities

Other authorities—continued

INTRODUCTION

This case involves some of the most brazen anticompetitive conduct that the Court is likely ever to see. Petitioners are the former investor-operators of a baseball club that plays in the Liga de Béisbol Professional de Puerto Rico. When they began an aggressive campaign to improve the club for fans and players alike, other clubs in the league felt threatened by the competitive pressure to invest in a higher quality product. The other clubs thus banded together to implement a group boycott, ultimately expelling petitioners from the league altogether.

When competitors join in a conspiracy to expel a noncooperating competitor from a market, they usually strain to hide their collusion. Not here. Instead, respondents were open and obvious about what they were doing. And little wonder why: Since 1922, the business of baseball has been exempt from the federal antitrust laws. This exemption is not the product of a considered judgment of Congress—it is instead the product of judicial policymaking tracing to the *Lochner* era. See *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922).

The baseball antitrust exemption is no longer sustainable (if ever it was), and it should be overruled. The exemption's conceptual foundation—that the business of baseball is not interstate commerce and thus not subject to federal economic regulation at all—was questionable from the start and is today wholly indefensible. The business of baseball, like the business of every other major professional sport, is obviously interstate commerce subject to regulation by the federal government. For just that reason, the Court has consistently (and rightly) refused to extend the exemption to other sports markets, including those for boxing and football. But that refusal has only deepened the absurdity of the exemp-

tion's continued application. As matters stand today, the business of baseball—and baseball alone—is set apart for "aberrational" treatment, receiving an "illogical" protection from the Nation's antitrust laws that Congress never could have intended. See *NCAA v. Alston*, 594 U.S. 69, 95 (2021); *Radovich v. NFL*, 352 U.S. 445, 452 (1957).

The Court has addressed the baseball exemption head-on just twice since deciding *Federal Baseball*. The first time, in *Toolson v. New York Yankees*, 346 U.S. 356 (1953), the Court issued a terse, 189-word per curiam opinion that reaffirmed the exemption but disclaimed a "re-examination of the underlying issues." *Id.* at 357. The second time, in *Flood v. Kuhn*, 407 U.S. 258 (1972), the Court upheld the exemption on *stare decisis* grounds alone. *Id.* at 282-284.

Stare decisis can no longer save the exemption from the overruling it has long deserved. Congress conferred on this Court a special oversight role with respect to the antitrust laws. In fulfilling that role, the Court has been more willing to correct its past errors than in other contexts. It is now well past time to correct the error first made in *Federal Baseball* and later perpetuated in *Toolson* and *Flood*: The baseball antitrust exemption was wrong from the start, has faced consistent and withering criticism from respected commentators and judges alike, is badly out of place in the context of a multibillion-dollar market dominated by large corporations, and has not produced any legitimate reliance interests.

The Court should take this opportunity to overrule *Federal Baseball*, *Toolson*, and *Flood* once and for all. Or if it does not do so, it should at minimum confirm that the baseball antitrust exemption extends only to the narrow circumstances presented in *Toolson* and *Flood* and may not be applied to tactics or leagues not at issue in those cases. Either way, the petition should be granted, and the decision below should be reversed.

OPINIONS BELOW

The opinion of the court of appeals is published at 146 F.4th 1 and reproduced in the appendix at 1a-44a. The opinion of the district court is published at 680 F. Supp. 3d 107 and reproduced in the appendix at 45a-67a.

JURISDICTION

The First Circuit entered judgment on July 21, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 1 of the Sherman Antitrust Act provides in relevant part: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." 15 U.S.C. § 1.

Section 2 of the Sherman Antitrust Act provides in relevant part: "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, * * * shall be deemed guilty of a felony." 15 U.S.C. § 2.

STATEMENT

A. Legal background

1. This case concerns baseball's judicially created exemption from the federal antitrust laws, which traces to this Court's 1922 decision in *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922). There, MLB's predecessor leagues—the National and American Leagues—had conspired to monopolize the business of baseball. *Id.* at 207. A team from a competitor league challenged their conduct as a violation of the Sherman Act. *Ibid.* Writing for the Court, Justice Holmes concluded that while baseball teams travel from one state to another, "giving exhibitions of base ball" is a wholly intrastate activity not

involving or affecting interstate commerce and thus not subject to regulation under the Commerce Clause. *Id.* at 208-209. Thus, according to *Federal Baseball*, the Sherman Act simply does not apply to "the business * * * of base ball." *Id.* at 208.

Two decades later, in *Wickard v. Filburn*, 317 U.S. 111 (1942), the Court repudiated the rationale underlying *Federal Baseball*. In *Wickard*, the Court held in respect to wheat production that Congress's Commerce Clause power "extends to those activities intrastate which so affect interstate commerce * * * as to make regulation of them appropriate means to * * * effective execution of the granted power to regulate interstate commerce." *Id.* at 124. After *Wickard*, wholly intrastate conduct affecting interstate markets is properly regulated by the federal government. The Court has thus acknowledged since that "[p]rofessional baseball is a business and it is engaged in interstate commerce." *Flood*, 407 U.S. at 282.

