

No. 16-1071

In the Supreme Court of the United States

MARK SOKOLOW, *et al.*,

Petitioners,

v.

PALESTINE LIBERATION ORGANIZATION, *et al.*,

Respondents.

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

**BRIEF OF AMICI CURIAE
THE RESTORING RELIGIOUS FREEDOM PROJECT AT
EMORY UNIVERSITY AND JBAC, INC.
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI*¹

This *amici curiae* brief is submitted on behalf of the Restoring Religious Freedom Project at Emory University School of Law and JBAC, Inc. The interest of *Amici Curiae* is in the proper application of the law of personal jurisdiction and the scope of power of Congress in protecting U.S. citizens abroad.

David Schoen has 30 years of extensive complex litigation experience. As a U.S. citizen and practitioner, Mr. Schoen is concerned about the effects of the Second Circuit's decision on litigation under the Anti-Terrorism Act.

Mark Goldfeder is Senior Lecturer at Emory University School of Law, and Director of the Restoring Religious Freedom Project at Emory University. The project involves practitioners and law students including Mr. Andrea Natale, who has focused his legal studies on Constitutional authority and jurisdiction. As a U.S. citizen who travels in the Middle East region, Dr. Goldfeder is concerned about the extraterritorial applicability of the Anti-Terrorism Act in protection of his interests at home and abroad.

¹ The parties were given timely notice and have consented to the filing of this brief. Their written consents are both included with this filing. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or their counsel made a monetary contribution to the preparation or submission of this brief. Mr. Schoen represented Petitioners in the U.S. District Court for the Southern District of New York. Mr. Schoen's representation terminated on 11/13/2013.

Jewish Board of Advocates for Children, Inc. (JBAC, Inc.), whose co-founder and president is attorney Elliot Pasik, is located in Long Beach, NY. JBAC is a nonprofit organization that advocates in legal forums on behalf of all children. JBAC's interest in this case is to protect innocent children, who are often the victims of terror and war.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced at Pet. App. 143a. Additionally, 28 U.S.C. § 2403(a) may apply.

SUMMARY OF ARGUMENT

This case is analogous to *Jesner v. Arab Bank, PLC*, No. 16-499 (Petition for Certiorari granted on April 3, 2017) as it also deals with the scope of federal courts' jurisdiction over foreign entities for conduct occurring abroad. Here, certiorari review is necessary because the decision of the Circuit Court deprives U.S. citizens of a relief granted by the Jury, Congress, and the President.

The Second Circuit has effectively invalidated the Anti-Terrorism Act of 1992 ("ATA") by applying—erroneously—the Fourteenth Amendment's "at home" test in this Fifth Amendment case. The Act grants relief to U.S. citizens for (and federal jurisdiction to federal courts over,) claims from "act of international terrorism." 18 U.S.C. § 2333(a). In concluding that the district court lacked general jurisdiction, the Second Circuit's holding collides with the ATA's authorization of service of process "where the defendant resides, is found, or has an agent." 18 U.S.C. § 2334(a).

This Court has never decided whether “Congress could, consistent with the Due Process of the Fifth Amendment, authorize federal court personal jurisdiction over alien defendants based on the aggregate of national contacts, rather than on the contacts between the defendant and the State in which the federal court sits.” *Asahi Metal Indus. Co. v. Sup. Ct. of Cal.*, 480 U.S. 102, 113 n.* (1987). *But see Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1669 (2013) (“Corporations are often present in many countries, and it would reach too far to say that mere corporate presence suffices. If Congress were to determine otherwise, a statute more specific than the ATS would be required.”). For ATA claims, Congress did, specifically, establish that federal courts can lawfully exercise judicial authority based on physical presence in the United States. Because the Second Circuit’s decision contradicts the Congressional mandate on Constitutional grounds, this Court should grant review to settle the conflict between the two Branches.

The error of the Circuit Court is premised on the assumption that because the personal jurisdiction doctrine has been applied and enforced in many decisions with respect to the power of the states, the same principles are applicable to and controlling as to the United States in the exercise of its powers. *C.f.*, *United States v. Bennett*, 232 U.S. 299, 305, 34 S. Ct. 433, 436–37, 58 L. Ed. 612 (1914). Even assuming *arguendo* that the Due Process Clauses are identical in scope, the Second Circuit failed to recognize that the Federal Government, unlike the States, has the exclusive power to conduct “foreign or external affairs.” *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S.

304, 315, 57 S. Ct. 216, 219, 81 L. Ed. 255 (1936); *United States v. California*, 332 U.S. 19, 35 (1947) (The United States “must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from was waged on or too near its coasts.”). The effect of the Due Process limit is therefore different where the powers of the Federal Government and the States are not co-extensive. For example, an alienage classification that is inherently suspect and therefore subject to strict scrutiny review at the state level, *Graham v. Richardson*, 403 U.S. 365, 372, 91 S. Ct. 1848, 1852, 29 L. Ed. 2d 534 (1971), receives rational basis review at the federal level because Congress has the power to regulate immigration. *Mathews v. Diaz*, 426 U.S. 67, 79, 96 S. Ct. 1883, 1891, 48 L. Ed. 2d 478 (1976). The difference is not the scope of the limitation. Rather, it is the scope of the power upon which the limitation is applied. Accordingly, the impact of the Due Process limitation would have a more circumscribed effect on the powers of the Federal Government in the foreign affairs arena. *See United States v. Texas*, 339 U.S. 707, 718, 70 S. Ct. 918, 923, 94 L. Ed. 1221 (1950) (“In external affairs the United States became the sole and exclusive spokesman for the Nation.”).

