

No. _____

IN THE
Supreme Court of the United States

SOKOLOW, ET AL.,

Respondents,

v.

PALESTINE LIBERATION ORGANIZATION, ET AL.,

Petitioners.

UNITED STATES OF AMERICA,

Respondent,

v.

PALESTINE LIBERATION ORGANIZATION, ET AL.,

Petitioners.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

American courts have recognized since the Founding that a judgment entered without jurisdiction is void. Then and now, judicial actions performed without jurisdiction are not “simply erroneous, but absolutely void.” *Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano*, 589 U.S. 57, 63–64 (2020) (quoting *Kern v. Huidekoper*, 103 U.S. 485, 493 (1880)). Early American courts did not understand jurisdiction as mere rule of procedure but as a requirement rooted in Article III’s limits on judicial power.

A federal jury returned a verdict against Petitioners in 2015 when the district court indisputably lacked personal jurisdiction over them. The court of appeals vacated that judgment and directed dismissal in 2016, and this Court denied certiorari in 2018. Congress enacted a statute that created personal jurisdiction based on Petitioners’ conduct during and after 2020. The court of appeals then recalled its mandate and reinstated the original judgment. The question presented is:

Whether a court of appeals’ equitable power to recall a mandate permits it to reinstate a final judgment that was vacated for lack of personal jurisdiction years prior, based on personal jurisdiction arising under a statute that did not create that jurisdiction until long after the original, vacated judgment became “final” and all appeals were finished.

PARTIES TO THE PROCEEDING

Petitioners are the Palestine Liberation Organization and the Palestinian Authority, who were defendants-appellees below.

Respondents, who were plaintiffs-appellants below, are: Mark I. Sokolow, Rena M. Sokolow, Jamie A. Sokolow, Lauren M. Sokolow, Elana R. Sokolow, Dr. Alan J. Bauer, Revital Bauer, Yehonathon Bauer, Binyamin Bauer, Daniel Bauer, Yehuda Bauer, Shmuel Waldman, Henna Novack Waldman, Morris Waldman, Eva Waldman, Rabbi Leonard Mandelkorn, Shaul Mandelkorn, Nurit Mandelkorn, Oz Joseph Guetta, Varda Guetta, Nevenka Gritz, individually, and as successor to Norman Gritz, and as personal representative of the Estate of David Gritz, Shayna Eileen Gould, Ronald Allan Gould, Elise Janet Gould, Jessica Rine, Katherine Baker, individually and as personal representative of the Estate of Benjamin Blutstein, Rebekah Blutstein, Richard Blutstein, individually and as personal representative of the Estate of Benjamin Blutstein, Larry Carter, individually and as personal representative of the Estate of Diane (“Dina”) Carter, Shaun Choffel, Dianne Coulter Miller, individually and as personal representative of the Estate of Janis Ruth Coulter, Robert L. Coulter, Jr., individually and as personal representative of the Estate of Janis Ruth Coulter, Ann Marie K. Coulter, as personal representative of the Estate of Robert L. Coulter, Sr., individually and as personal representative of the Estate of Janis Ruth Coulter, Chana Bracha Goldberg, Eliezer Simcha Goldberg, Esther Zahava Goldberg, Karen Goldberg, individually, as personal representative of the Estate of Stuart Scott Goldberg, and as natural guardian of plaintiff Yaakov Moshe Goldberg, Shoshana Malka Goldberg, Tzvi Yehoshua

Goldberg, Yaakov Moshe Goldberg, minor, by his next friend and guardian Karen Goldberg, and Yitzhak Shalom Goldberg. The United States was intervenor-appellant below.

RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

Sokolow v. Palestine Liberation Org., No. 04-397
(Dec. 1, 2016)

United States Court of Appeals (2d Cir.):

Waldman v. Palestine Liberation Org., No. 15-3135
(Aug. 31, 2016) (initial panel opinion)

Waldman v. Palestine Liberation Org., No. 15-3135
(June 3, 2019) (panel opinion on motion to recall the mandate)

Waldman v. Palestine Liberation Org., No. 15-3135
(Sept. 8, 2023) (panel opinion after remand)

Waldman v. Palestine Liberation Org., No. 15-3135
(March 30, 2026) (panel opinion after remand)

United States Supreme Court:

Sokolow v. Palestine Liberation Org., No. 16-1071
(Apr. 2, 2018)

Sokolow v. Palestine Liberation Org., No. 19-764
(May 29, 2020)

Fuld v. Palestine Liberation Org., Nos. 24-20 & 24-151 (June 20, 2025)

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit on remand from this Court is reported at 171 F.4th 575, and reproduced at App. 1a–29a. The order denying rehearing en banc is unreported and reproduced at App. 30a.

The Second Circuit’s earlier opinion holding the Promoting Security and Justice for Victims of Terrorism Act unconstitutional is reported at 82 F.4th 64. This Court’s decision reversing that judgment is reported at 606 U.S. 1. The Second Circuit’s 2019 opinion declining to recall its mandate under the Anti-Terrorism Clarification Act is reported at 925 F.3d 570. The Second Circuit’s 2016 opinion vacating the original judgment for lack of personal jurisdiction is reported at 835 F.3d 317.

JURISDICTION

The court of appeals for the Second Circuit recalled the mandate and reimposed and affirmed the district court’s judgment on March 30, 2026. The Second Circuit denied a timely petition for rehearing en banc on June 18, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Article III, Section 1 of the Constitution provides in relevant part:

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Amendment V of the Constitution provides, in part, that no person shall “be deprived of life, liberty, or property, without due process of law.”

INTRODUCTION

For centuries, Anglo-American law has recognized that a judgment entered without jurisdiction is void. The rule “that the judgment of a court lacking jurisdiction is void traces back to the English Year Books.” *Burnham v. Superior Court of California*, 495 U.S. 604, 608 (1990) (plurality opinion). Judicial actions performed without jurisdiction are not “simply erroneous, but absolutely void.” *Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano*, 589 U.S. 57, 63–64 (2020) (quoting *Kern v. Huidekoper*, 103 U.S. 485, 493 (1880)).

The decision below rejects that foundational rule. A jury returned a \$218.5 million verdict against Petitioners in 2015, which was trebled to \$655.5 million under the Anti-Terrorism Act. The Second Circuit vacated the judgment and directed dismissal for want of personal jurisdiction in 2016. This Court denied certiorari, and the case reached post-appeal finality in 2018. At that moment, the judgment became absolutely void.

Later, Congress enacted a statute providing for personal jurisdiction over Petitioners based on conduct occurring after specified dates in 2020. After this Court found the exercise of jurisdiction constitutional, the court below recalled its mandate to reimpose the previously void jury verdict and judgment. It took that step while acknowledging full-well that “the district court in this action lacked personal jurisdiction over the defendants when it entered its original judgment.” App. 21a. That concession should have resolved this case, because

“the validity of every judgment depends upon the jurisdiction of the court *before it is rendered, not upon what may occur subsequently.*” *Pennoyer v. Neff*, 95 U.S. 714, 728 (1877) (emphasis added). Yet the Second Circuit held that its equitable power to recall a mandate—a “limited” power, only to be used in “the most rare and extraordinary” circumstances, *Calderon v. Thompson*, 523 U.S. 538, 558 (1998)—allowed it to reinstate the original judgment based on jurisdiction arising from a statute enacted years later, which in turn based jurisdiction on conduct occurring thereafter.

That holding has no precedent. The court of appeals relied on decisions involving jurisdictional changes or waivers occurring while litigation remained pending. None involved a final judgment vacated for lack of personal jurisdiction, the completion of appellate review, and the later acquisition of jurisdiction under a subsequently enacted statute. And none held that recalling a mandate could transform proceedings that were void for lack of jurisdiction into a valid exercise of judicial power. The lower court used its “limited” and “sparing” power, *id.* at 550, to pull off a never-before-seen maneuver that ignores centuries of this Court’s precedent. That alone warrants review and reversal.