Although *Wickard* knocked the theoretical legs out from under *Federal Baseball*, the Court nonetheless has continued to reaffirm its holding. In the next case addressing the exemption—*Toolson v. New York Yankees*, 346 U.S. 356 (1953)—the Court heard a challenge to MLB's "reserve clause," which specified that when a team's contract with a player expired, the team retained the right to the player, who would be free to enter into another contract with another team only if his current team traded, sold, or released the player in its sole discretion. Despite the clause's plainly anticompetitive nature, *Toolson* declined to invalidate it in a single-paragraph, per curiam opinion that reaffirmed "the business of baseball" is not "within the scope of the federal antitrust laws" under *Federal Baseball*. *Id.* at 357. In reaching that conclusion, the Court held that "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." *Ibid.*

Justice Burton dissented, joined by Justice Reed. He noted the obvious: Congress has not "enacted [an] express exemption of organized baseball from the Sherman Act." *Id.* at 364.

2. Following *Toolson*, other sports businesses sought the same exemption that baseball enjoys. Despite their factual and analytical similarities to baseball, the Court consistently declined to expand the exemption.

In *United States v. International Boxing Club of New York*, 348 U.S. 236 (1955), the Court reviewed a civil antitrust action against defendants engaged in the business of promoting professional boxing contests. There, Chief Justice Warren explained that "if it were not for *Federal Baseball* and *Toolson*, * * * it would be too clear for dispute" that professional sports businesses are "within the scope of the [Sherman] Act." *Id.* at 240-241. Nonetheless concluding that "*Federal Baseball* did not hold that *all* businesses based on professional sports [are] outside the scope of the antitrust laws," the Court refused to extend the exemption to boxing. *Id.* at 243 (emphasis added). Justice Frankfurter, joined by Justice Minton, dissented, complaining that "[i]t would baffle the subtlest ingenuity to find a single differentiating factor between other sporting exhibitions * * * and baseball insofar as the conduct of the sport is relevant to the criteria or considerations by which the Sherman Law" is enforced. *Id.* at 248. Thus, as long as *Federal Baseball* and *Toolson* remain good law, Justice Frankfurter would have extended the exemption to other sports.

Next, in *Radovich v. NFL*, 352 U.S. 445 (1957), the Court considered whether to extend the baseball antitrust exemption to football. The Court again declined, noting that if it were "considering the question of baseball for the first time upon a clean slate," it "would have no doubts" that the baseball exemption is unjustified. *Id.* at 452. The Court thus recognized that baseball's special treatment

under the antitrust laws is "unrealistic, inconsistent, [and] illogical" but opined that Congress was better situated to "eliminate [the] error" itself. *Ibid.* Justice Harlan, in dissent, echoed Justice Frankfurter's opinion from *International Boxing*: It is not possible "to distinguish football from baseball under the rationale of *Federal Baseball*," nor is there any "basis for attributing to Congress a purpose to put baseball in a class by itself." *Id.* at 456 (cleaned up).

The Court's most recent word on the subject came in *Flood v. Kuhn*, 407 U.S. 258 (1972). There, the Court again addressed whether it should "rule that professional baseball's reserve system is within the reach of the federal antitrust laws" notwithstanding *Toolson*'s rejection of just that claim. *Id.* at 259. Answering the question in the negative, a divided 5-3 Court chose to "adhere once again to *Federal Baseball* and *Toolson* and to their application to professional baseball." *Id.* at 284. At the same time that it recognized that the exemption is an "anomaly" and "aberration," the Court thus declared that, in the absence of congressional action, it is "entitled to the benefit of *stare decisis.*" *Id.* at 282. *Flood* gave no other justification for continuing the baseball exemption.

3. *Flood* relied in part on the lower court's finding that "some form of reserve on players is a necessary element of the organization of baseball as a league sport." *Id.* at 267. But that finding turned out to be incorrect. Just four years after *Flood* was decided, an arbitrator invalidated the reserve clause on contract-law grounds, and players thus gained free agency. See *Kansas City Royals Baseball Corp. v. MLB Players Association*, 409 F. Supp. 233, 261 (W.D. Mo. 1976), affirmed, 532 F.2d 615 (8th Cir. 1976). The business of baseball has continued since, unabated.

Later, in 1994, MLB club owners and the MLB Players Association were engaged in another heated labor dispute, culminating in a strike and the cancellation of the 1994 World Series. See Gary R. Roberts, *A Brief Appraisal of the Curt Flood Act of 1998 From the Minor League Perspective*, 9 MARQUETTE SPORTS L. J. 413, 414 (1999). As part of the collective bargaining agreement negotiated to resolve the strike, MLB and the Players Association agreed to "jointly request and cooperate in lobbying Congress to pass a law that will clarify that Major League Baseball Players are covered under the antitrust laws (i.e., that Major League Players will have the same rights under the antitrust laws as do other professional athletes, e.g., football and basketball players)." *Id.* at 416 (quoting collective bargaining agreement). In response, Congress enacted the Curt Flood Act of 1998, which eliminated the baseball exemption for conduct "directly relating to or affecting employment of major league baseball players." 15 U.S.C. § 26b(a).

