No. 16-1071

In the Supreme Court of the United States

MARK SOKOLOW, ET AL., PETITIONERS

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 FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether the district court had personal jurisdiction to adjudicate petitioners' claims against respondents under the Anti-Terrorism Act of 1992, 18 U.S.C. 2333(a).

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

1. a. Petitioners are United States citizens, and the guardians, family members, and personal representatives of the estates of United States citizens, who were injured or killed in seven terrorist attacks in or near Jerusalem. Pet. App. 5a n.2. In 2004, petitioners filed suit against respondents Palestinian Authority (PA) and Palestine Liberation Organization (PLO) under the Anti-Terrorism Act of 1992 (ATA), which provides a right of action to United States nationals and their estates, survivors, or heirs for injuries caused by acts of

international terrorism. 18 U.S.C. 2333(a). Respondents moved to dismiss the claims for lack of personal jurisdiction. See Pet. App. 5a.

The district court denied respondents' motion, holding that it had general jurisdiction over respondents. Pet. App. 52a-74a. The court framed the jurisdictional inquiry as "whether a defendant has minimum contacts with the forum" sufficient to justify maintenance of the suit and "whether it would be reasonable, under the circumstances of the particular case, to exercise jurisdiction over the defendant." *Id.* at 60a. The court reasoned that respondents' "continuous and systematic" presence in the United States was sufficient to support general jurisdiction, and that respondents could therefore be sued in the United States on all claims, regardless of whether the claims concerned respondents' conduct within the United States. *Id.* at 61a. The court emphasized that respondents "purposely engaged in numerous activities" here, including commercial and public-relations activities, and that respondents maintained an office in Washington, D.C. *Id.* at 62a; see *id.* at 63a-65a. The court also concluded that exercising personal jurisdiction over respondents was reasonable in light of "traditional notions of fair play and substantial justice." *Id.* at 72a (citations and internal quotation marks omitted).

Respondents moved for reconsideration after this Court "significantly narrowed the general personal jurisdiction test in [*Daimler AG* v. *Bauman*, 134 S. Ct. 746 (2014)]." Pet. App. 14a. The district court denied the motion. *Id.* at 75a-81a. The court stated that respondents were effectively "at home in the United States" because their activities here were "continuous and systematic." *Id.* at 77a. And the court stated that it did not have "any basis to believe" that respondents

were engaged in more continuous or systematic activities in any other country. *Id.* at 77a. Respondents raised their jurisdictional arguments again in seeking summary judgment. *Ibid.* The court denied that motion, rejecting respondents' argument that their contacts with the United States were insufficient to support general jurisdiction under *Daimler*. *Id.* at 82a-87a.

b. The district court permitted claims concerning six terrorist attacks to proceed to a jury trial. Pet. App. 9a n.4. Petitioners presented evidence linking respondents to each of the attacks, *id.* at 9a-11a, 35a-36a, but "did not allege or submit evidence that [petitioners or their decedents] were targeted in any of the six attacks at issue because of their United States citizenship or that [respondents] engaged in conduct in the United States related to the attacks," *id.* at 15a.

The jury found respondents civilly liable for the six attacks under several theories. It concluded that, for all of the attacks, respondents had provided material support or resources. Pet. App. 35a. It also concluded that, for five of the attacks, respondents were responsible based on respondeat-superior principles because a PA police officer or other PA employee had either carried out the attack or provided material support or resources for the attack. *Ibid.* The jury further concluded that, in connection with three of the attacks, respondents knowingly provided material support to organizations designated by the State Department as foreign terrorist organizations, and members of those organizations carried out the attacks. *Id.* at 36a. Finally, the jury concluded for one of the attacks that respondents had harbored or concealed a person that they knew or had reasonable grounds to believe was involved with the attacks. *Ibid.* The jury awarded petitioners damages

of $218.5 million, which were increased to $655.5 million under the ATA's treble-damages provision. *Id.* at 6a; see 18 U.S.C. 2333(a).