But the decision also creates an impermissible means of evading the fundamental separation-of-powers rule articulated in *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995). Congress may prescribe law for pending cases. But it may not direct the reopening of completed cases to revive void judicial decisions. *Id.* at 225. The Second Circuit’s reasoning allows that constitutional boundary to be circumvented whenever a court applies subsequent legislation to reinstate a void judgment through recalling its mandate.

Worryingly, the Second Circuit’s reasoning is not in any way limited to Petitioners or the specific statute at issue. Its rule rests on the general equitable authority of courts of appeals to recall mandates. If the decision below stands, even a judgment judicially determined to be void for lack of personal jurisdiction may later be revived if Congress creates personal jurisdiction and a court recalls its mandate. No longer would the concept of judicial finality or voidness exist, as it would always depend on whether the political branches or a later appellate panel wish to revisit any case.

The consequences for Petitioners in this case are also extraordinary. The United States has previously advised that depriving the Palestinian Authority of a substantial portion of its revenues could severely impair its ability to govern, destabilize the West Bank, undermine longstanding American foreign-policy objectives, and threaten the security of Israel, Jordan, and Egypt. Enforcement of a \$655.5 million judgment amid Palestine’s present fiscal crisis presents those risks in acute form.

The Court should grant the petition.

STATEMENT

This case arises from Anti-Terrorism Act claims relating to attacks in Jerusalem between 2002 and 2004. Following a 2015 trial, a jury returned a \$218.5 million verdict, which was trebled to \$655.5 million. The court of appeals vacated that judgment for lack of personal jurisdiction a decade ago, and the case was dismissed. *Waldman v. PLO*, 835 F.3d 317 (2d Cir. 2016). That judgment of dismissal became final when this Court denied certiorari in April 2018. *Sokolow v. PLO*, No. 16-1071 (Apr. 2, 2018).

Congress subsequently enacted the Anti-Terrorism Clarification Act, Pub. L. No. 115-253, 132 Stat. 3183 (2018), to create jurisdiction over Petitioners if they accepted certain foreign assistance or a waiver from the United States. The court of appeals refused to recall its mandate after Petitioners proved they stopped accepting any such aid or waiver. *Waldman v. PLO*, 925 F.3d 570, 573-75 (2d Cir. 2019).

Respondents again sought certiorari, and while their second certiorari petition was pending, Congress passed the Promoting Security and Justice for Victims of Terrorism Act (“PSJVTA”), Pub. L. No. 116-94, div. J, tit. IX, § 903(b)(5), 133 Stat. 2534, 3082-83 (2019). The PSJVTA created personal jurisdiction over Petitioners if they made certain payments to Palestinians after April 18, 2020, or engaged in certain activities in the United States after January 4, 2020. *See* 18 U.S.C. § 2334(e)(1).

This Court granted certiorari, vacated the judgment, and remanded for consideration in light of the new statute. *Sokolow v. PLO*, 140 S. Ct. 2714 (2020). On remand, both the district court and the court of appeals held that the PSJVTA violated Due Process. This Court reversed, holding that the Fifth Amendment allows Congress to link personal jurisdiction to foreign policy interests, even if the statute would fail a traditional Fourteenth Amendment due process analysis. *Fuld v. PLO*, 606 U.S. 1 (2025).

On remand, the court of appeals held that the “district court in this action lacked personal jurisdiction over the defendants when it entered its original judgment,” and that jurisdiction was only created with the passage of the PSJVTA. App. 21a. But the court concluded that a judgment that was void for lack of personal jurisdiction can be reinstated

years later through its power to recall the mandate. App. 20a (“defendants are mistaken that jurisdictional defects cannot be cured after final judgments are entered”). The court denied Petitioners’ en banc petition (App. 30a) as well as their subsequent motion to stay the mandate pending a forthcoming petition for certiorari (Ct. App. ECF 704). This Court denied an emergency application to stay the mandate pending consideration of this petition. *PLO v. Sokolow*, No. 26-A-141, 2026 WL 2230713 (Aug. 3, 2026) (Sotomayor, J.). The case is now in post-judgment enforcement proceedings before the district court.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CONFLICTS WITH THIS COURT’S PRECEDENTS GOVERNING VOID JUDGMENTS, FINALITY, AND THE POWER TO RECALL APPELLATE MANDATES.