4. In the half-century since *Flood* was decided, the judicially created antitrust exemption has been the object of sustained scholarly and judicial criticism. As Justice Alito recently summarized in the Journal of Supreme Court History:

> *Federal Baseball* has been pilloried pretty consistently in the legal literature since at least the 1940s. Commentators have called it: baseball's most infamous opinion; a clearly wrong decision based on a curious and narrow misreading of the antitrust laws and/or an utter misunderstanding of the nature of the business of baseball; a remarkably myopic decision, almost willfully ignorant of the nature of baseball; and a simple and simplistic decision that forms a source of embarrassment for scholars of Holmes.

Hon. Samuel A. Alito, Jr., *The Origin of the Baseball Antitrust Exemption: Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 34 J. SUPREME COURT HISTORY 183, 185 (2009) (cleaned up, footnotes omitted).

More recently, a unanimous Court in *NCAA v. Alston*, 594 U.S. 69 (2021)—which held that the antitrust laws are fully applicable to the business of college sports—distanced itself from the exemption, repeating "criticisms of [*Federal Baseball*] as unrealistic and inconsistent and aberrational." *Id.* at 95 (cleaned up).

B. Factual background

Petitioners have alleged the following facts, which at this stage must be taken as true. App., *infra*, 15a.

The Puerto Rico league is a professional baseball league in Puerto Rico, comprising six clubs located in Puerto Rico that compete from November to January. *Id.* at 6a. Although the Puerto Rico league is part of a confederation of Caribbean leagues that have entered into an agreement with MLB to allow MLB players to play in the offseason, neither the Puerto Rico league nor its teams are affiliates of MLB. *Id.* at 53a.

Each of the Puerto Rico league's clubs is owned and operated separately, and the investor-operators do not share franchise profits with one another. *Id.* at 6a. They compete against one another on the field as well as for fans, in-person attendance, player talent, sponsorships, merchandise sales, radio, and streaming broadcast rights agreements. *Id.* at 6a-7a.

Petitioner Thomas Axon purchased operating control of the Cangrejeros de Santurce baseball club. *Id.* at 7a. He made this purchase through Cangrejeros LLC. *Ibid.* Despite being one of the most storied franchises in Puerto Rican baseball, the Cangrejeros franchise had fallen on hard times. Axon sought to restore the club by increasing

the team's player quality, improving fan experience, broadening the fan base, promoting and establishing new broadcasts, enhancing sponsorships, and expanding merchandising opportunities. *Ibid.* Among other things, he expanded broadcasting reach in the continental United States, commissioned a documentary film about the team, offered higher salaries to players, and proposed a pre-season exhibition tournament. *Ibid.* Axon also proposed making a $2 million investment through Cangrejeros LLC to revitalize the Cangrejeros club's stadium, which is owned by the Municipality of San Juan and has fallen into disrepair. *Id.* at 7a-8a.

After Axon continued to advocate publicly for improvements to the stadium, vowed to invest millions of dollars toward that effort, and indicated that he would consider moving the team to another city, the Puerto Rico league's president, Juan Flores-Galarza, acting in concert with the other league teams and the mayor of San Juan (who opposed the renovation and any relocation), accused Axon of engaging in conduct "detrimental to baseball" in violation of the league's constitution. *Id.* at 9a.

Flores called a special meeting of the league's board, which comprises the investor-operators who control the league's other franchises, to discuss possible sanctions against Axon. *Ibid.* At the meeting, which Axon was not permitted to attend, the board conspired to suppress competition by agreeing to suspend Axon from controlling the Cangrejeros franchise or any other league club for a period of two years, fine him $5,000, and place him on probation for an additional year after the suspension expired. *Ibid.* Flores also wrote to the Municipality of Humacao, stating that the Puerto Rico league did not endorse relocating the Cangrejeros franchise to Humacao. *Ibid.*

Axon sought a preliminary injunction in the Superior Court of San Juan against the Puerto Rico league and Flores for breach of contract to prevent his suspension

from taking effect. *Ibid.* The suit was not successful. After Axon's loss, Flores and the league engaged in additional anticompetitive acts to eliminate Axon as an economic competitor entirely. Flores informed petitioners that the league was permanently seizing Cangrejeros LLC's interests in the Cangrejeros franchise. *Id.* at 10a-11a. The league, in concert with the competing investor-operators and the mayor, terminated Cangrejeros LLC's participation rights and seized petitioners' economic interests in the franchise without compensation. *Ibid.*

The Puerto Rico league then announced that Impulse Sports, a co-conspirator that had filed for incorporation just days before the board ousted petitioners, had been selected to take over as the Cangrejeros club's new investor-operator. *Id.* at 11a-12a. The league and the other investor-operators knew that, unlike petitioners, Impulse Sports would adhere to their agreement not to compete for players or the other teams' fans.

C. Procedural background

Petitioners filed suit in federal district court, asserting antitrust claims under sections 1 and 2 of the Sherman Act. See App., *infra*, 47a-48a.[1] In short, petitioners alleged that respondents conspired to restrain competition and maintain a monopoly by agreeing to a group boycott and refusing to deal with petitioners following their efforts to enhance competition in the Puerto Rico league, culminating in the unlawful seizure of petitioners' investor-operator interest in the Cangrejeros franchise.

