No. 26-416

IN THE

Supreme Court of the United States

RAMON ALBERTO RODRIGUEZ, *et al.*,
Petitioners,

v.

IMPERIAL BRANDS PLC AND WPP PLC,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioners abandoned their Helms-Burton Act claims against all defendants except Respondents—a U.K. corporation and a corporation incorporated in the Bailiwick of Jersey. Against those defendants, Petitioners asserted personal jurisdiction exclusively under Federal Rule of Civil Procedure 4(k)(2), abandoning all other previously asserted theories of personal jurisdiction. After this Court decided *Fuld* v. *Palestine Liberation Organization*, 606 U.S. 1 (2025), Petitioners advocated that the relevant constitutional standard for the exercise of personal jurisdiction under the Fifth Amendment is one of "reasonableness," and that the "reasonableness" inquiry depends on the three factors this Court identified in *Fuld*: the burden on the defendant, the interests of the forum jurisdiction, and the interests of plaintiffs in obtaining relief. The court of appeals applied the standard that Petitioners advocated to affirm the dismissal of their claims.

The question presented is:

Whether the court of appeals correctly determined that the exercise of personal jurisdiction would be unreasonable under the three-factor "reasonableness" test that Petitioners agreed was the appropriate inquiry.

CORPORATE DISCLOSURE STATEMENT

WPP plc is publicly traded (NYSE: WPP; LSE: WPP) and does not have a parent corporation. No other publicly held corporation has notified WPP that it owns ten percent or more of WPP's stock.

Imperial Brands plc is publicly traded (LSE: IMB) and has no parent corporation. The Capital Group Companies, Inc. has notified Imperial that it holds more than ten percent of Imperial's shares, and that such shares are owned by accounts under the discretionary management of The Capital Group Companies, Inc. or its investment-management affiliates, primarily for institutional and high-net-worth individuals. No publicly held corporation has notified Imperial that it owns ten percent or more of Imperial's stock.

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BRIEF IN OPPOSITION

INTRODUCTION

Contrary to Petitioners' assertion, the question they ask this Court to review was not disputed below, because Petitioners advocated, and Respondents agreed, that the relevant test is the "reasonableness" inquiry that this Court suggested the Fifth Amendment "might entail." *Fuld* v. *Palestine Liberation Org.*, 606 U.S. 1, 23, 24 (2025). And Petitioners and Respondents further agreed that reasonableness depends on "'the burden on the defendant, the interests of the forum State, and the plaintiffs' interest in obtaining relief.'" *Id.* (quoting *Asahi Metal Indus. Co.* v. *Superior Ct. of Cal.*, 480 U.S. 102, 113 (1987)). The court of appeals expressly and

repeatedly recognized and relied on that agreement. Pet. App. 9a ("Before us, the plaintiffs agree that the Fifth Amendment imposes some limits on a federal court's exercise of personal jurisdiction—namely, they say, by way of a 'reasonableness' standard of the sort to which the Supreme Court adverted in *Fuld*[.]"); Pet. App. 24a ("[B]ecause the plaintiffs here concede that the Fifth Amendment imposes a 'reasonableness' requirement, we will evaluate the three factors laid out in *Fuld* to determine whether assertion of jurisdiction over WPP and Imperial is reasonable."). The court of appeals accordingly had no opportunity to consider whether the Fifth Amendment might be satisfied under a different analysis, and that issue is not preserved.

Petitioners further concede that there is no circuit split on the role the reasonableness inquiry plays in defining "the outer bounds of the Federal Government's power, consistent with due process, to hale foreign defendants into U.S. courts," *Fuld*, 606 U.S. at 18, the question left open by *Fuld* just last Term. Their arguments for nonetheless rushing review of that question do not hold up. Petitioners are wrong to assert that the court of appeals' decision in this case is the "only" federal appellate decision to address the question. As the petition recognizes, the D.C. Circuit and the Ninth Circuit have each applied a similar reasonableness standard. *See Gligorov* v. *Nation of Brunei*, 185 F.4th 1169, 1180-1181 (D.C. Cir. 2026); *Devas Multimedia Priv. Ltd.* v. *Antrix Corp.*, 187 F.4th 1077, 1089 (9th Cir. 2026). Nor are Petitioners correct that further percolation of the question is unlikely; numerous district courts have already considered the question, and appeals from those decisions are working their way through the circuits now.

Denial is further warranted because the court of appeals' decision carefully analyzed and closely adhered to this Court's analysis in *Fuld*. Consistent with the parties' agreement as to the appropriate inquiry, it set aside the federalism-focused jurisdictional analysis under the Fourteenth Amendment and instead addressed the reasonableness and fairness considerations this Court has articulated for decades as central to the guarantee of due process. Applying the *Asahi* factors that Petitioners advocated, the court of appeals concluded that, although Petitioners had an interest in securing relief, the interests of the United States in adjudicating this dispute were far more attenuated than in *Fuld*, and that the exercise of personal jurisdiction over Respondents would have imposed severe burdens. Pet. App. 26a, 31a. That careful decision's consistency with *Fuld*, and in particular *Fuld*'s warning to be "wary to reach further and bless more attenuated assertions of jurisdiction," 606 U.S. at 18, further counsels denial.

Finally, Petitioners' claims are plagued by additional flaws that render this case a poor vehicle for consideration. Their jurisdictional theory is based on a factual premise that has already been disproven by the limited factual record in the district court (not addressed in the decisions below). And their case would fail in any event due to substantive deficiencies—including that their claim is time-barred and fails to plausibly allege that either WPP or Imperial knowingly and intentionally trafficked in confiscated property without authorization. This Court's consideration of the question left open by *Fuld* is better left for a case that presses claims not so destined for dismissal on the merits.

This Court should deny the petition.

STATEMENT

A. Petitioners' Claims Arise From Property In Cuba That Respondents Have Never Owned, Controlled, Used, Marketed, Or Visited

Seeking to deter foreign investment in and business with Cuba, Congress in 1996 enacted the Helms-Burton Act, 22 U.S.C. §§ 6081, *et seq*. Title III of the Helms-Burton Act establishes "a private right of action for U.S. nationals whose property was unlawfully confiscated" by the Cuban government. *Exxon Mobil Corp.* v. *Corporación CIMEX, S.A. (Cuba)*, 609 U.S. 108, 111 (2026).