A. Judgments entered without personal jurisdiction are void once a case reaches post-appeal finality.

The decision below cannot be reconciled with this Court’s repeated holdings that a judgment entered without jurisdiction is absolutely void.

The rule is categorical. A court’s proceedings and judgments entered without jurisdiction are not “simply erroneous, but absolutely void.” *Roman Catholic Archdiocese*, 589 U.S. at 63–64 (quoting *Kern*, 103 U.S. at 493). “A void judgment is a legal nullity.” *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010). Orders issued while a court “had no jurisdiction over the proceeding” are themselves “void.” *Roman Catholic Archdiocese*, 589 U.S. at 64.

That rule is not a feature only of modern procedure; rather, it pre-dates the Constitution and is an essential component of both Article III judicial power as well as due process. *Burnham*, 495 U.S. at 608–10. Indeed, in *Burnham*, the Court traced the principle “that the judgment of a court lacking jurisdiction is void” through the English Year Books and the common law inherited at the Founding. *Id.* at 608–09. The rule was historically expressed through the concept of *coram non judice*, “‘before a person not a judge’—meaning, in effect, that the proceeding in question was not a *judicial* proceeding because lawful judicial authority was not present, and could therefore not yield a *judgment*.” *Id.* at 609–10.

Early American courts understood and applied this Article III rule. *See id.* (citing cases). In *Grumon v. Raymond*, the Supreme Court of Errors of Connecticut held that, because a prerequisite to jurisdiction had not been satisfied, “all that was done was *coram non judice*, and void.” 1 Conn. 40, 47 (1814). Justice Story likewise explained that proceedings conducted without jurisdiction are void: “Every exertion of authority beyond this limit is a mere nullity, and incapable of binding such persons or property in any other tribunals.” *Picquet v. Swan*, 19 F. Cas. 609, 611–12 (C.C.D. Mass. 1828).

Other early courts spoke in the same terms. In *Evans v. Instine*, the Supreme Court of Ohio concluded that defective service did not “give any court jurisdiction [so] that a judgment rendered can be of any effect.” 7 Ohio 273, Pt. I, 274–75 (1835). The Supreme Court of Pennsylvania similarly distinguished judgments entered by tribunals “having jurisdiction of the persons or the property *in the first instance*” from all others, which the court treated “as nullities.” *Steel v. Smith*, 7 Watts & Serg. 447, 451

(Pa. 1844) (emphasis added). And this Court soon confirmed the same rule in *Boswell's Lessee v. Otis*: “When the record of a judgment is brought before the court collaterally or otherwise, it is always proper to inquire whether the court rendering the judgment had jurisdiction.” 50 U.S. (9 How.) 336, 348 (1850). If the necessary jurisdictional predicates were absent, “the proceedings of the court beyond their jurisdiction are void.” *Id.* at 350.

Early American courts did not understand jurisdiction as a procedural nicety but as a requirement rooted in Article III’s limits on judicial power. This requirement marked the boundary between a valid exercise of power and an act having no judicial force at all. Article III’s grant of the “judicial Power” must be understood against that backdrop. A federal court acting outside its jurisdiction does not merely exercise judicial power incorrectly; it lacks lawful authority to bind the parties in the first place.

Indeed, this Court has confirmed that limits on federal jurisdiction “spring from the nature and limits of the judicial power of the United States.” *Mansfield, Coldwater & Lake Michigan Railway Co. v. Swan*, 111 U.S. 379, 382 (1884). This has led to the rule that a federal court therefore must examine its jurisdiction even on its own initiative. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999).