2. The court of appeals vacated and remanded the case to the district court with instructions to dismiss petitioners' suit for lack of personal jurisdiction. Pet. App. 1a-51a.

As an initial matter, the court of appeals rejected petitioners' argument that respondents have no due process rights because respondents "are foreign governments and share many of the attributes typically associated with a sovereign government." Pet. App. 19a; see *id.* at 19a-20a. The court acknowledged that it had held that "[f]oreign sovereign states do not have due process rights," and instead enjoy the protections against suit afforded by the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1602 *et seq.* Pet. App. 19a (citing *Frontera Res. Azerbaijan Corp.* v. *State Oil Co. of the Azerbaijan Republic*, 582 F.3d 393, 398-401 (2d Cir. 2009)). But the court explained that "neither the PLO nor the PA is recognized by the United States as a sovereign state, and the executive's determination of such matter is conclusive." *Id.* at 20a (citing *Zivotofsky* v. *Kerry*, 135 S. Ct. 2076, 2088 (2015)). The court noted that petitioners had pointed to no decision "indicating that a non-sovereign entity with governmental attributes lacks due process rights." *Id.* at 19a-20a.

The court of appeals next turned to whether the exercise of personal jurisdiction over respondents was consistent with the Due Process Clause of the Fifth Amendment. In analyzing that question, the court rejected petitioners' argument that the principles of general and specific jurisdiction developed in the context of the Fourteenth Amendment's Due Process Clause were

inapplicable because the Fourteenth Amendment "is grounded in concepts of federalism [and] was intended to referee jurisdictional conflicts among the sovereign States." Pet. App. 21a. The court explained that its "precedents clearly establish the congruence of due process analysis under both the Fourteenth and Fifth Amendments." *Id.* at 22a. The "principal difference," the court further explained, "is that under the Fifth Amendment the court can consider the defendant's contacts throughout the United States, while under the Fourteenth Amendment only the contacts with the forum state may be considered." *Ibid.* (citation omitted). The court observed that it "ha[d] already applied Fourteenth Amendment principles to Fifth Amendment civil terrorism cases," among others. *Id.* at 22a-23a (citing *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 673-674 (2d Cir. 2013), cert. denied, 134 S. Ct. 2870 (2014); *In re Terrorist Attacks on Sept. 11, 2001*, 538 F.3d 71, 93 (2d Cir. 2008), cert. denied, 557 U.S. 935 (2009); *Texas Trading & Milling Corp.* v. *Federal Republic of Nigeria*, 647 F.2d 300, 315 n.37 (2d Cir. 1981), cert. denied, 454 U.S. 1148 (1982)).

Applying these principles, the court of appeals held that the district court lacked general jurisdiction over respondents. Pet. App. 25a-32a. It explained that "[a] court may assert general personal jurisdiction over a foreign defendant to hear any and all claims against that defendant only when the defendant's affiliations with the State in which suit is brought 'are so constant and pervasive as to render [it] essentially at home in the forum State.'" *Id.* at 24a (internal quotation marks omitted; brackets in original) (quoting *Daimler*, 134 S. Ct. at 751). The court concluded that "overwhelming evidence" showed that respondents were at home in the

West Bank and in Gaza. *Id.* at 27a. In contrast, respondents' activities in the United States were more limited and resembled "those rejected as insufficient by the Supreme Court in *Daimler*." *Id.* at 28a.