Petitioners are the descendants of Ramón Rodriguez Gutiérrez, who they allege "owned and controlled" a Cuban limited partnership called Ramón Rodriguez e Hijos Sociedad en Comandita (the "RRHSC Partnership"). C.A. App. Tab 208 ¶¶1 n.1, 28. Petitioners' Title III claims arose from a cigar factory and adjacent mixed-use building in Havana, Cuba (the "RRHSC Property") that the Cuban government confiscated in 1961. *Id.* ¶¶1-3. Petitioners sued Respondents Imperial Brands plc ("Imperial") and WPP plc ("WPP"), as well as two of WPP's U.S.-based subsidiaries. *Id.* ¶¶5-23. Petitioners also sued Corporación Habanos, S.A. ("Habanos"), a Cuban company controlled by the Cuban government. *Id.* ¶¶7, 9, 35, 91.

Respondent Imperial is incorporated and headquartered in the United Kingdom. C.A. App. Tab 208 ¶34. In 2007, Imperial acquired a Spanish company, Altadis, S.A., that had a noncontrolling ownership interest in Habanos. *Id.* ¶¶5, 77. Pursuant to an agreement reached in April 2020, Imperial disposed of its "non-U.S." premium cigar business, including its indirect ownership interest in Habanos, in October 2020. *Id.* ¶86 & n.43.

Respondent WPP is a holding company incorporated in the Bailiwick of Jersey with its principal place of business in London. C.A. App. Tab 208 ¶36. Petitioners alleged that Habanos hired two U.S.-based WPP subsidiaries, Young & Rubicam LLC ("Y&R") and BCW, LLC, to promote Habanos cigars globally. *Id.* ¶20. Y&R and BCW allegedly purchased U.S.-based Internet domains and other networking services as part of these efforts. *Id.* ¶¶21-22, 41, 54-56, 61-62, 82. Jurisdictional discovery later established, however, that these services were not provided to Habanos by Y&R and BCW, but by different indirect Spanish subsidiaries of WPP that Petitioners did not sue. C.A. Supp. App. Tab 93-1 ¶¶20-25; *id.* Tab 93-2 ¶¶23-28; *id.* Tab 173 at 2 & n.1.

According to Petitioners, through 2010, Habanos—but not Respondents—used the factory portion of the RRHSC Property to manufacture, sell, market, and distribute Cuban cigars. C.A. Supp. App. Tab 93-1 ¶¶10, 18, 41-42, 78-80. And nonparty Tabacuba, the Cuban state tobacco monopoly company, allegedly used offices in the mixed-use portion of the RRHSC Property. *Id.* ¶¶8, 18. Petitioners do not allege that Imperial or any WPP entity has ever had any ownership interest in or control over the RRHSC Property or that they ever used, marketed, or visited the RRHSC Property. Habanos was the only defendant alleged to have used the RRHSC Property, and the claims against it were dismissed for improper venue and are not before this Court. Pet. ii, 10; Pet. App. 39a-45a.

B. The District Court Dismissed Petitioners' Claims Against Respondents For Lack Of Personal Jurisdiction

In March 2020, Petitioners' counsel sent a letter to Habanos, Imperial, WPP, Y&R, and BCW stating that

Petitioners intended to bring claims under the Helms-Burton Act and seek $405 million in treble damages, plus attorneys' fees and interest, unless the letter recipients immediately ceased their alleged trafficking in the RRHSC Property. C.A. Supp. App. Tab 14-8. In August 2020, Petitioners brought suit in the U.S. District Court for the Southern District of Florida. *See id.* Tab 1.

U.K. criminal law prohibits U.K.-incorporated companies like Imperial from complying with the Helms-Burton Act, including participating in Title III lawsuits, without government authorization, so the district court imposed a limited stay while Imperial sought and awaited permission to litigate the case. *See* C.A. Supp. App. Tab 14; D.Ct. Dkts. 26, 49. In February 2021, Imperial received the necessary authorization and moved to dismiss Petitioners' complaint for lack of subject matter, personal, and legislative jurisdiction, and for failure to state a claim because the claim was time-barred and not plausibly alleged. *See* C.A. Supp. App. Tab 71. WPP, Y&R, and BCW moved to dismiss on similar grounds. *See id.* Tabs 72, 74. Respondents twice renewed these motions after Petitioners filed an Amended Complaint in March 2021 and a Second Amended Complaint in March 2022. *See id.* Tabs 88, 91, 93; C.A. App. Tabs 226, 227.

Petitioners eventually conceded that the district court lacked jurisdiction over Y&R and BCW and that their claims against these U.S.-based WPP subsidiaries should be dismissed. *See* Pet. App. 58a. Petitioners also abandoned their theory of personal jurisdiction under Florida's long-arm statute. *See id.* By the time the district court ruled on the motions to dismiss, Petitioners argued only that Imperial and WPP were subject to personal jurisdiction under Federal Rule of Civil Procedure 4(k)(2), on the theory that Y&R and BCW had created jurisdictional contacts with the United States through

their online promotion (to non-U.S. audiences) of Habanos cigars, and that these contacts should be imputed to WPP and, through Habanos, to Imperial. *See* Pet. App. 58a, 62a-64a.

In April 2024, the district court adopted a magistrate judge's recommendation that Petitioners' claims against Imperial and WPP be dismissed for lack of personal jurisdiction. Pet. App. 37a. The magistrate judge concluded that Y&R's and BCW's alleged online activities did not satisfy the "minimum contacts" test. Pet. App. 66a; *see* Pet. App. 37a. The magistrate judge explained that WPP's alleged online activity was not "aimed at" the United States, observing that "the social media platforms on which Habanos' products are alleged to be advertised … do not reference the United States," and that Petitioners had not alleged that Habanos's cigars "have ever been sold in the United States." Pet. App. 66a (internal quotation marks omitted). Under Petitioners' "imputation theory," "personal jurisdiction over Imperial hinge[d] entirely on personal jurisdiction over WPP," so the lack of personal jurisdiction as to WPP "extend[ed] to Imperial." Pet. App. 64a, 66a.