Most importantly here, jurisdiction must exist *before* a judgment becomes final. As *Pennoyer* explained in capturing the temporal consequence of that rule, “the validity of every judgment depends upon the jurisdiction of the court *before it is rendered*, not upon what may occur subsequently.” 95 U.S. at 728 (emphasis added). A judgment entered without jurisdiction is “without any binding force.” *Id.* at 730.

Congress may alter the jurisdictional rules governing future conduct or pending litigation. But subsequent legislation and subsequent conduct cannot change whether the rendering court possessed judicial authority when it acted. Nor can an appellate court's equitable power to recall its mandate transform what the early cases called an "act of usurpation," a "mere nullity," and proceedings "coram non iudice, and void" into a valid exercise of Article III judicial power.

State courts addressing closely analogous circumstances have recognized the same. As the Supreme Court of Virginia explained: "Just as medicine may cure a sick man of a fatal disease but not revive him after his burial, a litigant can 'cure' the absence of personal jurisdiction by making a general appearance prior to final judgment but cannot resurrect a void judgment thereafter." *McCulley v. Brooks & Co. General Contractors, Inc.*, 816 S.E.2d 270, 273 (Va. 2018); see also *G.L. v. D.L.*, 406 P.3d 367, 2017 WL 5624235, at *5 (Haw. Ct. App. 2017) (a void judgment could not be "resurrected or reinstated" through a later waiver of personal jurisdiction).

The relevant facts are undisputed. The original judgment was entered in 2015. The Second Circuit later held that the district court lacked personal jurisdiction, vacated the judgment, and directed dismissal. This Court denied certiorari in April 2018. The PSJVTa did not provide a possible basis for personal jurisdiction until Petitioners engaged in statutorily specified conduct in 2020.

The court below expressly acknowledged that personal jurisdiction was absent when the original judgment was entered. App. 21a. But it held that jurisdiction arising later could support reinstatement of that void judgment.

That is precisely what *Pennoyer* forecloses. The judgment's validity depends on the district court's jurisdiction when the judgment was rendered, "not upon what may occur subsequently." 95 U.S. at 728. Recalling the mandate could procedurally restore a matter to the appellate docket. But it could not alter the historical fact that the district court lacked the power to enter judgment in 2015. Nor could it convert a legal nullity into a valid judgment. As this Court explained,

For wherever a court acts without jurisdiction, its decrees, judgments, and proceedings are absolute nullities, powerless as evidence for any purpose whatever. They are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences are considered in law trespassers.

Webster v. Reid, 52 U.S. 437, 451 (1850) (citation and internal quotation marks omitted).

This Court's review is warranted to restore the settled rule that a judgment correctly dismissed for lack of personal jurisdiction cannot be retroactively validated once the case is final and closed after all appeals have ended.

B. No precedent supports the Second Circuit's expansion of its power to recall a mandate.

In avoiding the authority above, the Second Circuit relied on two categories of cases: decisions involving waiver or forfeiture of personal-jurisdiction objections, and decisions applying newly enacted jurisdictional statutes to cases pending on direct review. App __a. Neither supports the result below.

The personal-jurisdiction cases involved conduct occurring in *pending cases*, where there was an ongoing proceeding in which a party could waive or forfeit a defense. In *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinée*, 456 U.S. 694 (1982), the Court upheld the imposition of personal jurisdiction as a discovery sanction during active litigation. And in *Corporación Mexicana de Mantenimiento Integral, S. de R.L. de C.V. v. Pemex-Exploración y Producción*, 832 F.3d 92, 99–101 (2d Cir. 2016), the court held that a litigant had forfeited a personal-jurisdiction argument through its conduct during ongoing appellate proceedings.

Those decisions reflect the familiar and unremarkable principle that personal jurisdiction is an individual right that may be waived. But the capacity to waive a defense during an active case does not establish that later conduct can retroactively confer jurisdiction after the case has ended and the judgment has been vacated as void.

