

In the Supreme Court of the United States

ALL PETROLEUM-PRODUCT CARGO ONBOARD THE
M/T ARINA WITH INTERNATIONAL MARITIME
ORGANIZATION NUMBER 9189952, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
*Solicitor General
Counsel of Record*
A. TYSEN DUVA
Assistant Attorney General
JENNY C. ELLICKSON
Attorney
*Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

QUESTION PRESENTED

Whether the amended complaint in this *in rem* civil forfeiture proceeding adequately alleged that the entity to whom the property belonged committed a federal terrorism offense that “affect[ed] * * * foreign commerce” under 18 U.S.C. 2339B(d)(1)(E).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 173 F.4th 342. The memorandum opinion of the district court granting judgment on the pleadings (Pet. App. 17a-24a) is available at 2024 WL 4133293.

JURISDICTION

The judgment of the court of appeals (Pet. App. 25a-26a) was entered on April 21, 2026. The petition for a writ of certiorari was filed on July 17, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner Aspan Petrokimya Co. (Aspan), a Turkish commodities-trading firm, contests the civil forfeiture of \$50 million of Iranian oil that the United States seized from tankers seeking to evade U.S. sanctions to fund Iranian terrorism against the United States and its

allies. See Pet. App. 2a, 4a. The district court granted judgment on the pleadings to the United States, *id.* at 17a-24a, and the court of appeals affirmed, *id.* at 1a-16a.

1. “Since the earliest years of this Nation, Congress has authorized the Government to seek * * * *in rem* civil forfeiture actions” against property involved in illicit activity. *United States v. Ursery*, 518 U.S. 267, 274 (1996). “Forfeitures serve a variety of purposes, but are designed primarily to confiscate property used in violation of the law, and to require disgorgement of the fruits of illegal conduct.” *Id.* at 284. Among other forfeitures authorized by Congress, 18 U.S.C. 981(a)(1)(G)(i) authorizes the *in rem* forfeiture of “all assets, foreign or domestic,” of any entity “engaged in planning or perpetrating any * * * Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States.” *Ibid.*

Section 2332b(g)(5), in turn, defines a “Federal crime of terrorism” to include any offense that violates one of several listed statutes and “is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.” 18 U.S.C. 2332b(g)(5). One of the listed offenses is “knowingly provid[ing] material support or resources to a foreign terrorist organization,” in violation of 18 U.S.C. 2339B(a)(1). See 18 U.S.C. 2332b(g)(5)(B)(i). Section 2339B provides extraterritorial jurisdiction over that offense in various circumstances, including when “the offense occurs in or affects interstate or foreign commerce.” 18 U.S.C. 2339B(d)(1)(E); see 18 U.S.C. 2239B(d)(2).

An *in rem* forfeiture is carried out through a civil action against the property whose forfeiture is sought. See generally *United States v. One Assortment of 89*

Firearms, 465 U.S. 354, 363 (1984). Third parties may file claims asserting an interest in the property and contesting the forfeiture. 18 U.S.C. 983(a)(4)(A); Fed. R. Civ. P. Supp. R. G(5)(a). When a third party with a colorable interest in the property has come forward, the government bears the burden of proving by a preponderance of the evidence that the property is subject to forfeiture. See 18 U.S.C. 983(c)(1).

2. The National Iranian Oil Company (NIOC) is a state-owned entity that provides one- to two-thirds of the total revenue for the Iranian government, including the Iranian Revolutionary Guard Corps and its Qods Force (together, the IRGC). Pet. App. 2a-3a. The United States has designated both of those entities as foreign terrorist organizations. *Id.* at 3a.

In October 2020, a sanctioned vessel owned by a NIOC subsidiary loaded more than 700,000 barrels of crude oil at Kharg Island, Iran. Pet. App. 2a-3a; Am. Compl. ¶ 44. That ship sailed farther into the Persian Gulf where it transferred the oil to the tanker *Arina*. Pet. App. 3a. During the transfer, the *Arina* turned off its automatic transponder to evade detection. Am. Compl. ¶ 50. The *Arina* then sailed to the Mediterranean where it transferred some of the oil to the tanker *Nostos* off the coast of Cyprus. Pet. App. 4a; Am. Compl. ¶ 61.

Following an investigation by the Federal Bureau of Investigation and the Department of Homeland Security into Iranian sanctions violations, the United States obtained and executed warrants to seize the oil aboard both the *Arina* and the *Nostos*. Pet. App. 4a; Am. Compl. ¶ 1. The United States then brought two civil-forfeiture complaints (one for each ship) and named the seized oil as the defendant property. Pet. App. 4a. With

judicial approval, the United States conducted interlocutory sales of the oil for over \$50 million. *Ibid.*

In April 2022, Aspan filed a claim of ownership of the oil and sought to recover the proceeds of the sale. Pet. App. 4a. In support, Aspan provided documents falsely stating that the oil originated in Oman, not Iran. Am. Compl. ¶ 58. Aspan moved to dismiss the forfeiture complaints, and the district court granted the motions without prejudice, on the ground that the complaints had not adequately pleaded that NIOC's sale of Iranian crude oil affected foreign commerce. Pet. App. 4a; C.A. App. 261. The United States subsequently filed an amended complaint that consolidated the two forfeiture actions and included additional factual allegations. Pet. App. 4a.