Respondents moved to dismiss. They argued in relevant part that petitioners' federal antitrust claims should

[1] The complaint also asserts violations of the Puerto Rico antitrust statute, Puerto Rico's unfair competition and consumer deception laws, certain Puerto Rico tort claims, and a violation of Axon's civil rights. Litigation of these other claims, which are not relevant to this petition, is ongoing in the district court.

be dismissed under Rule 12(b)(1) according to *Federal Baseball*, *Toolson*, and *Flood*.

The district court granted the motion. App., *infra*, 45a-67a. Relevant here, the court dismissed petitioners' federal antitrust claims on the ground that "the antitrust exemption applies to professional baseball" in all its forms, and not just to anticompetitive conduct by MLB and its affiliates. *Id.* at 55a. Accordingly, the district court held that "[t]he Sherman Act baseball exemption applies" because petitioners "are a professional baseball team, and the antitrust claims arise in the context of the business of baseball." *Id.* at 59a. In doing so, the district court acknowledged that it was "boldly going where no lower court has gone before" by "appl[ying] the Supreme Court's much criticized" baseball antitrust exemption to a "professional baseball venture NOT associated with Major League Baseball." *Id.* at 46a-47a.

The First Circuit affirmed in relevant part. App., *infra*, 1a-44a. With respect to the federal antitrust claims, the court ruled in favor of respondents solely on the basis of the exemption for the "business of baseball." *Id.* at 27a-28a. Like the district court, it held that the baseball exemption applies not only to MLB and its affiliates, but also "to entities not part of MLB," while noting that "no other case has ever broadly interpreted the exemption" in that way. *Id.* at 18a. Concerning petitioners' argument that the exemption applies at most only to activities that are "central to" organizing and operating a baseball league (*id.* at 21a), the First Circuit held that the claims here "fail[] the 'central to' test." *Id.* at 28a.

REASONS FOR GRANTING THE PETITION

The Court should grant the petition and overrule the baseball antitrust exemption or at least confirm its very narrow application. The questions presented are manifestly important: MLB and its clubs generate billions of

dollars annually in economic activities that are wrongly insulated from antitrust scrutiny. Precisely because they are so insulated, professional baseball leagues and their member clubs have used progressively more damaging anticompetitive tactics to protect their ill-gotten and unfairly maintained market dominance.

The baseball exemption was poorly reasoned when it was first adopted in *Federal Baseball*, and the intervening years have not been kind. Commentators, lower court judges, and Members of this Court have subjected it to consistent criticism. With the passage of time, it has now become legally and factually unsustainable, full stop. This Court has a special oversight role with respect to the development of antitrust doctrine, and that special role warrants revisiting and overruling the baseball exemption in this case. The petition should be granted.

A. Continued application of the baseball exemption is a matter of exceptional importance

1. The continued application—or at least the proper narrow application—of the baseball antitrust exemption is tremendously important. Under the exemption, an entire industry is excused by judicial fiat from compliance with the Sherman Act, "the Magna Carta of free enterprise." *United States v. Topco Associates*, 405 U.S. 596, 610 (1972). According to the free enterprise principles that have driven the American economy's growth over the past century, "each and every business, no matter how small," should enjoy "the freedom to compete." *Ibid.*

Not so for baseball. Of course, when the Court decided *Federal Baseball* in 1922, it may have been fair to call baseball a pastime first and a business second. The game's best-known player was Babe Ruth, who was just 27 years old and in the prime of his career. He was playing for the Yankees at the Polo Grounds, earning $10,000 per year (about $170,000 today), far more than any other

player at the time. See Jim Reisler, *Babe Ruth: Launching the Legend* 6 (2004). There were no broadcasting rights or endorsement deals to be had then—the first live radio broadcast had taken place just one year earlier, and newspaper sports pages were not yet the norm.

But in stark contrast with 1922, and even 1972 when the Court last revisited the exemption in *Flood*, professional baseball today is a major-league moneymaker. It operates domestically and internationally and generates billions in annual revenues for massive businesses. Consider, for example, that the going price for an MLB baseball club in the 1970s was just north of $12 million. See Michael J. Haupert, *The Economic History of Major League Baseball*, Economic History Association, Table 3, perma.cc/84HF-8T2H. Adjusted for inflation, that would be roughly $75 million in 2025 dollars. But the value today of an average MLB club is 35 times greater: over *$2.6 billion*. See Justin Teitelbaum & Brett Knight, *Baseball's Most Valuable Teams 2025*, Forbes (Mar. 26, 2025), perma.cc/YM5L-ZC9W.

MLB's and its clubs' payrolls and revenues would also come as a shock to owners, players, and fans from 1972, let alone 1922. Players in 1972 were earning, on average, less than $270,000 each, stated in 2025 dollars. See Haupert, *supra*, at Table 1. Today, that number is nearly 20 times greater: MLB's average player salary surpassed $5.1 million this year—and some players earn a staggering *225 times* more than the 1972 average. See *MLB's Average Salary Tops $5 Million for First Time, AP Study Shows*, Associated Press (Apr. 2, 2025), bit.ly/-46CIoBt.