Because the court had previously dismissed Habanos for improper venue, *see* Pet. App. 6a, the district court's April 2024 order disposed of all claims in the case.

C. After The Court's Decision In *Fuld*, Petitioners Urged The Court Of Appeals To Conduct A Reasonableness Inquiry And To Consider The *Asahi* Factors

On appeal, Petitioners initially argued that the defendants had the necessary minimum contacts with the United States under the familiar Fourteenth Amendment framework. After the appeal was fully briefed,

however, this Court decided *Fuld* v. *Palestine Liberation Organization*, 606 U.S. 1 (2025).

At oral argument, the Eleventh Circuit panel asked Petitioners how best to apply *Fuld* in this case. When asked to state the test the court of appeals should apply under the Fifth Amendment, Petitioners' counsel paraphrased the three-part reasonableness standard from *Asahi*: "[W]hat *Fuld* basically says is, is it reasonable under the circumstances, given the substance of the statute and the harm done allegedly to the plaintiffs, and the strength, so to speak, of the ability of opposing multinational corporations to defend in this forum. Is it overall a reasonable circumstance?" C.A. Oral Arg., at 04:45-05:15 (Aug. 12, 2025), https://tinyurl.com/5n725vdz. Petitioners also acknowledged that personal jurisdiction could be exercised only where there is a "meaningful relationship," "reasonable relationship," or "some tether" to the United States. *Id.* at 03:55-4:15; 7:00-8:40.

In supplemental briefing following oral argument, Petitioners reiterated this position. In response to the court of appeals' question "What limits, if any, does the Fifth Amendment impose on a federal court's exercise of personal jurisdiction over an extraterritorial defendant?" (C.A. Dkt. 80 at 3), Petitioners stated: "*Fuld* replaced the Fourteenth Amendment's interstate-federalism test with a Fifth Amendment inquiry focused on reasonableness—'an evaluation of several factors, including the burden on the defendant, the interests of the forum, and the plaintiff's interest in obtaining relief.'" C.A. Appellants' Supp. Br. 3 (quoting *Fuld*, 606 U.S. at 24). They acknowledged: "Reasonableness remains the touchstone. The doctrine that now governs balances the burdens on defendants with the United States' paramount interests in enforcing its laws and protecting its citizens." C.A. Appellants' Supp. Br. 11. They further

contended: "*Fuld* recognized that due process still asks whether the exercise of jurisdiction is reasonable in the particular case." C.A. Appellants' Supp. Br. 28. Petitioners also urged the Eleventh Circuit to evaluate this case under the three *Asahi* factors, arguing that Petitioners' claims against Respondents "'tick all three boxes' of the reasonableness standard articulated in *Fuld*," C.A. Appellants' Supp. Br. 33 (quoting *Fuld*, 606 U.S. at 24).

D. Applying The Reasonableness Framework Petitioners Advocated, The Court Of Appeals Affirmed The District Court's Dismissal For Lack Of Personal Jurisdiction

The court of appeals recognized in its opinion what was apparent from Petitioners' repeated submissions: "Before us, the plaintiffs agree that the Fifth Amendment imposes some limits on a federal court's exercise of personal jurisdiction … by way of a 'reasonableness' standard of the sort to which the Supreme Court adverted in *Fuld*." Pet. App. 9a. The court of appeals then decided the case under the framework that Petitioners advocated, applying the *Asahi* factors to determine whether assertion of personal jurisdiction over Respondents was reasonable. Pet. App. 24a.

The court acknowledged that, at the pleading stage, Petitioners had a strong interest in vindicating their claimed rights under the Helms-Burton Act. Pet. App. 24a. But it found the other factors cut against the exercise of personal jurisdiction.

As for the factor considering the forum's interests in adjudicating the dispute, the court considered the important interests served by the Helms-Burton Act—as Petitioners urged—but reasoned that the "Helms-Burton Act is much broader" than the statute at issue in

Fuld "and contains no similar jurisdictional predicates." Pet. App. 25a. Unlike the plaintiffs in *Fuld*, Petitioners *did* seek to impose Helms-Burton Act liability against "'run-of-the-mill private defendants,'" not "two *sui generis* foreign entities." Pet. App. 25a, 28a. Though the court acknowledged that the United States "undoubtedly has an interest in providing a forum in which American victims can sue foreigners who wrongfully traffic in their property," the Helms-Burton Act's apparent targeting of "persons whose activity does not necessarily have a close connection to this country, suggests that the United States's interest here is more attenuated than it was in *Fuld*." Pet. App. 25a. Moreover, as Respondents pointed out, the United States' interests likely cut in both directions: the State Department acknowledged the "[v]ery serious questions [that] would arise in defending the reasonableness under international law of many lawsuits permitted by" the Act, including those where (as here) the only connection to the United States consists of "the current nationality of the person who holds an expropriation claim." *Legal Considerations Regarding Title III of the Libertad Bill*, 141 Cong. Rec. 27,751, 27,752 (1995).

As for the burden on the defendants, the court of appeals noted that, although the *Fuld* defendants "didn't contend that they lacked notice or that forcing them to litigate in the United States would impose an unfair burden," here, "both defendants do." Pet. App. 26a.

The court of appeals first considered the burdens litigating this case would impose on WPP and concluded that its burden if forced to litigate in U.S. courts "would be 'severe.'" Pet. App. 26a (quoting *Asahi*, 480 U.S. at 114). WPP "(1) had no clear statutory notice that profiting from its subsidiaries would expose it to suit in U.S. courts, (2) didn't itself engage in predicate conduct

bearing a meaningful connection to the United States, and (3) lacked a strong presence in this country." Pet. App. 27a.