The subject-matter-jurisdiction decisions relied on in the decision below are similarly inapposite. *Andrus v. Charlestone Stone Products Co.*, 436 U.S. 604, 607 n.6 (1978), applied a newly enacted jurisdictional statute while the case remained pending on appeal. The other decisions cited below likewise concerned intervening legislation applied during direct review. *See, e.g., United States v. Union Gas Co.*, 832 F.2d 1343, 1357 (3d Cir. 1987); *Dedham Water Co. v. Cumberland Farms Dairy, Inc.*, 805 F.2d 1074, 1083 (1st Cir. 1986); *Sandefur v. Cherry*, 718 F.2d 682, 684–685 (5th Cir. 1983).

There is nothing unusual about applying current law to a case that remains pending on appeal. *Landgraf v. USI Film Products*, 511 U.S. 244, 269–79 (1994), discussed the long lines of cases applying a

new statute to cases pending on appeal or to new claims brought on old facts. But the distinction between pending and completed cases is the distinction that matters here.

The closest decision invoked below, *United Republic Insurance Co. v. Chase Manhattan Bank*, 315 F.3d 168 (2d Cir. 2003), underscores the point. There, an unresolved motion had raised a possible defect in diversity jurisdiction before the court issued its decision. The panel, unaware of the motion, affirmed on the merits. After learning of the unresolved jurisdictional issue only months later, the panel recalled the mandate and remanded so that the district court could determine whether jurisdiction existed and, if not, whether any nondiverse party could be severed. *Id.* at 169–171.

That case involved a court correcting its own failure to resolve whether jurisdiction potentially had not existed at the time of judgment. It did not involve a conceded absence of jurisdiction when judgment was entered, the completion of appellate review, and the later creation of jurisdiction based on new legislation and subsequent conduct.

Indeed, collateral-review cases ordinarily permit attacks on judgments alleged to be void. See *Espinosa*, 559 U.S. at 270–271. The decision below uses mandate recall for the opposite purpose: not to vacate a judgment infected by a jurisdictional defect, but to reinstate one after the defect had already been identified and finally adjudicated.

No American court has ever taken this step. The absence of precedent is unsurprising given that the decision below conflicts with the foundational principle that a court without jurisdiction possesses

no power over the action, and all of its decisions are absolutely void.

C. The decision exceeds the narrow limits on the power to recall a mandate.

To sidestep this Court’s void-judgment precedents, the Second Circuit invoked its power to recall a mandate. App __a. But that power cannot bear the weight the panel placed on it. This Court has repeatedly emphasized that recalling a mandate is an extraordinary act constrained by the profound interests in repose.

The very foundation of the power has historically been treated with caution. For example, Chief Justice Rehnquist observed that a court of appeals only “probably” possesses authority to recall its mandate and stressed that recall is an “extraordinary remedy.” *Hawaii Housing Authority v. Midkiff*, 463 U.S. 1323, 1324 (1983) (Rehnquist, C.J., in chambers). Justice Harlan expressed still greater doubt about such an authority. *United States v. Ohio Power Co.*, 353 U.S. 98, 102–103 (1957) (Harlan, J., dissenting).

In *Calderon v. Thompson*, 523 U.S. 538 (1998), the Court confirmed that, “[i]n light of ‘the profound interests in repose’ attaching to the mandate of a court of appeals,” the recall power “can be exercised only in extraordinary circumstances.” *Id.* at 550. Its “sparing use” demonstrates that it is “one of last resort, to be held in reserve against grave, unforeseen contingencies.” *Id.*

The decision below stretches that limited equitable authority beyond all recognition. The Second Circuit did not recall its mandate to correct a clerical

mistake,¹ address concerns regarding an ill litigant who acted in good-faith,² resolve an issue regarding the withholding of exculpatory information,³ or consider fraudulent representations made to the court.⁴ Rather, the Second Circuit used its power to recall a mandate to reinstate a \$655 million dollar judgment that the same court had previously vacated because—as no one disputes—the rendering court lacked personal jurisdiction at the time of judgment.