The court of appeals also found respondents' contacts with the United States insufficient for purposes of specific jurisdiction—a question that petitioners had invited the court to address even though the district court had not decided that issue. Pet. App. 32a-50a; see Pet. C.A. Br. 32-33; see also Pet. App. 32a (finding specific jurisdiction "sufficiently briefed and argued to allow [the court] to reach that issue"). The court concluded that respondents' actions relating to the six terrorist attacks at issue did not create "a substantial connection" to the United States. Pet. App. 32a (quoting *Walden* v. *Fiore,* 134 S. Ct. 1115, 1121 (2014)). "While the plaintiff-victims were United States citizens," *id.* at 33a, the court explained that the residence or citizenship of victims alone "is an insufficient basis for specific jurisdiction over the defendants," *id.* at 36a; see *id.* at 39a (discussing *Walden*, 134 S. Ct. at 1119). The court also determined that there was "no basis to conclude that [respondents] participated in these acts in the United States or that their liability for these acts resulted from their actions that did occur in the United States." *Id.* at 36a. And it rejected petitioners' contention that respondents had aimed their conduct at the United States by targeting U.S. citizens, because it determined that petitioners' own evidence established that the attacks were indiscriminate—not targeted at Americans. *Id.* at 37a-39a; see *id.* at 45a. The court contrasted petitioners' suit with previous ATA cases, which it noted had involved more extensive forum-related conduct. *Id.* at 40a-49a.

DISCUSSION

Private actions under the Anti-Terrorism Act are an important means of fighting terrorism and providing redress for the victims of terrorist attacks and their families. The court of appeals held here, however, that this particular action is barred by constitutional constraints on the exercise of personal jurisdiction because the district court had neither general nor specific jurisdiction over respondents in this suit arising from overseas terrorist attacks. Petitioners challenge that conclusion on three grounds: they argue that respondents lack any rights at all under the Due Process Clause of the Fifth Amendment (Pet. 22-27); in the alternative the court of appeals erred in applying principles of personal jurisdiction developed under the Due Process Clause of the Fourteenth Amendment to assess jurisdiction under the Due Process Clause of the Fifth Amendment (Pet. 27-30); and in any event the court of appeals erred in its application of specific-jurisdiction principles to the facts of this case (Pet. 30-34). The court of appeals' rejection of those arguments does not conflict with any decision of this Court, implicate any conflict among the courts of appeals, or otherwise warrant this Court's intervention at this time.

1. The court of appeals' conclusion that respondents are entitled to due process protections does not warrant this Court's review.

a. The court of appeals' determination does not conflict with any decision of this Court. The Fifth and Fourteenth Amendments prohibit the federal government and the States, respectively, from depriving any "person" of "life, liberty, or property, without due process of law." U.S. Const. Amends. V, XIV. Due process

requires that "in order to subject a defendant to a judgment *in personam*," the defendant must generally have sufficient "contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co.* v. *State of Washington*, 326 U.S. 310, 316 (1945) (citation omitted); see *Insurance Corp. of Ireland, Ltd.* v. *Compagnie des Bauxites de Guinee,* 456 U.S. 694, 702 (1982) (explaining that the requirements of personal jurisdiction flow "from the Due Process Clause").

Because the Due Process Clauses of the Fifth and Fourteenth Amendments "speak[] only of 'persons,'" *Livnat* v. *Palestinian Auth.,* 851 F.3d 45, 48 (D.C. Cir. 2017) (citation omitted), petition for cert. pending, No. 17-508 (filed Sept. 28, 2017), whether an entity receives due process protections depends on whether the entity qualifies as a "person." This Court has recognized one class of entities that are not "persons" for purposes of due process: the States of the Union. *South Carolina* v. *Katzenbach,* 383 U.S. 301, 323-324 (1966), abrogated on other grounds by *Shelby Cnty.* v. *Holder,* 133 S. Ct. 2612 (2013). In reaching that result, the Court stated only that "[t]he word 'person' in the context of the Due Process Clause of the Fifth Amendment cannot, by any reasonable mode of interpretation, be expanded to encompass the States of the Union." *Ibid.*

This Court has not recognized any other class of entities—whether natural or artificial—as outside the category of "persons" for purposes of due process. It has treated as "persons" domestic and foreign entities of various types, such as corporations. See, *e.g.*, *International Shoe*, 326 U.S. at 316-317 (domestic corporation); *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 750-752

(2014) (German public stock company); *Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, 564 U.S. 915, 918-920 (2011) (foreign subsidiaries of a U.S. tire manufacturer). Because this Court's existing jurisprudence has set only States of the Union outside of the category of "persons," this Court's decisions do not establish that foreign entities like respondents are barred from invoking due process protections.