As for notice, the court of appeals contrasted the Helms-Burton Act with the statute addressed in *Fuld*, which expressly named the two entities to which the statute applied. *See* 606 U.S. at 8. The court of appeals observed that the Helms-Burton Act "sweeps broadly," reaching "'run-of-the-mill private defendants' that may not have 'meaningful "contacts, ties, [and] relations" with the United States.'" Pet. App. 27a-28a (quoting *Fuld*, 606 U.S. at 22 (quoting *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472 (1985))).

As for predicate conduct, the court of appeals found that none of the conduct in which WPP allegedly engaged had any "meaningful relationship to the United States." Pet. App. 28a. Petitioners alleged *no* suit-related contacts between WPP and the United States. At most, Petitioners alleged that WPP's U.S.-based subsidiaries had used social media and email platforms offered by U.S. technology companies to conduct marketing activity for Habanos to entirely foreign audiences. Pet. App. 28a; C.A. Appellees' Supp. Br. 24-25. As the court of appeals reasoned, "[e]ven if" this conduct by WPP's subsidiaries bore "a meaningful relationship to this country, their conduct and contacts can't fairly be imputed to WPP." Pet. App. 28a. Petitioners have never alleged any basis for imputing the conduct of WPP's subsidiaries to WPP, nor have they ever alleged that WPP exerts the sort of control over those subsidiaries that could support such a finding. C.A. Appellees' Supp. Br. 25. Further, as described above, jurisdictional discovery revealed that the marketing services Petitioners challenged were in fact provided by WPP affiliates in Spain, not the

United States. C.A. Supp. App. Tab 93-1 ¶¶20-25; *Id.* Tab 93-2 ¶¶23-28; *Id.* Tab 173 at 2 & n.1.

Finally, as to presence in the United States, the court of appeals found that WPP's presence in the United States—an alleged "dual headquarters in London and New York"—"looks nothing like the PLO's and PA's 'longstanding' presence here" on which *Fuld* relied. Pet. App. 30a (quoting *Fuld*, 606 U.S. at 24). It further concluded that there were "no allegations that WPP engaged in conduct at its New York office that had any relationship to the conduct on which the plaintiffs' trafficking claims are predicated." Pet. App. 30a.

As for Imperial, "[f]or similar reasons" to WPP, the court of appeals found that the burden of litigating in U.S. courts would be severe. Pet. App. 31a. Imperial, like WPP (but unlike the defendants specifically identified in the jurisdiction-conferring statute at issue in *Fuld*), "lacked clear statutory notice that it could be haled into U.S. courts." *Id.* A 2007 SEC filing may have shown that Imperial was aware that the Helms-Burton Act, which, beyond conferring private claims, bolstered U.S. sanctions against Cuba, 22 U.S.C. §§ 6031-6040, "could affect its Cuban business operations." *Id.* But this did not show that Imperial "was on notice it could be sued in U.S. courts for the conduct at issue in this case." *Id.*; C.A. Appellees' Supp. Br. 31-32.

And Imperial was not alleged to have any contacts or relationships with the United States at all. As the court of appeals observed, "there is no contention that Imperial had any offices in the United States or itself engaged in conduct in this country." Pet. App. 31a. Instead, Petitioners sought to attribute to Imperial the alleged actions of WPP's subsidiaries, but they failed to "allege[] enough to establish that those subs acted as

Imperial's agents." *Id.* Rather, the WPP subsidiaries were hired by Habanos, and "Habanos was controlled by Cuba, not by Imperial." Pet. App. 32a.

The court of appeals also observed that the law of the United Kingdom—where Imperial is incorporated—"bars U.K.-incorporated companies … both from complying with Title III of the Helms-Burton Act and from defending against Title III lawsuits without an authorization from" the U.K. government. Pet. App. 26a-27a. The court of appeals observed that the U.K. statute was "not insignificant[]," before making clear by use of the words "[m]oreover, and in any event," that it was not resting its decision on that ground. *Id.*[1]

The court of appeals concluded that, "[u]nder the particular circumstances presented, … subjecting WPP and Imperial to jurisdiction in the United States would impose an unreasonable burden on both companies." Pet. App. 32a. It therefore affirmed the district court's dismissal of Petitioners' claims against Imperial and WPP for lack of personal jurisdiction.

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[1] The court of appeals appears to have believed that this reasoning would apply to WPP as well, but WPP is incorporated in the Bailiwick of Jersey, which is not part of the United Kingdom or the European Union (despite its significant relationships with each), and has not yet adopted the European Council regulation that would require companies like WPP to seek authorization before complying with Title III. *See* D.Ct. Dkt. 28 at 4 n.4. This is unimportant, however, as the court of appeals clarified that this reasoning was not determinative and that the burden on WPP would be severe "in any event." Pet. App. 26a-27a.

REASONS FOR DENYING THE PETITION

I. PETITIONERS FORFEITED THEIR QUESTION PRESENTED BY AGREEING TO THE TEST THE COURT OF APPEALS APPLIED

Petitioners ask this Court to answer "what standard" the Fifth Amendment applies to the exercise of personal jurisdiction and whether that standard applies "burden-centered reasonableness factors." Pet. i. But Petitioners and Respondents agreed on the answers to these questions, and the court of appeals applied the agreed standard to affirm the dismissal of Petitioners' claims. The court of appeals thus had no occasion to consider whether any other test might apply under the Fifth Amendment—the question Petitioners now ask this Court to address for the first time.

This Court is "a court of review, not of first view." *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005). It does not ordinarily consider questions that were "not addressed by the Court of Appeals," *id.*, much less ones that the "petitioner did not present" to the court below, *G. D. Searle & Co.* v. *Cohn*, 455 U.S. 404, 412 n.7 (1982). The Court should deny the petition for certiorari because the question presented was "not properly raised, litigated or passed upon below." *McCullough* v. *Kammerer Corp.*, 323 U.S. 327, 328 (1945).