League and club revenues have seen similar growth. In 2024, MLB's revenues surpassed $12 billion—a 33% increase from 2014 alone. Maury Brown, *MLB Revenues Hit Record $12.1 Billion in 2024*, Forbes (Jan. 27, 2025), bit.ly/467O6Lt. Simply put, baseball is no longer

just America's national pastime—before all else, it is "big business." *MLB v. Butterworth*, 181 F. Supp. 2d 1316, 1319 (N.D. Fla. 2001). And it is big business operating free of federal antitrust constraints.

2. With an anomalous antitrust exemption at their disposal, MLB and other leagues (including the Puerto Rico league here) have put anticompetitive tactics to effective use, employing flagrant restraints of trade to protect their market positions in ways that no other industry could. For example, they have used the following tactics at will:

- **Geographic market allocation agreements,** enforced through league rules that constrain franchise relocations. See *City of San Jose v. Office of the Commissioner of Baseball*, 776 F.3d 686 (9th Cir. 2015) (applying the baseball exemption).
- **Horizontal agreements to reduce output,** enforced through league rules that permit limiting the number of teams. See *Nostalgic Partners, LLC v. Office of the Commissioner of Baseball*, 637 F. Supp. 3d 45 (S.D.N.Y. 2022) (applying the baseball exemption), affirmed, No. 22-2859, 2023 WL 4072836 (2d Cir. June 20, 2023).
- **Horizontal agreements to fix non-players' wages** or to boycott or refrain from poaching employees. See Evan Drellich & Ken Rosenthal, *MLB Intends to Curb Team Spending on Tech; Staffing Limits also Discussed, Officials Say*, THE ATHLETIC (June 13, 2023), perma.cc/L9Q4WW82.

These and other anticompetitive schemes—undertaken openly and at will—are well documented throughout the literature. *E.g.*, Marc Edelman & John T. Holden, *Baseball's Anti-competitive Antitrust Exemption*, 65 BOSTON COLLEGE L. REV. 1695, 1732-1745 (2024) (cataloguing MLB's anticompetitive tactics).

3. MLB's and other baseball leagues' employment of these anticompetitive schemes is having significant real-world consequences that warrant the Court's attention. This case is itself a textbook example: The exemption permitted the Puerto Rico league and its franchises to conspire (successfully) to oust an investor-operator of a competing team, without any federal antitrust scrutiny. See App., *infra*, 27a-28a. In no other context would these tactics remotely be permissible. And the results have been predictable: suppressed competition and lower-quality services, harming players and fans alike.

In another example, MLB's termination of around 40 minor league teams in 2020—which eliminated hundreds of jobs, lessened competition for rising players, and deprived fans of favored local clubs—was found immune from antitrust scrutiny. See *Nostalgic Partners*, 637 F. Supp. 3d at 49. The impacts were far-reaching and obvious. The baseball industry touches not only well-compensated major league players and owners, but also a vast body of minor league players and related market participants, including thousands of employees, vendors, and professionals whose livelihoods depend on the whims of their antitrust-exempt employers. With these minor league clubs shuttered at the finger-snap of MLB higher-ups, entire local industries were wiped out.

The First Circuit's expansion of the exemption to non-MLB-affiliated leagues will have an especially harmful impact in regions like Puerto Rico, where baseball plays a significant role in cultural and community identity. Indeed, the reduction of competitive opportunities and the potential reinforcement of monopolistic practices and legally protected cartels may challenge the sustainability of this important institution altogether. Again, this is no mere speculation: In August 2007, the Puerto Rico league canceled its season due to declining attendance and profits that had been worsening for over a

decade. See *Financial Problems Force Puerto Rican Winter League to Cancel Season*, ESPN (Aug. 16, 2007), perma.cc/F8CH-2ZZ4.

In sum, the baseball exemption is an unusually harmful precedent to players, sponsors, cities, broadcasters, and fans who would benefit from a competitive market. If it is to continue on today as the law of the land, it should be this Court, and not the First Circuit, that says so.

B. The baseball exemption should be overruled

Stare decisis alone cannot support the exemption any longer. Congress has conferred broad authority on this Court to "oversee" development of antitrust doctrine, similar to the common law tradition. *Kimble v. Marvel Entertainment, LLC*, 576 U.S. 446, 461 (2015). The Court has "therefore felt relatively free to revise [its] legal analysis as economic understanding evolves and * * * to reverse antitrust precedents that misperceived a practice's competitive consequences." *Ibid.* Changes in the market for professional sports, alongside the traditional *stare decisis* factors—"the quality of the decision's reasoning; its consistency with related decisions; legal developments since the decision; and reliance on the decision" (*Ramos v. Louisiana*, 590 U.S. 83, 106 (2020) (citation omitted))—leave scant room for debate that *Federal Baseball*, *Toolson*, and *Flood* should be overruled.