b. The Second Circuit's treatment of respondents as entities that receive due process protections also does not conflict with any decision of another court of appeals. In fact, the decision below accords with the D.C. Circuit's decision in *Livnat*, *supra*, which also held that the PA is entitled to due process protections. 851 F.3d at 48, 50. *Livnat* appears to be the only other appellate decision addressing the legal status of non-sovereign foreign entities that exercise governmental power.[1] In *Livnat*, the D.C. Circuit understood this Court's decision in *Katzenbach* to reflect the principle that the term "person" excludes "sovereigns"—an understanding that the court saw as consistent with common usage. *Id.* at 50 ("[I]n common usage, the term 'person' does not include the sovereign.") (citation omitted). After noting the distinctive attributes of sovereign entities, the D.C. Circuit concluded that foreign non-sovereign governmental entities like respondents do not fall outside due process protections. *Id.* at 50-52. In addition, the D.C. Circuit rejected the argument that the PA is outside our domestic structure of government, explaining that this

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[1] The decisions of the D.C. Circuit and the court of appeals below accord with a substantial number of district court decisions concluding that one or both of respondents have due process rights in the personal jurisdiction context. See *Livnat* v. *Palestinian Auth.*, 82 F. Supp. 3d 19, 26 (D.D.C. 2015) (compiling cases).

Court had consistently "rejected the notion that 'alien' entities"—such as foreign corporations—"are disqualified from due-process protection." *Id.* at 50.

Petitioners err in contending (Pet. 24-25) that the decision below conflicts with federal appellate decisions addressing the status of foreign sovereigns. As petitioners note (Pet. 24), the Second and D.C. Circuits have held that foreign sovereigns lack due process rights—a question on which this Court reserved decision in *Republic of Argentina* v. *Weltover, Inc.*, 504 U.S. 607, 619 (1992) (assessing personal jurisdiction over Argentina under specific-jurisdiction principles, while "[a]ssuming, without deciding, that a foreign state is a 'person' for purposes of the Due Process Clause"). See *Frontera Res. Azerbaijan Corp.* v. *State Oil Co. of the Azerbaijan Republic,* 582 F.3d 393, 399-400 (2d Cir. 2009); *Price* v. *Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 95-100 (D.C. Cir. 2002). But as noted above, the Second and D.C. Circuits have recognized that the reasoning of those decisions is limited to sovereigns, and they have held that non-sovereign foreign entities like respondents do receive due process protections. Pet. App. 19a-20a; see *Livnat,* 851 F.3d at 48, 50.

Contrary to petitioners' suggestion (Pet. 24), there is also no conflict between the decision below and *City of East St. Louis* v. *Circuit Court for Twentieth Judicial Circuit*, 986 F.2d 1142, 1144 (7th Cir. 1993), which indicated that municipalities lack due process rights. As *Livnat* observed, *City of East St. Louis* rested on the "principle that municipalities are creatures of a State and therefore lack any constitutional rights against the State." 851 F.3d at 53 (citing *City of East St. Louis*, 986 F.2d at 1144, and discussing cases cited therein, including *City of Newark* v. *New Jersey*, 262 U.S. 192, 196

(1923)). That rationale does not extend to foreign entities like respondents. The court of appeals' treatment of respondents as subject to due process protections therefore does not implicate any conflict.[2]

Petitioners contend (Pet. 21) that this Court should decide whether respondents are entitled to due process protections in the absence of a conflict because the decision below may "interfere with the Executive's foreign-affairs prerogatives." In the view of the United States, petitioners' approach poses a greater threat of such interference. The power to recognize foreign governments is exclusively vested in the President. *Zivotofsky* v. *Kerry*, 135 S. Ct. 2076, 2086 (2015); see *ibid.* ("Recognition is a topic on which the Nation must speak . . . with one voice.") (citations and internal quotation marks omitted). The President's recognition of a foreign state "is a 'formal acknowledgement' that a particular 'entity possesses the qualifications for statehood'