The amended complaint alleged that NIOC generates billions of dollars for the Iranian regime and sells oil directly on behalf of its terrorist arm, the IRGC. Pet. App. 3a. It further alleged that NIOC has engaged in foreign commerce to target Americans, including by supplying weapons to Iraqi militants to kill American soldiers and by orchestrating a murder-for-hire plot against a senior American official. Am. Compl. ¶ 20. The complaint also alleged that NIOC's efforts to provide material support to the IRGC have affected commerce with the United States, including by introducing "billions of dollars of oil annually into the black market [which] has predictable effects on the price of petroleum and other fossil fuels in the United States." *Id.* ¶ 72. The complaint further alleged that "Iran's petrochemical and petroleum sectors are primary sources of funding for the Iranian regime's global terrorist activities." *Id.* ¶ 13.

Aspan filed a motion to dismiss the amended complaint, which the district court denied. Pet. App. 4a. The court found that the amended complaint had “‘remedied the defect’ of the initial complaints as to the jurisdictional element.” *Id.* at 5a (citation omitted). To expedite appellate review, Aspan filed an answer admitting all factual allegations in the amended complaint and consented to entry of judgment on the pleadings in favor of the United States, while preserving its right to appeal. *Ibid.*

3. The court of appeals affirmed, rejecting Aspan’s contention that the amended complaint did not adequately allege that NIOC’s material-support offense affected foreign commerce, as required by Section 2339B(d)(1)(E). Pet. App. 1a-16a. The parties agreed, and the court thus assumed, that “foreign commerce” includes everything within the reach of Congress’s power under the Foreign Commerce Clause. *Id.* at 8a-9a (citation omitted). And based on circuit precedent, the court explained that the Foreign Commerce Clause “permits Congress to regulate transactions occurring entirely abroad so long as they substantially affect commerce with the United States.” *Id.* at 10a (citing *United States v. Park*, 938 F.3d 354, 372 (D.C. Cir. 2019)).

The court of appeals applied that “effects test” without defining “the precise level of ‘effect’ necessary” because it found that the allegations in the amended complaint—to which Aspan had admitted—“sufficed ‘under any version of the test.’” Pet. App. 10a (citation omitted). The court observed that NIOC had committed “no ‘minor offense’” but had funneled “many millions of dollars” to the IRGC. *Id.* at 11a (citation omitted). And the court emphasized that the allegations to which Aspan had admitted included NIOC playing a “significant role”

in the black market for sanctioned oil, which “predictably impacts U.S. commerce” because “fluctuations in th[at] black market frequently influence oil prices in the United States.” *Ibid.*

ARGUMENT

Petitioners renew their contention (Pet. 13-18) that the amended complaint in this *in rem* civil forfeiture proceeding did not adequately allege that NIOC committed a federal terrorism offense that “affect[ed] * * * foreign commerce” under 18 U.S.C. 2339B(d)(1)(E). The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or any other court of appeals. Moreover, this case would be an unsuitable vehicle for reviewing the scope of the Foreign Commerce Clause both because the Court would need to resolve an antecedent question of appellate jurisdiction and because petitioners raise, at bottom, a statutory argument concerning a provision whose undisputed constitutionality does not depend on the Foreign Commerce Clause.

1. The Commerce Clause empowers Congress “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” U.S. Const. Art. I, § 8, Cl. 3. As this Court has explained, there is “evidence that the Founders intended the scope of the foreign commerce power to be the greater.” *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 448 (1979) (citation omitted); see *Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 434 (1932). The power to regulate foreign commerce is not limited by the same “considerations of federalism and state sovereignty” that “may * * * restrict[]” the federal regulation of commerce among the States. *Japan Line*, 441

U.S. at 449 n.13; see *Buttfield v. Stranahan*, 192 U.S. 470, 492-493 (1904).