1. Lack of reasoning. The logic underlying *Federal Baseball*—that baseball does not involve interstate commerce and is therefore not subject to federal regulation at all—was abrogated no fewer than 80 years ago. See *Wickard*, 317 U.S. 111. There is thus no dispute today that "[p]rofessional baseball is a business and it is engaged in interstate commerce" (*Flood*, 407 U.S. at 282), and therefore *may* be regulated under the Sherman Act.

Despite that *Federal Baseball*'s legal foundation had long-since been rejected, the Court upheld the exemption

in *Toolson*, albeit in a six-sentence per curiam opinion that disclaimed any willingness to "re-examin[e] the underlying issues." 346 U.S. at 357. Despite supposedly declining to engage the substance of *Federal Baseball*, the Court reconceptualized its interstate-commerce rationale as a "determin[ation] that *Congress* had no intention of including the business of baseball within the scope of the federal antitrust laws." *Ibid.* (emphasis added). But *Federal Baseball* said no such thing, and *Toolson* did not offer any explanation for this reimagination of the exemption. And it is nowhere supported by the Sherman Act's text, which broadly applies to "every person." 15 U.S.C. §§ 1, 2.

The Court acknowledged after *Toolson* that an exemption limited only to baseball produces "inconsistent" and "illogical" results, adding that if the Court were "considering the question of baseball for the first time," it "would have no doubts" that baseball would be subject to the federal antitrust laws. *Radovich*, 352 U.S. at 452. Yet the Court upheld the exemption in *Flood* on *stare decisis* grounds, even while again acknowledging the "inconsistency and illogic" in baseball's disparate treatment. See 407 U.S. at 282-284.

In light of this history, it comes as no surprise that scholars, judges, and Members of this Court have pilloried the exemption and the decisions that underlie it. Respected scholars have called the exemption "almost comical." William N. Eskridge, Jr., *Overruling Statutory Precedents*, 76 GEORGETOWN L.J. 1361, 1381 (1988). Others have characterized it as an "embarrassment." Roger I. Abrams, *Legal Bases and the Law* 66-67 (1998). As one historian has put it, "[t]he critiques of [the] decision[s] are legion and its fans few." Spencer Weber Waller et al. eds., *Baseball and the American Legal Mind* 75-76 (1995); see also Brief for Baseball Antitrust Scholars as Amicus Curiae, *Tri-City ValleyCats, Inc. et al. v. Office of the*

Commissioner of Baseball, No. 23-283, 2023 WL 7089114, at *2 (U.S. Oct. 19, 2023) (showing that the baseball exemption has been "consistently derided for decades").

Judges have been no kinder. They have described *Federal Baseball* as an "anachronism" (*Henderson Broadcasting Corp. v. Houston Sports Association, Inc.*, 541 F. Supp. 263, 272 (S.D.Tex. 1982)) and more colorfully as an "impotent zombi" (*Gardella v. Chandler*, 172 F.2d 402, 408-409 (2d Cir. 1949) (Frank, J., concurring)) given the abrogation of *Federal Baseball*'s underpinnings. Other courts have criticized "the rationale of *Toolson* [as] extremely dubious." *Salerno v. American League of Professional Baseball Clubs*, 429 F.2d 1003, 1005 (2d Cir. 1970). In short: "The death of the business-of-baseball exemption would likely be met with considerable fanfare, save for the club owners who benefit from the rule." *MLB v. Crist*, 331 F.3d 1177, 1188 (11th Cir. 2003).

Members of this Court, dissenting from *Toolson* and *Flood*, have gone further. Justice Douglas self-admittedly "lived to regret" "join[ing] the Court's opinion in *Toolson*" and described the exemption as "a derelict in the stream of the law that [the Court], its creator, should remove." *Flood*, 407 U.S. at 286. Justice Marshall similarly called for the Court to overturn the exemption, explaining in his separate *Flood* dissent that "when [the Court's] errors deny substantial federal rights, like the right to compete freely and effectively to the best of one's ability as guaranteed by the antitrust laws, [the Court] must admit [the] error and correct it." *Id.* at 292-293.

Against this tidal wave of criticism stands a single principle: *stare decisis*. There is quite literally no other justification for the exemption, which is undeniably bad and arbitrary judicial policymaking. Yet "*stare decisis* is not an inexorable command," and in "the area of antitrust law" especially, the Court must be open to "recognizing

and adapting to changed circumstances and the lessons of accumulated experience." *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (cleaned up). Appreciating that "Congress expected the courts to give shape to the [Sherman Act's] broad mandate by drawing on common-law tradition," the Court often has "reconsidered its decisions construing the Sherman Act when the theoretical underpinnings of those decisions are called into serious question." *Id.* at 20-21 (cleaned up). Because the baseball exemption's theoretical underpinnings were dubious from the start and are entirely nonexistent today, that is just the outcome warranted here.

2. Inconsistency with other decisions. The widely acknowledged inconsistency between the treatment of professional baseball and of other professional sports virtually screams for the Court's reexamination. In grounding the baseball exemption on baseball's supposedly "unique" needs, *Flood* did not even attempt to explain how MLB is any different from other professional sports leagues. 407 U.S. at 282. No such explanation is evident. Again, as Justice Frankfurter put it in his dissent from *International Boxing*, extension of the exemption to baseball but not boxing is simply "baffl[ing]," given that there is no relevant "differentiating factor between" baseball and "other sporting exhibitions." 348 U.S. at 248. Or as Justice Harlan put it in his *Radovich* dissent, neither is it possible "to distinguish football from baseball under the rationale of *Federal Base Ball*," nor is there any "basis for attributing to Congress a purpose to put baseball in a class by itself." 352 U.S. at 452.