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[2] Petitioners overread the United States' 1988 brief in a case in which the Palestine Information Office (PIO) challenged an order issued by the State Department under the Foreign Missions Act, 22 U.S.C. 4301 *et seq.*, and Article II directing the PIO—an agent of the PLO—to cease operations. See Pet. Reply Br. 7. The government's brief argued that the court of appeals should reject the PLO's claims of a First Amendment violation because sovereign entities lack constitutional rights and the PLO was asserting that it was a sovereign entity. See Pet. Reply App. 41a ("Foreign political entities such as the PLO, which purport to be sovereign entities, have no constitutional rights."); *id.* at 45a ("Because the PLO purports to be an independent foreign entity, it has no constitutional rights."); see also *id.* at 57a (similarly rejecting procedural due process claim). The government's argument rested on the incompatibility of the PLO's assertion of sovereign status with its claim of First Amendment rights, not on an independent determination that the PLO's governmental attributes rendered it the equivalent of a sovereign.

or 'that a particular regime is the effective government of a state,'" *Id.* at 2084 (quoting 1 Restatement (Third) of Foreign Relations Law of the United States § 203 cmt. a (1987))—not merely a determination that the United States will "accord [a government] certain benefits," Pet. 26. An approach under which courts would assess the extent to which foreign entities operate as "the effective government of a state" or "possess[] the qualifications for statehood," *Zivotofsky*, 135 S. Ct. at 2084 (citation omitted), risks judicial determinations at odds with Presidential determinations underlying recognition.

c. The Court has not seen any need to revisit the scope of the term "person" under the Due Process Clauses since *Katzenbach*, and in any event this case would not be an appropriate vehicle for doing so for two reasons. First, petitioners' argument relies (Pet. 23-24) on analogizing respondents to foreign sovereigns and municipalities, but this Court has not yet passed upon the status of those entities for due process purposes. Second, because respondents are *sui generis* entities with a unique relationship to the United States government, a ruling on whether respondents have due process protections is unlikely to have broad utility in resolving future cases concerning other entities. See Pet. 8-9 (stating that respondents are not recognized as sovereign by the United States but "interact with the United States as a foreign government," "employ 'foreign agents'" that are registered "as agents of the 'Government of a foreign country'" under the Foreign Agents Registration Act of 1938, 22 U.S.C. 611, and "have received over a billion dollars" from the United States in "government-to-government assistance") (citation omitted).

2. Certiorari is also not warranted to consider petitioners' novel argument that federal courts may exercise personal jurisdiction under the Fifth Amendment whenever "a defendant's conduct interfered with U.S. sovereign interests as set out in a federal statute, and the defendant was validly served with process in the United States pursuant to a nationwide-service-of-process provision." Pet. Reply Br. 11 (emphasis omitted).

a. The court of appeals' rejection of petitioners' Fifth Amendment theory does not conflict with any decision of this Court. This Court has explained that due process requires "certain minimum contacts" with the forum "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe*, 326 U.S. at 316 (quoting *Milliken* v. *Meyer*, 311 U.S. 457, 463 (1940)). In cases arising under the Fourteenth Amendment, principles of general jurisdiction permit defendants to be sued for any conduct in a forum where their contacts are "so 'continuous and systematic' as to render them essentially at home." *Goodyear*, 564 U.S. at 919. Principles of specific jurisdiction permit defendants to be sued in a forum where they are not essentially at home if there is "an affiliation between the forum and the underlying controversy, principally [an] activity or an occurrence that takes place in the forum State." *Bristol-Myers Squibb Co.* v. *Superior Court*, 137 S. Ct. 1773, 1781 (2017) (brackets in original) (quoting *Goodyear*, 564 U.S. at 919). In the context of an intentional tort, a court may exercise specific jurisdiction over a defendant who has "expressly aimed" tortious actions at the forum—including by committing a tortious act with "kn[owledge] that the brunt of th[e] injury would be felt" there. *Calder* v.