As described above, Petitioners expressly and repeatedly advocated for a "reasonableness" test, animated, as *Fuld* suggested, by "'an evaluation of several factors,' including 'the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief.'" 606 U.S. at 24 (quoting *Asahi*, 480 U.S. at 113); *see supra* pp. 7-9. The court of appeals then decided the case under the framework Petitioners advocated. Applying that test, the court of appeals concluded

that the exercise of personal jurisdiction would be unreasonable. Petitioners no doubt disagree with how the court of appeals applied the rule of law they proposed, but the contested application of an uncontested rule of law is not a basis for granting certiorari. S. Ct. R. 10.

Petitioners do not seek review of what the court of appeals decided—and what they asked it to decide—namely, whether the exercise of jurisdiction would be reasonable under the familiar *Asahi* factors. Instead, despite still admitting they advocated for a "reasonableness" standard below, Petitioners now argue that they "disputed [its] content" and did not "supply the standard" the court of appeals applied. Pet. 12, 18, 30-31. That position cannot be reconciled with their repeated advocacy for the exact standard—the *Asahi* factors—the court of appeals in fact applied, specifically based on Petitioners' agreement that it should do so. *See supra* pp. 7-9.

Indeed, Petitioners' effort to distance themselves from their position before the court of appeals only creates a further obstacle to this Court's review. Before deciding the correct legal test under the Fifth Amendment, this Court would first have to decide whether Petitioners in fact "agree[d]" to the "'reasonableness'" test, as the court of appeals found. Pet. App. 9a. It is not worth this Court's effort to revisit that case-specific finding. And in any event, Petitioners offer this Court no basis to conclude that the court of appeals was wrong in ruling that Petitioners took the position they did.

Tellingly, the proceedings below are materially similar to one of the cases Petitioners describe as giving a "non-answer" to the question they present. Pet. 20. In *Gligorov*, the D.C. Circuit, like the Eleventh Circuit here, ordered supplemental briefing after *Fuld* was

decided. 185 F.4th at 1177-1178. As here, the "parties … agreed that … the Fifth Amendment requires only that the exercise of personal jurisdiction over a defendant be 'reasonable,' and that a reasonable nexus to the United States exists." *Id.* Given the parties' agreement, the court applied the same *Asahi* factors—"the plaintiff's interest in obtaining relief in the U.S. forum, the interests of the forum, … and the magnitude and fairness of the litigation burden imposed on each defendant." *Id.* at 1181. But Petitioners' effort to distinguish *Gligorov* only reinforces the flaws in their own petition: "[a] circuit that orders reargument on the governing standard, then assumes one by stipulation … , has not answered the reserved question; it has confirmed how open the question remains." Pet. 20. Just so here: given that Petitioners "agree[d]" to the "reasonableness" standard the court of appeals applied, Pet. App. 9a, they have no basis to seek this Court's review of that standard.

In short, the question on which Petitioners seek review was "not properly raised, litigated or passed upon below." *McCullough*, 323 U.S. at 328. The petition may and should be denied for this reason alone.

II. PETITIONERS CONCEDE THERE IS NO CIRCUIT SPLIT, AND THEIR ARGUMENTS FOR RUSHING CONSIDERATION ARE UNPERSUASIVE

Petitioners concede that "[t]here is no circuit conflict here." Pet. 22. The "absence of a direct conflict among the Circuits" regarding the question presented further justifies denying the petition. *Bunting* v. *Mellen*, 541 U.S. 1019, 1021 (2004).

Attempting to turn this long-standing principle on its head, Petitioners argue that limited case law addressing the question presented—and uniformity among the

decisions that do—are evidence that this Court's intervention is necessary. This claim is undermined by Petitioners' own arguments and authorities.

First, Petitioners do not explain why limited case law addressing their question presented is cause for concern. *Fuld* was decided just last year, and it is unsurprising that its application to exercises of personal jurisdiction under Rule 4(k)(2) has not yet produced many appellate decisions—though, as discussed below, many are on the way. As Petitioners acknowledge, this issue "arises only in suits against private foreign defendants beyond any State's reach," Pet. 21, and so is presented only in cases where those predicates apply—and only a subset of Helms-Burton Act actions.

Second, the decision below is not, as Petitioners claim, "the only court of appeals decision in which an answer to the reserved question has supplied the rule of decision." Pet. 21. As explained, the D.C. Circuit in *Gligorov* likewise applied a reasonableness test as the "rule of decision" in a case governed by Rule 4(k)(2). *See* 185 F.4th at 1177-1178. As the Eleventh Circuit did here, the D.C. Circuit relied on the plaintiff's *agreement* about the proper inquiry. *See id.*; Pet. App. 9a. And the same rule was also applied by the Ninth Circuit in *Devas Multimedia Private Limited* v. *Antrix Corporation*, 187 F.4th 1077 (9th Cir. 2026), without any indication that it was the result of an agreement between the parties. *Id.* at 1089 (applying *Asahi* factors to apply Fifth Amendment personal jurisdiction inquiry in case implicating Foreign Sovereign Immunities Act).

Third, Petitioners' assertion that the Eleventh Circuit's decision will somehow limit future percolation of this issue, such that this "first appellate answer" will become "the final one," is unsupported. Pet. 22. This

argument turns on Petitioners' claim that the Eleventh Circuit is "the one circuit where [Helms-Burton Act] cases live." Pet. 19. The claim is not true. Four other regional courts of appeals have adjudicated Helms-Burton Act cases. *Moreira* v. *Société Générale, S.A.*, 125 F.4th 371 (2d Cir. 2025); *Glen* v. *Trip Advisor, LLC*, No. 21-1842, 2022 WL 3538221 (3d Cir. Aug. 18, 2022); *Glen* v. *American Airlines, Inc.*, 7 F.4th 331 (5th Cir. 2021); *Exxon Mobil Corp.* v. *Corporación CIMEX, S.A. (Cuba)*, 111 F.4th 12 (D.C. Cir. 2024), *rev'd and remanded*, 609 U.S. 108 (2026). In any event, Petitioners' question is not confined to Helms-Burton Act cases; their petition asks the Court to decide the standard that applies to *all* actions in which personal jurisdiction is predicated on Rule 4(k)(2). And because they argue that exercises of personal jurisdiction under Rule 4(k)(1)(C) and Rule 4(k)(2) are governed by the same standard, they are in practice asking the Court to decide the standard that governs "every federal statute enforced against absent foreign defendants – securities, terrorism, and beyond – wherever Rule 4(k)(2) or a federal service provision supplies the forum." Pet. 23; *see also* C.A. Appellants' Supp. Br. 9 (inquiry "governs every federal-question statute … that exercises Congress's extraterritorial power").