Nothing in *Calderon* suggests that the power to recall a mandate permits a court to overcome an antecedent constitutional limit on Article III power. There is indeed no prior case exercising the recall power as here, and that “prolonged reticence would be amazing if such interference were not understood to be ... proscribed.” *Plaut*, 514 U.S. at 230.

The Second Circuit’s reasoning lacks any constraint on its recall power, and is thus especially incompatible with *Calderon*. This Court should grant review to clarify that the equitable authority to recall a mandate cannot be used to revive a judgment entered without jurisdiction that has become void and final.

¹ *Kinnear-Weed Corp. v. Humble Oil & Refining Co.*, 296 F.2d 215 (5th Cir. 1961); *see also* 16 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3938 (3d ed. 2012 & Supp. 2026) (“Some minor sins of omission or commission provide obvious occasion for appellate correction of appellate mistakes by recalling the mandate”).

² *Graham v. Balcor Co.*, 241 F.3d 1246 (9th Cir. 2001).

³ *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993).

⁴ *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).

D. The decision below creates a mandate-recall exception to *Plaut* and longstanding separation of powers principles.

The panel was wrong to assume that the retroactive provisions of the PSJVT Act change the analysis. App. 9a. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), applied separation-of-powers principles to hold that Congress may not require Article III courts to reopen final judgments. The Framers, having “lived among the ruins of a system of intermingled legislative and judicial powers,” understood the finality of judicial judgments to be central to the separation of powers. *Id.* at 219.

Congress may change the law governing pending cases. But as *Plaut* recognized, when Congress enacts retroactive legislation, an appellate court ordinarily applies that legislation only to judgments “still on appeal.” *Id.* at 226; see *United States v. Schooner Peggy*, 5 U.S. (1 Cranch) 103 (1801).

Plaut drew a constitutional line between judicial decisions still subject to review and those that are definitively final. Congress “exceeds [its] powers” when retroactive legislation is applied to reopen a judicial action “already finally adjudicated.” *Plaut*, 514 U.S. at 225. The Court knew of “no previous instance in which Congress ha[d] enacted retroactive legislation requiring an Article III court to set aside a final judgment, and for good reason.” *Id.* at 240.

The lower courts have long understood that distinction. The Second Circuit itself stated that “a statute that would require an Article III court to set aside a final judgment entered before its enactment would violate the constitutional principle of separation of powers.” *Schwartz v. Merrill Lynch &*

Co., 665 F.3d 444, 454 (2d Cir. 2011) (citation and internal quotation marks omitted). Its en banc court has similarly recognized that “Congress lacks the authority to alter a finally rendered judgment ordering the payment of money.” *Benjamin v. Jacobson*, 172 F.3d 144, 161 (2d Cir. 1999) (en banc). The Ninth Circuit explained that judgments for which all appeals have been completed “are final and protected from the effects of new legislation.” *Elramly v. INS*, 131 F.3d 1284, 1285 (9th Cir. 1997) (per curiam).

Here, Congress enacted the PSJVTA after the original judgment was vacated for lack of jurisdiction and this Court denied certiorari. The panel’s decision to extra-constitutionally expand its traditional power to recall a mandate cannot be justified by the PSJVTA. If Congress could not constitutionally require reinstatement of a final judicial decision made without jurisdiction, then a court cannot evade the limits on its mandate-recall power by pointing to legislation.

This Court’s prior decision in this case does not address or resolve the issue. *Fuld* upheld Congress’s authority to define conduct constituting consent to personal jurisdiction in service of substantial federal foreign policy interests. *Fuld*, 606 U.S. at 19-21. It did not hold that Congress could revive a prior, void judicial decision. Nor did it address the Article III finality principles established in *Plaut* or ever mention a court of appeals’ limited power to recall mandates.

The decision below thus risks throwing the lower courts—previously unanimous and clear on the *Plaut* issue—into flux. This Court’s intervention is necessary to prevent the mandate-recall power from becoming an exception that swallows *Plaut*’s rule.