Jones, 465 U.S. 783, 789-790 (1984); see *Walden* v. *Fiore*, 134 S. Ct. 1115, 1123 (2014). But a court may not exercise specific jurisdiction merely because a defendant could foresee that his conduct would have some effect in the forum. *Calder*, 465 U.S. at 789-790.

The Second Circuit's reliance on these principles developed in the context of the Fourteenth Amendment to assess the sufficiency of respondents' contacts under the Fifth Amendment does not conflict with any decision of this Court. This Court has repeatedly reserved the question whether the limitations on personal jurisdiction under the Fifth Amendment differ from the limitations under the Fourteenth Amendment. See *Bristol-Myers*, 137 S. Ct. at 1783-1784; *Omni Capital Int'l, Ltd.* v. *Rudolf Wolff & Co.*, 484 U.S. 97, 102 n.5 (1987); see also *J. McIntyre Mach., Ltd.* v. *Nicastro*, 564 U.S. 873, 885 (2011) (plurality opinion); *Asahi Metal Indus. Co.* v. *Superior Court*, 480 U.S. 102, 113 n.* (1987) (opinion of O'Connor, J.). Recent personal jurisdiction cases arising in federal district courts have not presented that question because "[f]ederal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons." *Daimler*, 134 S. Ct. at 753; see Fed. R. Civ. P. 4(k)(1)(A) (authorizing service of process on a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located").

b. The Second Circuit's approach to jurisdiction under the Fifth Amendment also does not conflict with any decision of another court of appeals. Statutes such as the ATA present questions concerning Fifth Amendment jurisdictional limitations because they contain nationwide service-of-process and venue provisions that

permit a federal court to exercise jurisdiction over defendants who would not be subject to suit in the courts of the State in which the federal court is located. See Fed. R. Civ. P. 4(k)(1)(A) and (C) (authorizing service of process on a defendant who is not "subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located" if service is "authorized by a federal statute"); 18 U.S.C. 2334(a) (providing that an ATA defendant "may be served in any district where the defendant resides, is found, or has an agent").

In analyzing such statutes, courts of appeals generally have adapted Fourteenth Amendment jurisdictional principles to the Fifth Amendment context in the manner that the court below did: by considering a defendant's contacts with the Nation as a whole, rather than only contacts with a particular State, in deciding whether the defendant had the contacts needed for personal jurisdiction. See, *e.g.*, *In re Application to Enforce Admin. Subpoenas Duces Tecum of SEC*, 87 F.3d 413, 417 (10th Cir. 1996) ("When the personal jurisdiction of a federal court is invoked based upon a federal statute providing for nationwide or worldwide service, the relevant inquiry is whether the respondent has had sufficient minimum contacts with the United States."); *Livnat,* 851 F.3d at 55.[3] The decision below is consistent

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[3] See also Pet. App. 22a; *In re Federal Fountain, Inc.,* 165 F.3d 600, 602 (8th Cir. 1999) (en banc); *United States SEC* v. *Carrillo*, 115 F.3d 1540, 1543 (11th Cir. 1997); *United Liberty Life Ins. Co.* v. *Ryan*, 985 F.2d 1320, 1330 (6th Cir. 1993); *United Elec., Radio & Mach. Workers of Am.* v. *163 Pleasant St. Corp.*, 960 F.2d 1080, 1085-1086 (1st Cir. 1992); *Go-Video, Inc.* v. *Akai Elec. Co.*, 885 F.2d 1406, 1414-1416 (9th Cir. 1989); *Lisak* v. *Mercantile Bancorp, Inc.*, 834 F.2d 668, 671-672 (7th Cir. 1987), cert. denied, 485 U.S. 1007 (1998); 4 Charles Alan Wright et al., *Federal Practice and Procedure* § 1068.1 (4th ed. 2015).

with those decisions, because the Second Circuit concluded that the district court lacked jurisdiction on the ground that respondents' contacts with the United States as a whole were inadequate to ground either general or specific jurisdiction. Pet. App. 23a-50a.