Consistent with that observation, the court below recognized that the Foreign Commerce Clause “is ‘at least as expansive’ as the Interstate Commerce Clause.” Pet. App. 9a (citation omitted). The Interstate Commerce Clause, in turn, has “long been interpreted” by this Court to confer authority “extend[ing] beyond activities actually in interstate commerce to reach other activities that, while wholly local in nature, nevertheless substantially affect interstate commerce.” *McLain v. Real Estate Bd. of New Orleans, Inc.*, 444 U.S. 232, 241 (1980) (emphases omitted); see *United States v. Lopez*, 514 U.S. 549, 558-559 (1995). The court of appeals accordingly determined that “the Foreign Commerce Clause similarly permits Congress to regulate transactions occurring entirely abroad as long as they substantially affect commerce with the United States.” Pet. App. 10a.

b. Applying that “effects test” here, the court of appeals correctly found that the amended complaint sufficiently alleged that NIOC’s conduct underlying its material-support offense substantially affected commerce with the United States. Pet. App. 10a-11a. Specifically, the amended complaint alleged that NIOC generated billions of dollars of oil revenue each year and that a substantial portion of that activity, amounting to many millions of dollars, benefited the IRGC. *Ibid.* As the court below explained, the effect of that conduct “based on the allegations in the Amended Complaint” was “plain”: “[b]y conducting millions of dollars of sanctioned oil transactions and related activities in support of the IRGC, NIOC is alleged to play a significant role in a black market that predictably impacts U.S. commerce,”

insofar as “fluctuations in this black market frequently influence oil prices in the United States.” *Id.* at 11a.

Petitioners do not dispute that the amended complaint sufficiently alleged that NIOC’s conduct underlying its material-support offense substantially affected commerce with the United States. Instead, petitioners contend (Pet. 13-15) that the court of appeals should have construed the Foreign Commerce Clause, and thus Section 2339B(d)(1)(E), to require “a significant connection” between the regulated foreign commerce and the United States—specifically, “a ‘nexus to the United States’ in the form of [a] foreign commercial act ‘with’ the United States,” Pet. i. That restrictive reading is not supported by this Court’s precedent, see pp. 6-7, *supra*, and petitioners identify no court that has adopted it.

Petitioners are incorrect in asserting (Pet. 14) that the decision below necessarily would allow the federal government to regulate any and all “commerce occurring entirely among” “foreign nations.” The analysis below rested specifically on how Iranian smuggling “predictably impacts U.S. commerce,” because the black market for oil predictably impacts “oil prices in the United States.” Pet. App. 11a. Petitioners offer no support for the proposition that the United States is disabled as a Nation from addressing such foreign conduct that harms American economic interests and affects American domestic markets. And because the court of appeals had no need to define “the precise level of ‘effect’ necessary” to satisfy the effects test that it applied, *id.* at 10a (citation omitted), petitioners’ claims of

purportedly overbroad applications in other contexts is speculative.*

2. Petitioners err in asserting (Pet. 15-18) that the decision below conflicts with decisions from other circuits that petitioners claim have adopted “a narrower construction” of the Foreign Commerce Clause. As a threshold matter, petitioners are incorrect in suggesting (Pet. 4, 6) that the decision below “acknowledge[d]” the existence of a circuit conflict. The court of appeals merely stated that petitioners’ Foreign Commerce Clause argument relied on, *inter alia*, “out-of-circuit authorities.” Pet. App. 9a. The court did not express a view on whether those authorities actually supported him. And the decisions cited in the petition do not.

The Sixth Circuit’s decision in *United States v. Rife*, 33 F.4th 838 (2022), upheld 18 U.S.C. 2423(c)’s prohibition on illicit sexual conduct with a minor following foreign travel as a valid exercise of Congress’s “power to enact legislation implementing treaties.” 33 F.4th at 840. In declining to rely on the Foreign Commerce Clause, the court observed that the defendant’s “molest[ation] of his two victims was undisputedly noncommercial,” “was not itself trade or commerce of any kind,” and “was likewise not part of any transportation or traffic in foreign commerce.” *Id.* at 844-845. That observation would not compel the conclusion that Congress lacks power under the Foreign Commerce Clause to regulate the conduct here, which involved millions of

* Petitioners err in repeatedly asserting (Pet. 4, 6, 18) that the court of appeals described their reading of the Foreign Commerce Clause as having “force.” Instead, after summarizing its Foreign Commerce Clause arguments, the court of appeals stated: “*Irrespective of those arguments’ force*, they are foreclosed by our precedent.” Pet. App. 9a (emphasis added).

dollars of black-market oil transactions that influenced oil prices in the United States and thus affected U.S. commerce. See Pet. App. 10a-11a.

The Eleventh Circuit’s decision in *United States v. Davila-Mendoza*, 972 F.3d 1264 (2020), “assume[d], without deciding, that the Foreign Commerce Clause has the same scope as the Interstate Commerce Clause,” and accordingly evaluated whether the offense conduct in that case—drug trafficking in the territorial waters of a foreign nation, by foreign nationals using a foreign-registered vessel, of drugs not bound for the United States—had “a ‘substantial effect’ on commerce between the United States and foreign nations.” *Id.* at 1271; see *id.* at 1276. Although the court did not find such an effect, see *id.* at 1274-1276, it is far from clear that it would reach the same conclusion on the admitted facts here.