This singular treatment of baseball thus not only is irrational but also violates a foundational principle of *stare decisis*: "The law of precedent teaches that like cases should generally be treated alike." *Epic Systems Corp. v. Lewis*, 584 U.S. 497, 510 (2018).

Perpetuation of the baseball exemption now also conflicts with *Alston*. There, the Court held emphatically that the NCAA is not "immun[e] from the normal operation of the antitrust laws." 594 U.S. at 74, 95. And yet, if *Federal Baseball*, *Toolson*, and *Flood* are to continue insulating the "business of baseball" from antitrust scrutiny, it would be no great leap for the NCAA to insist that it is entitled to the baseball antitrust exemption with respect to the business of *college* baseball. That, indeed, appears to be a natural consequence of the First Circuit's decision in this case, which now has extended the exemption to non-MLB-affiliated leagues. It follows that, at minimum, *Federal Baseball*, *Toolson*, and *Flood* are in serious tension with *Alston*.

3. Reliance interests. The only remotely plausible ground for declining to overturn *Federal Baseball*, *Toolson*, and *Flood* would be concern for reliance interests. But that is no refuge for the baseball exemption, either. *Stare decisis* accommodates only "*legitimate* reliance interest[s]" (*United States v. Ross*, 456 U.S. 798, 824 (1982) (emphasis added)), and abusers of the antitrust laws by definition have none.

To be sure, the Court in *Flood* "expressed concern about the confusion and the retroactivity problems that inevitably would result with a judicial overturning of *Federal Baseball*." 407 U.S. at 283. But as Justices Marshall and Brennan correctly recognized, "[t]o the extent that there is concern over any reliance interests that club owners may assert, they can be satisfied by making [the] decision" applicable only to pending and future cases. *Id.* at 293 (Marshall, J., dissenting). And as experience quickly taught in the years immediately following *Flood*, whatever reliance interests there may have been on the reserve clause were quickly overcome. See *Kansas City Royals*, 409 F. Supp. at 261; *cf.* Curt Flood Act of 1998 (codified at 15 U.S.C. § 26b).

Indeed, the Court's denial of exemptions to other sports has proven that baseball does not need the exemption to continue to function effectively. The Court recently said so directly: "teams that need to cooperate [with each other] are not trapped by antitrust law." *American Needle, Inc. v. NFL*, 560 U.S. 183, 202 (2010). Teams and leagues are free to agree on a wide range of matters, such as the rules of the game (e.g., "how many players may be on the field or the time allotted for play"), which will be analyzed under the "rule of reason" in light of market realities. *Alston*, 594 U.S. at 90. As long as they do not unreasonably restrain competition in a relevant market, such agreements will be upheld, assuming they are challenged at all.

The proof of the pudding is in the eating. The NFL was denied antitrust immunity in 1957 (see *Radovich*, 352 U.S. at 452), yet it has thrived ever since, generating nearly double the revenues as MLB in 2024. See Kurt Badenhausen, *How NFL Teams and Owners Made $22 Billion Last Year*, SPORTICO (Aug. 28, 2025), perma.cc/UZ2Y-UQK9. In short, the application of the antitrust laws to professional sports is entirely workable, and there are no legitimate reliance interests to justify putting baseball "above the law." *Alston*, 594 U.S. at 112 (Kavanaugh, J., concurring).

C. The lower courts are in disarray over the baseball exemption's meaning and scope

Even supposing there were some justification for retaining the baseball antitrust exemption (there is not), review still would be warranted to clarify the exemption's proper scope and bring uniformity to its application by the lower courts.

The Court's last case on the exemption stated both that MLB's "*reserve system* enjoy[s an] exemption from the federal antitrust laws" and that "*the business of base-*

ball [falls outside] the scope of federal antitrust laws," without describing where "the business of baseball" begins and ends. *Flood*, 407 U.S. at 279, 282 (emphases added). Some courts have since interpreted the exemption narrowly, while others have applied it broadly so that it insulates any anticompetitive conduct related to any professional baseball league. Without guidance from this Court, the lower courts have developed inconsistent rulings that render the exemption "whatever the reviewing court says it is." Joseph J. McMahon, Jr. & John P. Rossi, *A History and Analysis of Baseball's Three Antitrust Exemptions*, 2 VILLANOVA SPORTS & ENTERTAINMENT L.J. 213, 243 (1995). With MLB continuing to grow and the exemption expanding into new leagues and markets, this inconsistency will worsen absent direction from the Court.