Petitioners point to no decision adopting their far broader "sovereign interests" theory, under which the Fifth Amendment's due process limitations are satisfied so long as the "defendant's conduct interfered with U.S. sovereign interests as set out in a federal statute, and the defendant was validly served with process in the United States pursuant to a nationwide-service-of-process provision." Pet. Reply Br. 11 (emphasis omitted). Indeed, the D.C. Circuit concluded that "[n]o court has ever" adopted such an argument. *Livnat*, 851 F.3d at 54.[4]

Several courts also have suggested that if a defendant has sufficient contacts, a court must determine that "the plaintiff's choice of forum [is] fair and reasonable." *Peay* v. *BellSouth Med. Assistance Plan*, 205 F.3d 1206, 1212 (10th Cir. 2000); see *Republic of Panama* v. *BCCI Holdings (Lux.) S.A.*, 119 F.3d 935, 947 (11th Cir. 1997); see also *Livnat*, 851 F.3d at 55 n.6 (noting that issue but declining to express a view).

[4] The cases noted by an amicus curiae (House Amicus Br. 18 n.5) are not to the contrary. In three of the decisions, a federal statute provided for nationwide service of process, and the court held that due process did not require the existence of minimum contacts with any single State under ordinary *International Shoe* analysis. *Klein* v. *Cornelius*, 786 F.3d 1310, 1318-1319 (10th Cir. 2015) (rejecting Texas defendant's challenge to jurisdiction of federal court in Utah in receivership proceedings); *Trustees of the Plumbers & Pipefitters Nat'l Pension Fund* v. *Plumbing Servs., Inc.*, 791 F.3d 436, 443-444 (4th Cir. 2015) (rejecting Alabama corporations' challenge to jurisdiction over an ERISA claim in federal court in Virginia, where the ERISA plan was administered); *Haile* v. *Henderson Nat'l Bank*,

c. Review of petitioners' broad Fifth Amendment arguments would be premature. Few courts have had the opportunity to consider such arguments. And the contours and implications of petitioners' jurisdictional theory—which turns on whether a defendant's conduct "interfered with U.S. sovereign interests as set out in a federal statute," Pet. Reply Br. 11—are not themselves well developed. Under these circumstances, further development in the lower courts is likely to be useful before this Court addresses arguments that the federal courts may, in particular circumstances, exercise personal jurisdiction over civil cases without regard to the principles of specific and general jurisdiction developed under the Fourteenth Amendment.

d. Review of petitioners' theory is not currently warranted on the ground that application of Fourteenth Amendment-derived jurisdictional principles "leaves the [ATA] a practical nullity" and "would bar most suits under the Act based on overseas attacks." Pet. 17. It is far from clear that the court of appeals' approach will foreclose many claims that would otherwise go forward in federal courts. As the court of appeals explained, its approach permits U.S. courts to exercise jurisdiction over defendants accused of targeting U.S. citizens in an

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657 F.2d 816, 820, 823-824 (6th Cir. 1981) (rejecting Alabama defendants' challenge to jurisdiction of federal court in Tennessee in receivership proceeding), cert. denied, 455 U.S. 949 (1982). The remaining decision similarly stated that aggregation of nationwide contacts under the Fifth Amendment might be permissible when a statute authorizes nationwide service of process, but it found no personal jurisdiction over a foreign defendant because there was no applicable statute of that kind. *Max Daetwyler Corp.* v. *R. Meyer*, 762 F.2d 290, 294 (3d Cir.), cert. denied, 474 U.S. 980 (1985). None of the decisions adopted a standard similar to petitioners' "sovereign interests" theory.