Fourth, Petitioners are simply incorrect about the prospects of percolation in the lower courts. Other circuits have issued decisions addressing *Fuld*'s application to claims under other federal statutes. As discussed above, the D.C. and Ninth Circuits both recently evaluated exercises of personal jurisdiction over foreign defendants under reasonableness frameworks. *See Gligorov*, 185 F.4th at 1177-1178; *Devas Multimedia Priv. Ltd.*, 187 F.4th at 1088-1089. At least three other cases are already pending in the courts of appeals. *See Central*

Am. Bank for Econ. Integration v. *Mossi*, No. 24-cv-2544, 2025 WL 2732731 (D.D.C. Sept. 25, 2025), *appeal docketed*, No. 25-7162 (D.C. Cir. Oct. 27, 2025), *cross-appeal docketed*, No. 25-7178 (D.C. Cir. Nov. 6, 2025) (oral argument scheduled for Nov. 12, 2026); *X Corp.* v. *World Fed'n of Advertisers*, 826 F. Supp. 3d 772 (N.D. Tex. 2026), *appeal docketed*, No. 26-10394 (5th Cir. Apr. 23, 2026) (briefing ongoing); *Perimetral Oriental de Bogotá, S.A.S.* v. *Agencia Nacional de Infraestructura*, No. 25-cv-1099, 2026 WL 2364470 (D.D.C. Aug. 14, 2026), *appeal docketed*, No. 26-7189 (D.C. Cir. Sept. 15, 2026) (briefing ongoing). And district courts across the country have thoughtfully addressed the appropriate Fifth Amendment personal jurisdiction standard in other recent decisions. *See, e.g.*, *Anderson* v. *Biegler GmbH*, No. 24-cv-01603, 2026 WL 2672574, at *3-6 (D. Colo. Sept. 11, 2026); *King* v. *Bon Charge*, 823 F. Supp. 3d 508, 516-518 (D. Del. 2025); *Orient Plus Int'l Ltd.* v. *Baosheng Media Grp. Holdings Ltd.*, 808 F. Supp. 3d 609, 615-621 (S.D.N.Y. 2025).

None of the decisions issued after the Eleventh Circuit's ruling in this case deferred to the decision below as though it were the "national rule" or "final" answer on the question presented. Pet. 19, 22. Rather, as Petitioners concede, courts have adopted a variety of approaches in interpreting and applying *Fuld*. *See* Pet. 22 ("[I]n the year since *Fuld*, district courts have filled the open space four different ways."). In *Orient Plus International Limited*, for example, the court "borrow[ed] from the Second Circuit's 'sufficient nexus test,' which is employed in the criminal context to 'determine[] whether the extraterritorial application of federal criminal law comports with constitutional due process' under the Fifth Amendment." 808 F. Supp. 3d at 619 (quoting *United States* v. *Epskamp*, 832 F.3d 154, 168 (2d Cir.

2016)). And in *Anderson*, another district court evaluated five factors from a pre-*Fuld* Tenth Circuit decision, as well as the three "fairness factors identified in *Fuld*." 2026 WL 2672574, at *5-6 (quoting *Peay* v. *BellSouth Med. Assistance Plan*, 205 F.3d 1206, 1212 (10th Cir. 2000)). Of course, none of these approaches is at issue here, as Petitioners did not advance them below or in their petition. But Petitioners' suggestion that there is nothing to be gained from further percolation is manifestly incorrect.

Finally, Petitioners argue that, because "jurisdiction-denying" district court decisions are immediately appealable and "jurisdiction-sustaining" ones generally are not, percolation on the question presented is "not neutral" as to the question presented and will not clarify Fifth Amendment law. Pet. 25. But jurisdiction-denying district court decisions may lead to jurisdiction-sustaining appellate rulings. And jurisdiction-sustaining district court decisions are eventually appealable, with at least two already working their way through the courts. *See Mossi*, 2025 WL 2732731, at *12, *18 (holding that the court could exercise personal jurisdiction over the defendant under Rule 4(k)(2), then dismissing case on the merits for failure to state a claim), *appeal docketed*, No. 25-7162 (D.C. Cir. Oct. 27, 2025), *cross-appeal docketed*, No. 25-7178 (D.C. Cir. Nov. 6, 2025); *Agencia Nacional de Infraestructura*, 2026 WL 2364470, at *18 (concluding that exercising personal jurisdiction over the defendant was reasonable and did not violate the Fifth Amendment's Due Process Clause), *appeal docketed*, No. 26-7189 (D.C. Cir. Sept. 15, 2026). And one of the three post-*Fuld* appellate rulings arose from an immediately appealable interlocutory, jurisdiction-affirming district court ruling. *See Devas Multimedia*, 187 F.4th at 1085-1086.

This Court will be best equipped to address the question presented after such decisions have moved through the federal court system and provided the lower courts with an opportunity to carefully consider what standard the Fifth Amendment imposes. This case, in contrast, arises in the absence of a circuit split, just a year after *Fuld* was decided, and in a context where the parties agreed on the answer to Petitioners' proposed question presented. Each of these circumstances counsels denying the petition.

III. THE DECISION BELOW WAS CONSISTENT WITH *FULD*

A further reason to deny the petition is that the court of appeals' thorough decision carefully applied this Court's reasoning in *Fuld*, especially in light of Petitioners' agreement on the appropriate inquiry. The decision below accordingly presents no conflict with the decisions of this Court. S. Ct. R. 10(c).