II. THE QUESTION PRESENTED IS EXCEPTIONALLY IMPORTANT AND WARRANTS REVIEW NOW.

A. The decision destabilizes fundamental rules governing jurisdiction and finality.

The Second Circuit has decided an important question of federal law in conflict with this Court's decisions, and it has departed from the accepted course of judicial proceedings on issues central to Article III and the separation of powers. Sup. Ct. R. 10(a) & (c).

This is a dangerous decision. The panel held that a judgment vacated for lack of personal jurisdiction, and which reaches post-appeal finality, can be revived at any time if the forum later acquires jurisdiction over the defendant. More than two hundred years of precedent teaches that, under the judicial power conferred by the Constitution, such judgments are a "nullity" and "absolutely void." That constitutional principle safeguards the separation of powers protecting the independence of the judiciary and should not be forfeited so readily. If allowed to stand, the decision opens the door to overturning final judgments and reinstating void judgments years after the judgment has become final.

Though this judgment was reinstated by recalling the mandate, there was no judicial action to recall: the underlying jury verdict and resulting judgment were a "nullity" because they became final without personal jurisdiction. By holding otherwise, the court below destabilized two foundational propositions.

First, it undermines finality. The Second Circuit's new rule is that a judgment void when entered may remain available for later revival. Litigants rely on finality once a court of appeals has directed dismissal

and this Court has denied certiorari. But no case is ever truly over under the Second Circuit's approach.

Nor is the court's reasoning limited to the PSJVT or to Petitioners. Its rule rests on the general equitable authority of courts of appeals to recall mandates. Once recognized, that authority may be invoked whenever later legislation or conduct creates a jurisdictional basis that was absent at the time of judgment.

The question does not require further percolation. The novelty of the decision is a reason for prompt review, not delay. A lower court has crossed a constitutional line that other courts had no reason to address because the settled rules of voidness and finality appeared to foreclose the maneuver.

This case is also an ideal vehicle. The jurisdictional defect is undisputed; the court below expressly held that personal jurisdiction was absent when the case previously became final. App. 21a The later statutory basis for jurisdiction, and the date of the creation of jurisdiction, are likewise clear. The question was pressed below, resolved by the panel, and presented in the rehearing petition. There are no factual disputes obscuring the legal issue.

B. This case presents significant national security concerns.

The \$655.5 million judgment in this case also carries consequences for national security. The United States has previously advised the courts that an event depriving the Palestinian Authority of a substantial portion of its revenues would likely "severely compromise the PA's ability to operate as a governmental authority." *See* United States Statement of Interest, Dist. Ct. Doc. 953-1, at 3-4 (Aug. 10, 2015). It explained that collapse of the

Palestinian Authority would undermine decades of United States foreign policy and introduce a destabilizing force into the region. *Ibid.*

According to the United States, the resulting institutional vacuum would leave the Palestinian territories without an effective entity to govern, maintain order, and provide basic services in the West *Ibid.* The consequences could include a deep recession, a sharp increase in unemployment, the failure of essential public services, and widespread violence. *Ibid.* Those effects would also threaten neighboring Israel, Jordan, and Egypt, each an important United States partner. *Ibid.*

Those concerns have become even more acute.

Recent regional conflict has produced the worst collapse in the Palestinian economy on record. The judgment represents a third of the PA's annual expenditures on wages, salaries, and pensions for public employees, including teachers, physicians, sanitation workers, judges, construction personnel, and security forces. Schools and medical facilities have already reduced services or closed because of insufficient funding. Public employees have worked for extended periods without full pay.

The World Bank warned of a potential "fiscal collapse," accompanied by risks to institutional continuity and broader socioeconomic stability. The PA has implemented significant reforms and spending reductions, including ending prior payment programs identified by Congress. But the judgment is so large that its revival and enforcement of the judgment will have significant consequences for the region. These extraordinary consequences favor certiorari.

CONCLUSION

This Court should grant certiorari and reverse the decision below.

Respectfully submitted,

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