No. 24-151

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER,

v.

PALESTINE LIBERATION ORGANIZATION, ET AL.

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

BRIEF OF RESPONDENTS-PLAINTIFFS IN SUPPORT OF CERTIORARI

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RESPONSE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI OF THE UNITED STATES

Respondents are plaintiffs in the *Fuld* and *Sokolow* cases (referred to as "Plaintiffs"), from which the United States petitions for a writ of certiorari to review judgments issued by the United States Court of Appeals for the Second Circuit. See U.S. Pet. II-IV (listing parties). Plaintiffs themselves have petitioned for certiorari to review those same judgments. Pet., *Fuld* v. *Palestine Liberation Organization*, No. 24-20 (filed July 3, 2024) (*Fuld* Pet.). Plaintiffs respectfully submit that both petitions should be granted, and the cases should be scheduled for argument in tandem, rather than consolidated.

1. As Plaintiffs explained in their petition, the Second Circuit declared a federal statute facially unconstitutional, a development that strongly warrants the Court's review. The Second Circuit's rulings undermine fundamental national security and foreign policy determinations that lie at the very core of Congress's and the President's constitutional authority and expertise—determinations that the political branches have repeatedly reaffirmed in a series of statutory amendments attempting to overcome the Second Circuit's misguided decisions. *Fuld* Pet. 12-14.

The Second Circuit's decisions are also wrong: The Fifth Amendment does not constrain Congress's authority to authorize jurisdiction over cases involving extraterritorial conduct at all, much less in the same manner that the Fourteenth Amendment constrains the authority of individual States. *Id.* at 15-21. And even if the Fifth and Fourteenth Amendments did restrict the United States' exercise of jurisdiction to the same extent, the Promoting Security and Justice for Victims of Terrorism Act of 2019 (PSJVTA) easily satisfies the Fourteenth Amendment's

requirement that defendants receive "fair warning" and that the exercise of jurisdiction is "reasonable, in the context of our federal system of government." *Ford Motor Co.* v. *Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358-359 (2021) (quotation marks omitted).

2. The United States' petition should be granted for similar reasons. As the United States explains, "[t]his Court's 'usual' approach 'when a lower court has invalidated a federal statute' is to 'grant[] certiorari.'" U.S. Pet. 22 (quoting *Iancu v. Brunetti*, 588 U.S. 388, 392 (2019)). That approach is especially appropriate here, because the "resolution of the PSJVTA's constitutionality" will impact numerous litigants—many of whom "have now been pursuing a resolution of their claims for 20 years"—and involves a statute that is "important to the United States' efforts to combat and deter terrorism." *Id.* at 23.

The United States likewise agrees with Plaintiffs that the PSJVTA comports with the Due Process Clause of both the Fifth and Fourteenth Amendments. *Id.* at 14-22. This Court's personal-jurisdiction jurisprudence has "'eschewed any mechanical or quantitative test' in this area in favor of 'a flexible approach' focused on fairness," *id.* at 14 (quoting *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 139 (2023)), and "it is difficult to view the assertion of personal jurisdiction over [the Palestine Liberation Organization (PLO) and Palestinian Authority (PA)] pursuant to the PSJVTA as unfair," *ibid.*

3. The Court should therefore grant both petitions and schedule the cases for argument in tandem. Although the Court sometimes consolidates cases arising from the same underlying judgments, it should not do so here.

First, while Plaintiffs' petition and the United States' petition both agree that the PSJVTA is constitutional, they present significantly different arguments in support of that position. Plaintiffs principally argue that the

personal jurisdiction limitations developed under the Fourteenth Amendment simply do not apply in cases in federal court governed by the Fifth Amendment, and that the Second Circuit's contrary precedent conflicts with the original public meaning of the Fifth Amendment's Due Process Clause. *Fuld* Pet. 15-21. The United States, by contrast, principally argues that the PSJVTA satisfies due process standards under the Fourteenth Amendment. U.S. Pet. 14-17.

Even insofar as Plaintiffs and the United States address the Fourteenth Amendment, moreover, they do so from different perspectives. The United States primarily argues that an exercise of jurisdiction under the PSJVTA accords with "traditional notions of fair play and substantial justice," because the PLO and PA "are sophisticated entities that have operated in the United States for decades and have previously litigated similar cases here." U.S. Pet. 13 (quoting *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945)). Plaintiffs principally argue that, under the Fourteenth Amendment, "a defendant validly consents under a jurisdiction-triggering statute if the defendant 'appreciated the jurisdictional consequences attending its actions and proceeded anyway.'" *Fuld* Pet. 27 (quoting *Mallory* v. *Norfolk Southern Railway Co.*, 600 U.S. 122, 144 (2023) (plurality)) (brackets omitted).

Both approaches present sufficiently weighty issues that merit independent consideration. The Court should accordingly leave the cases unconsolidated, and set them for argument in tandem, so that the Court has the benefit of full argument on each approach.

CONCLUSION

The petition for a writ of certiorari should be granted, and the case should be set for argument in tandem with *Fuld*.

Respectfully submitted.

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