The court of appeals correctly recognized that *Fuld* was "absolutely clear" that "[t]he Fifth Amendment Due Process Clause 'does *not* incorporate the Fourteenth Amendment minimum contacts standard.'" Pet. App. 14a (quoting *Fuld*, 606 U.S. at 23). The court of appeals accordingly did not apply the Fourteenth Amendment test. Instead, it correctly observed, as this Court stated, that "the Fifth Amendment 'necessarily permits a more flexible jurisdictional inquiry' than the Fourteenth Amendment because the two provisions' respective Due Process Clauses address different sovereigns." Pet. App. 14a-15a (quoting *Fuld*, 606 U.S. at 16). The court of appeals also recognized that, while "[t]he Fourteenth Amendment's due process limitations … are 'driven by … (1) treating defendants fairly, and (2) protecting interstate federalism,'" "'the interstate federalism

concerns do not apply to limitations under the Fifth Amendment.'" Pet. App. 15a (quoting *Fuld*, 606 U.S. at 13, 15).

The court of appeals then meticulously considered this Court's treatment of the statute at issue in *Fuld*, noting the Court's observations that the statute "appl[ied] only to a 'narrow category of claims,' ha[d] targeted triggering predicates, and 'limit[ed] jurisdiction to only two enumerated nonsovereign foreign entities.'" Pet. App. 16a (quoting *Fuld*, 606 U.S. at 20-21). Those limited circumstances supported this Court's finding that it was "permissible … for the Federal Government to craft a narrow jurisdictional provision," consistent with its observation that courts should be "wary to reach further and bless more attenuated assertions of jurisdiction when the cases before [them] do not require doing so." *Fuld*, 606 U.S. at 18-19, 21; *see also Asahi*, 480 U.S. at 115 ("Great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.").

The acknowledgment that fairness—not federalism—is the principle underlying the Fifth Amendment's Due Process Clause has deep roots. As this Court observed more than four decades ago, due process "protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations,'" and "this protection … 'must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause' rather than as a function 'of federalism concerns.'" *Burger King*, 471 U.S. at 471-472 & n.13. That foundational principle supports *Fuld*'s suggestion, adopted by the court of appeals here, that "the Fifth Amendment might entail [an] 'inquiry into the reasonableness of the assertion of jurisdiction in the

particular case,'" and *Fuld*'s reliance on the inquiry articulated decades ago in *Asahi*. Pet. App. 17a (quoting *Fuld*, 606 U.S. at 23 (quoting *Asahi*, 480 U.S. at 115)).

That familiar *Asahi* inquiry was the same inquiry Petitioners advanced—one in which "'[r]easonableness' … depend[s] in each case 'on an evaluation of several factors,' including '[1] the burden on the defendant, [2] the interests of the forum State, and [3] the plaintiff's interest in obtaining relief.'" Pet. App. 17a (quoting *Fuld*, 606 U.S. at 24 (quoting *Asahi*, 480 U.S. at 113)). Petitioners now decry these factors as belonging to the Fourteenth Amendment. Pet. 16. But Petitioners also acknowledge, as they must, that these factors bear on whether the exercise of personal jurisdiction comports with "'traditional conception[s] of fair play and substantial justice'"—principles that animate the Fifth Amendment's due process guarantee as well. *Burger King*, 471 U.S. at 464 (quoting *International Shoe Co.* v. *Washington*, 326 U.S. 310, 320 (1945)). *Fuld* foreclosed only the federalism-protective aspects of the Fourteenth Amendment's personal jurisdiction standard, not the analysis of the defendants' "individual liberty interests." *Burger King*, 471 U.S. at 471-472 & n.13. The *Asahi* factors are thus also relevant to the Fifth Amendment's Due Process Clause.

Before applying those factors to this case, the court of appeals considered how they were applied in *Fuld*. The court of appeals noted that the *Fuld* defendants, which were quasi-governmental organizations, had not complained—and could not complain—that they lacked notice that they would be haled into an American court; after all, the statute listed them by name, providing them with "'clear notice.'" Pet. App. 17a-18a. Nor had the *Fuld* defendants argued that litigating the cases would impose an unfair burden. *Id.* Exercising

jurisdiction in *Fuld*, the court of appeals observed, was "[f]ar from haling just any run-of-the-mill private defendant into American courts." Pet. App. 25a (quoting *Fuld*, 606 U.S. at 22).

As set forth in detail above (at pp. 9-13), the court of appeals then carefully applied these factors to the allegations in this case and determined that it would be unreasonable to exercise personal jurisdiction over Respondents here. This was entirely consistent with *Fuld*, because the court of appeals correctly found that Respondents here bore no similarity to the *Fuld* defendants: "The Helms Burton Act gave neither clear notice that they could be sued in U.S. courts; neither engaged in any conduct related to the trafficking claims that had a meaningful relationship to the United States; and neither had any significant presence in this country." Pet. App. 32a.

Petitioners appeal to policy by suggesting that the court of appeals' decision would "defeat a remedy Congress aimed at foreign defendants." Pet. 27. That conclusion does not follow from the court of appeals' decision or the allegations in this case. Petitioners abandoned their claims against Habanos, allegedly an instrumentality of the Cuban government and the only defendant accused of using the RRHSC Property—a tactical decision they may well regret given this Court's later decision in *Exxon* permitting Helms-Burton Act suits against such foreign entities. *See supra* p. 5. Moreover, it is easy to imagine foreign corporations with more extensive conduct, or a more longstanding presence, in the United States that might bear a closer similarity to the *Fuld* defendants. For example, the Eleventh Circuit in *Del Valle* v. *Trivago GMBH* held that Florida's long-arm statute and the Fourteenth Amendment permitted the exercise of personal jurisdiction in a Helms-Burton Act

case against foreign hotel-booking services that allegedly profited from confiscated property by soliciting Florida residents to vacation in Cuba. 56 F.4th 1265, 1272-1277 (11th Cir. 2022). Petitioners cannot credibly claim that this case—which now involves only two companies that engaged in *no* conduct in the United States related to Petitioners' claim—forecloses a remedy against all foreign defendants.