The Second Circuit’s decision in *United States v. Weingarten*, 632 F.3d 60 (2011), appealed, 713 F.3d 704 (2014), *aff’d* 865 F.3d 48 (2017), cert. denied, 583 U.S. 1183 (2018), is even further afield. The court there took the view that, as a statutory matter, 18 U.S.C. 2423(b)’s prohibition on certain “travel[] in foreign commerce” to engage in illicit sexual conduct “does not criminalize travel occurring wholly between two foreign countries and without any territorial nexus to the United States.” *Id.* at 71. The court’s limiting construction of the statutory framework was based not on concerns about the Foreign Commerce Clause, as petitioners suggest (Pet. 17), but instead on concerns about superfluity and on the presumption against extraterritoriality. See 632 F.3d at 70-71. And in light of that statutory analysis, that court of appeals “d[id] not reach” the defendant’s alternative contention that, if Section 2423(b) did

include such travel, the statute would exceed Congress’s authority under the Foreign Commerce Clause. *Id.* at 61; see also *id.* at 64 (“[W]e * * * do not reach his constitutional challenge to § 2423(b)”); *id.* at 70-71 (similar).

3. At all events, this case would be an unsuitable vehicle for reviewing the scope of the Foreign Commerce Clause.

a. For one thing, this case arises in an unusual procedural posture that would require this Court to address an antecedent question of appellate jurisdiction to reach the merits. The district court denied Aspan’s motion to dismiss the amended complaint, finding that the government had adequately alleged the commerce element. Pet. App. 4a-5a. But because that interlocutory decision was not appealable, petitioners admitted all of the factual allegations in the complaint and consented to the entry of judgment on the pleadings in favor of the United States while reserving their right to appeal. *Id.* at 5a.

Courts of appeals generally have jurisdiction over only “final decisions of the district courts.” 28 U.S.C. 1291. In the court of appeals, the government agreed that the district court’s judgment was appealable, relying on circuit precedent permitting a party that consented to dismissal with prejudice to effectively appeal an earlier adverse interlocutory decision when it has reserved its right to do so. See Gov’t C.A. Br. 3 (discussing *LeFande v. District of Columbia*, 841 F.3d 485, 491 (D.C. Cir. 2016)). In the decision below, the court of appeals rested its jurisdiction on that same precedent. Pet. App. 5a.

In *Microsoft Corp. v. Baker*, 582 U.S. 23 (2017), however, this Court held that plaintiffs could not obtain

immediate interlocutory review of a decision denying class certification by voluntarily dismissing their claims with prejudice but reserving their right to revive them if the court of appeals reversed the denial of certification. *Id.* at 26-27. In doing so, the Court made clear that the “firm final-judgment rule is not satisfied whenever a litigant persuades a district court to issue an order purporting to end the litigation.” *Id.* at 41. The potential similarity of the posture here, and the Court’s independent obligation to assure itself of jurisdiction, see, *e.g.*, *Riley v. Bondi*, 606 U.S. 259, 273 (2025), would be an impediment to reviewing the question presented in this case.

b. Furthermore, this case would be unsuitable vehicle to address the scope of the Foreign Commerce Clause because petitioners have not directly contested Section 2339B(d)(1)(E)’s constitutionality. Instead, the petition asks this Court to decide a question of statutory interpretation—*i.e.*, whether the amended complaint adequately alleged that NIOC committed a federal terrorism offense that “affect[ed] * * * foreign commerce” within the meaning of Section 2339B(d)(1)(E). Although the question presented references the scope of the Foreign Commerce Clause, it does so only as a guide for the scope of “the jurisdictional provision in the criminal material-support statute.” Pet. i.

While the government assumed for the purpose of argument that the statute’s scope here was commensurate with the Foreign Commerce Clause (Gov’t C.A. Br. 29), the government also observed below (*id.* at 47), and the petition does not dispute, that Congress has multiple additional constitutional authorities that could authorize the forfeiture here. For example, the Necessary and Proper Clause empowers Congress to regulate

activity that does not itself constitute foreign commerce, if regulating that activity is “necessary to make a regulation of [foreign] commerce effective.” *Gonzalez v. Raich*, 545 U.S. 1, 35 (2005) (Scalia, J., concurring in the judgment). The Constitution also empowers Congress to “define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations.” U.S. Const. Art. 1, § 8, Cl. 10. And the Court has also stated that, by establishing the United States as a sovereign nation, the Constitution implicitly vests it with the “powers of external sovereignty” that are “inherently inseparable from the conception of nationality.” *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
 A. TYSEN DUVA
Assistant Attorney General
 JENNY C. ELLICKSON
Attorney

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