act of international terrorism. Pet. App. 45a; see *Morris* v. *Khadr*, 415 F. Supp. 2d 1323, 1335-1336 (D. Utah 2006). It permits U.S. courts to exercise jurisdiction if the United States was the focal point of the harm caused by the defendant's participation in or support for overseas terrorism. See Pet. App. 40a (discussing *Mwani* v. *Bin Laden*, 417 F.3d 1 (D.C. Cir. 2005) (attack on U.S. embassy)); *id.* at 41a-43a (discussing *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659 (2d Cir. 2013) (overseas provision of material support expressly aimed at the United States when terrorist organization was known to be targeting the United States), cert. denied, 134 S. Ct. 2870 (2014)). And the court of appeals stated that it would permit U.S. courts to exercise jurisdiction over defendants alleged to have purposefully availed themselves of the privilege of conducting activity in the United States, by, for example, making use of U.S. financial institutions to support international terrorism. See *id.* at 46a-47a (discussing *Licci* v. *Lebanese Canadian Bank, SAL*, 732 F.3d 161 (2d Cir. 2013)). In addition, nothing in the court's opinion calls into question the United States' ability to prosecute defendants under the broader due process principles the courts have recognized in cases involving the application of U.S. criminal laws to conduct affecting U.S. citizens or interests. See *id.* at 44a; accord *Livnat*, 851 F.3d at 56. Under these circumstances, in the absence of any conflict or even a developed body of law addressing petitioners' relatively novel theory, this Court's intervention is not warranted.

3. Finally, certiorari is not warranted to address the court of appeals' factbound application of established specific-jurisdiction principles. See Pet. 30-34. As a

threshold matter, the court of appeals correctly identified those principles. The court analyzed whether "the defendant's suit-related conduct * * * create[d] a substantial connection with the forum State." Pet. App. 32a (quoting *Walden*, 134 S. Ct. at 1121); see *id.* at 33a (framing the inquiry as "whether the defendants' suit-related conduct—their role in the six terror attacks at issue—creates a substantial connection with the forum State pursuant to the ATA"). Petitioners misread the decision below as holding that petitioners could establish specific jurisdiction only if respondents "'specifically targeted' U.S. citizens or territory." Pet. Reply Br. 11 (quoting Pet. App. 45a). The court of appeals stated that respondents had not "specifically targeted United States citizens," Pet. App. 45a, in distinguishing two cases invoked by petitioners, in which the defendants were accused of providing material support or financing to terrorist organizations whose "specific aim" was to "target[] the United States," or to "kill Americans and destroy U.S. property," *id.* at 42a, 45a (citations omitted); see *id.* at 42a-45a (discussing *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659 (2d Cir. 2013); *United States* v. *al Kassar*, 660 F.3d 108 (2d Cir. 2011), cert. denied, 566 U.S. 986 (2012)). But the court of appeals recognized that specific jurisdiction may exist when "the brunt" or "the focal point" of the harm from an intentional tort is felt in the forum State. *Id.* at 43a (quoting *Calder,* 465 U.S. at 789). The court found petitioners' claims did not meet that standard because Israel, not the United States, was "the focal point of the torts alleged in this litigation." *Ibid.*

Petitioners' remaining disagreements with the decision below amount to disagreements about what petitioners' evidence established. Petitioners argue (Pet.

31-32) that the court erred in applying principles of specific jurisdiction because, in petitioners' view, respondents expressly aimed their conduct at the United States. But the court of appeals found that the record did not establish that proposition. Rather, the court concluded, petitioners' "own evidence establishe[d] the random and fortuitous nature of the terror attacks." Pet. App. 38a. And it observed that it is "insufficient to rely on a defendant's 'random, fortuitous, or attenuated contacts'" "with the forum to establish specific jurisdiction." *Id.* at 37a (quoting *Walden*, 134 S. Ct. at 1123).

Petitioners similarly argue that "[t]he jury's verdict establishes that respondents intended" to influence United States policy, because the ATA reaches only "violent acts that 'appear intended' either 'to influence the policy of a government by intimidation or coercion,' 'to affect the conduct of a government by mass destruction, assassination, or kidnapping,' or 'to intimidate or coerce a civilian population.'" Pet. 31-32 (citation omitted). But the ATA covers attacks intended to influence foreign governments, such as Israel, as well as attacks that are intended (or appear intended) to influence the United States. As a result, the jury's verdict does not demonstrate that the court of appeals erred in applying principles of specific jurisdiction to the record in this case. In any event, a fact-intensive dispute regarding the record in this case does not warrant this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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