And Petitioners greatly overstate matters when they say that the court of appeals, in affirming the judgment of dismissal as to Imperial, treated U.K. law as a "veto" over the Helms-Burton Act. Pet. 25-26. The court of appeals observed that the U.K. statute was "not insignificant[]," before making clear that it was not resting its decision on that ground, Pet. App. 26a-27a, and going on to rule on the basis that there was no contention that Imperial had any contacts or relationships with the United States and that it lacked clear statutory notice that it could be haled into court to answer this claim, Pet. App. 31a-32a.

Indeed, Petitioners' position would subject every foreign corporation to personal jurisdiction in the United States so long as its subsidiaries' social-media advertising bore some tangential relationship to a plaintiff's claimed injury (or, in the case of Imperial, advertising performed by an agency retained by a separate company (Habanos) in which the defendant was a noncontrolling shareholder). Such an approach is inconsistent with *Fuld*'s warning to be "wary to reach further and bless more attenuated assertions of jurisdiction when the cases before us do not require doing so," 606 U.S. at 18. And it would fly in the face of the "'[g]reat care and reserve'" that "'should be exercised when extending … notions of personal jurisdiction into the international field.'" *Id.* at 19 (quoting *Asahi*, 480 U.S. at 115). The

court of appeals' careful approach avoided these consequences, was consistent with *Fuld*, and counsels denial of the petition.

IV. THE COURT SHOULD AWAIT A CASE THAT PRESENTS A REALISTIC PROSPECT OF RELIEF

Petitioners' failure to preserve the question presented, the absence of a circuit split, and the court of appeals' careful reasoning consistent with *Fuld* all support denial of the petition. But there is a further reason not to prolong this litigation: even were Petitioners to prevail in this Court, their claim has no prospect of success.

For one thing, Petitioners' litigation decisions, not the law, have helped to create the circumstances in which they are jurisdictionally barred from pressing their claims. As they acknowledge, over the course of the litigation, they have "abandoned" every theory of jurisdiction other than the Rule 4(k)(2) theory they advance here. Pet. 10. That includes, for example, jurisdictional theories based on specific jurisdiction under Florida's long-arm statute, with respect to Habanos; jurisdictional theories based on this Court's ruling in *Exxon*; or, in the case of WPP's U.S.-based subsidiaries, jurisdictional theories premised on defendants being subject to the general jurisdiction of state courts (and thus subject to personal jurisdiction under Fed. R. Civ. P. 4(k)(1)(A)). Petitioners have thus conceded away questions that, had they been preserved, might have suggested alternative resolutions to the jurisdictional question posed.

For another, although the magistrate judge and district court did not rely on it, jurisdictional discovery disproved even Petitioners' attenuated jurisdictional theory. It was not WPP's U.S.-based subsidiaries that provided marketing for Habanos, but rather its indirect

Spanish subsidiaries. C.A. Supp. App. Tab 93-1 ¶¶20-25; *Id.* Tab 93-2 ¶¶23-28; *Id.* Tab 173 at 2 & n.1. Petitioners' entire jurisdictional theory is thus based on an inaccurate premise about purported contacts with the United States. The reality is that a foreign company (Habanos) contracted with other foreign companies (indirect Spanish subsidiaries of WPP) to advertise entirely to foreign audiences. Had that information been considered—as it would be in the event of a remand—it would require answering the jurisdictional question anew.

Additionally, Petitioners' jurisdictional hurdles are only the beginning of their difficulties. As recognized by the magistrate judge—the only decisionmaker so far to consider the substance of Petitioners' claims—Petitioners' case is also plagued by substantive deficiencies.

Most notably, Petitioners' claim is time-barred. A claim under the Helms-Burton Act "may not be brought more than 2 years after the trafficking giving rise to the action has ceased to occur." 22 U.S.C. § 6084. Because it runs from the last culpable act and not from accrual, Section 6084 is a statute of repose, *California Public Employees' Retirement System* v. *ANZ Securities, Inc.*, 582 U.S. 497, 505 (2017) (citing *CTS Corporation* v. *Waldburger*, 573 U.S. 1, 8 (2014)), that "define[s] the scope of the cause of action," *CTS*, 573 U.S. at 16-17. Petitioners filed suit in August 2020, but all the "trafficking" alleged in their Second Amended Complaint long predated August 2018. As the magistrate judge concluded, *see* Pet. App. 72a, "it is apparent from the face of the complaint that the claim is time-barred," *Julmist* v. *Prime Insurance Company*, 92 F.4th 1008, 1020 (11th Cir. 2024). *See Jones* v. *United States*, No. 22-13381, 2024 WL 837054, at *3 (11th Cir. Feb. 28, 2024) (affirming judgment of dismissal because all the "alleged wrongful conduct occurred" before the repose period).

The magistrate judge also recommended dismissal because Petitioners failed to allege that either WPP or Imperial "knowingly and intentionally" engaged in specified commercial uses of "confiscated property" "without the authorization of any United States national who holds a claim to the property." 22 U.S.C. § 6023(13)(A). As the magistrate judge concluded, Petitioners failed to allege that Imperial or WPP (or any of WPP's subsidiaries) knew either (a) that the property at issue was confiscated or (b) that a United States national held a claim to that property. Pet. App. 76a-77a.

Respondents advanced even more bases for dismissal on the merits below, including that Petitioners had not plausibly alleged the essential element of "trafficking" based on Cuban entities' primary use of the RRHSC Property. C.A. Dkt. 33 at 37-42, 51-57; C.A. Dkt. 36 at 27-42. None was addressed by the district court or the court of appeals because they dismissed for lack of jurisdiction. Pet. App. 8a n.2, 33a n.7, 37a. But, even if this Court could overlook the procedural issues set forth at length above—and even if, upon review, it concluded that personal jurisdiction could be exercised over foreign defendants engaged in entirely foreign conduct aimed at entirely foreign consumers—this case would still, ultimately, fail decisively on the merits. Consideration of the question left open by *Fuld* is better reserved for a case in which a finding of personal jurisdiction could lead to consideration of meritorious claims—or at least claims more likely to succeed on the merits than Petitioners'.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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