1. Some courts, including the **Florida Supreme Court**, have articulated a narrow reading of the exemption, interpreting it to insulate from antitrust scrutiny only the specific tactic that was at issue in *Toolson* and *Flood*: MLB's "reserve system," which at that time permitted each team to retain its players at the team's sole option, in perpetuity. See *Butterworth v. National League of Professional Baseball Clubs*, 644 So. 2d 1021, 1025 (Fla. 1994); see also *Piazza v. MLB*, 831 F. Supp. 420, 437 (E.D. Pa. 1993) (similar). But because the reserve clause is no longer in use, the baseball exemption is essentially a dead letter in Florida state courts. On that reasoning, the Florida Supreme Court in *Butterworth* declined to apply the exemption to a dispute concerning the sale and relocation of a franchise. 644 So. 2d at 1025.

If this case had arisen in the state courts of Florida, petitioners' claims would have been allowed to proceed. The conduct challenged in this case has nothing to do with a provision like MLB's reserve clause. Indeed, it is not a dispute between club owners and players at all—it is,

instead, a dispute between and among club owners and a league. Moreover, this is the first case in which any court has extended the exemption to a league unaffiliated with MLB. There is thus no doubting that the Florida Supreme Court would have reached the opposite decision as the First Circuit below. That is no conjecture: The only other court to consider a challenge to the anticompetitive exclusion of an owner held that the exemption does *not* apply to such claims, using *Butterworth*'s reasoning. See *Piazza*, 831 F. Supp. at 438-441.

The **Eleventh Circuit** has expressly recognized the conflict at issue here. In *MLB v. Crist*, 331 F.3d 1177 (11th Cir. 2003), that court considered whether a majority of MLB clubs could lawfully vote to eliminate two other MLB clubs—analytically similar to the facts of this case. *Id.* at 1179. In ruling that they could, the Eleventh Circuit explicitly disagreed with *Butterworth*, concluding "[t]he Florida Supreme Court's holding has scant support in the case law." *Id.* at 1181 n.10. Indeed, according to the Eleventh Circuit, "the notion that the antitrust exemption should be narrowly cabined to the reserve system" was wholly untenable. *Ibid.* The court ultimately held that the "issue of contraction concerns a matter that is central to baseball's league structure" and thus falls within the exemption's scope. *Id.* at 1183. That decision aligns with the First Circuit's decision in this case, but conflicts squarely with *Butterworth*.

2. Other courts have applied the baseball exemption in other ways, using a "central to the business of baseball" test. Facing similar facts to those presented in *Butterworth*, these other courts have rendered decisions more consistent with the decision below.

In *Minnesota Twins Partnership v. State*, 592 N.W.2d 847 (Minn. 1999), for example, the **Minnesota Supreme Court** read *Toolson* and *Flood* broadly, concluding that otherwise unlawful collusion concerning "the sale and

relocation of a baseball franchise * * * falls within the exemption." *Id.* at 856.

The **Ninth Circuit** reached the same result in *City of San Jose v. Office of the Commissioner of Baseball*, 776 F.3d 686 (9th Cir. 2015), where it held that conduct that is "central to" the business of baseball is covered by the exemption. Applying that test, it rejected the City of San Jose's challenge to MLB's attempts to prevent the Oakland Athletics from relocating to San Jose because such relocation decisions are "central to [the] league's proper functioning." *Id.* at 690. Yet the Ninth Circuit has held that analogous territorial restraints in other sports violate the federal antitrust laws. See, e.g., *Los Angeles Memorial Coliseum v. NFL*, 726 F.2d 1381, 1401 (9th Cir. 1984) (affirming judgment enjoining the NFL from preventing the Oakland Raiders from moving to Los Angeles).

Other circuits have interpreted the exemption in wholly different ways, to cover nearly any conduct touching professional baseball in any way. For example, the **Seventh Circuit** interpreted it so broadly that it exempted the Chicago Cubs' attempts to fix the prices for seating on rooftops adjacent to Wrigley Field. See *Right Field Rooftops, LLC v. Chicago Cubs Baseball Club, LLC*, 870 F.3d 682 (7th Cir. 2017). The court there held that "block[ing] rooftops with signage" was permissible on the ground that "the Cubs' conduct is part and parcel of * * * providing public baseball games for profit." *Id.* at 689 (citation omitted). That holding exceeds even the scope of the decision below, where the court held that the exemption does *not* extend to conduct lacking a "direct on-the-field impact." App., *infra*, 24a-25a.

All told, the exemption has sown confusion across the circuits and state supreme courts, leading to different outcomes in cases presenting similar facts. Even if the question of whether the exemption should be discarded

were not independently worthy of review (it surely is), the broad disagreement over its scope and application calls for the Court's attention in its own right. Either way, its expiration date has long since passed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

MICHAEL B. KIMBERLY
Winston & Strawn LLP
1901 L Street NW
Washington, DC 20036
(202) 282-5096

CARLOS A. RODRIGUEZ-VIDAL
Goldman Antonetti & Cordova, LLC
P.O. Box 70364
San Juan, PR 00936
(787) 759-4117

JEFFREY L. KESSLER
Counsel of Record
JEFFREY J. AMATO
LAUREN E. DUXSTAD
ROBERT S. PANNULLO
Winston & Strawn LLP
200 Park Avenue
New York, NY 10166
(212) 294-4698
jkessler@winston.com

Counsel for Petitioners

OCTOBER 2025