Congress’s intent here is clear: The Fourteenth Amendment’s personal jurisdiction requirements shall not limit the jurisdiction of federal courts in adjudicating ATA claims. Rule 4(k)(1)(A), which is the statutory exception to the general rule that the Fourteenth Amendment does not restrain the Federal Government, does not apply in this case.

Under Rule 4(k)(1)(C), service of process establishes personal jurisdiction over a defendant when authorized by a federal statute. Here, the ATA authorizes service of process in any district where the defendant resides, is found, or has an agent. 18 U.S.C. § 2334(a). In reaching the same result as it would have had under Rule 4(k)(1)(A), the Second Circuit disregarded the Congressional mandate of Section 2334(a).

Even assuming, *arguendo*, that the Fourteenth Amendment's jurisprudence would control the personal jurisdiction analysis under the Fifth Amendment, *Goodyear-Daimler's* "at home" standard is not binding in this case for two reasons. First, this case deals with the federal, rather than state, power. Second, the ATA—unlike *Daimler's* Alien Tort Statute—contains a clear indication of extraterritoriality in defining international terrorism as activities that occur primarily outside the territorial jurisdiction of the United States.

The "at home" test should not be applied in cases that arise under the ATA, as it would wrongfully deprive U.S. citizens of the opportunity to vindicate their federal claims in federal fora. And this Court has already recognized the right of U.S. citizens to invoke the jurisdiction of federal courts in analogous circumstances. *Barrow S.S. Company v. Kane*, 170 U.S. 100, 112 (1898) ("The fact that the legislature of the state of the New York has not seen fit to authorize like suits to be brought in its own courts by citizens and residents of the other states cannot deprive such citizens of their right to invoke the jurisdiction of the national courts under the constitution and laws of the United States.").

Amici Curiae urge this Court to correct the error of the Second Circuit by adopting the framework of Justice Breyer’s concurring opinion in *Kiobel* to determine when federal courts can exercise jurisdiction under the ATA. *Kiobel*, 133 S. Ct. at 1671 (Justice BREYER, with whom Justice GINSBURG, Justice SOTOMAYOR and Justice KAGAN join, concurring in the judgment.) (“I would find jurisdiction under [the ATS] where (1) the alleged tort occurs on American soil, (2) the defendant is an American national, or (3) the defendant’s conduct substantially and adversely affects an important American national interest.”).

ARGUMENT

I. THIS CASE PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW THAT SHOULD BE SETTLED BY THIS COURT: WHETHER THE FIFTH AMENDMENT LIMITS THE AUTHORITY OF THE FEDERAL GOVERNMENT TO DEFINE FEDERAL COURTS’ *IN PERSONAM* JURISDICTION.

The Antiterrorism Act of 1992 (“ATA”) grants a federal cause of action to “[a]ny national of the United States injured in his or her person, property, or business by reason of an act of international terrorism.” 18 U.S.C. § 2333(a). The ATA defines “international terrorism” as activities that “occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries.” *Id.* § 2331(1)(C). By its very terms, therefore, the ATA grants a remedy to the U.S. citizens specifically for activities occurring outside the territorial the territorial jurisdiction of the United States.

The Second Circuit held that the Defendants are not subject to the jurisdiction of the federal court because, *inter alia*, they are not at home in the United States. Because the ATA authorizes service of process “where the defendant resides, is found, or has an agent.” 18 U.S.C. § 2334(a), the Second Circuit’s holding effectively invalidates this Federal Act. This Court should grant review because this case raises an important question of federal law regarding the scope of authority of the Federal Government in defining federal courts’ *in personam* jurisdiction.

A. The *Goodyear-Daimler*’s “at home” test invalidates the ATA.

“It is a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury its proper redress.” *Marbury v. Madison*, 5 U.S. 137, 147, 2 L. Ed. 60 (1803). The Second Circuit’s holding, however, impinges upon the right of all the United States citizens living and traveling abroad to seek redress in federal courts for the harm caused by acts of international terrorism—thereby undermining the power of the Federal Government to grant a remedy to United States citizens.

By applying the Fourteenth Amendment’s personal jurisdiction standards in this Fifth Amendment case, the Second Circuit went too far. This Court has never “determine[d] whether Congress could, consistent with the Due Process Clause of the Fifth Amendment, authorize federal court personal jurisdiction over alien defendants based on the aggregate of *national* contacts, rather than on the contacts between the defendant and the State in which the federal court sits.” *Asahi Metal Indus. Co. v. Sup. Ct. of Cal.*, 480 U.S. 102, 113, 107

S. Ct. 1026, 1032, 94 L. Ed. 2d 92 n. * (1987); *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 103, 108 S. Ct. 404, 409, 98 L. Ed. 2d 415 n. 5 (1987).²

In applying this new and limiting Constitutional theory, the Second Circuit has effectively invalidated the ATA and therefore certiorari review is appropriate. See e.g., *United States v. Morrison*, 529 U.S. 598, 605 (2000) (granting certiorari review “[b]ecause the Court of Appeals invalidated a federal statute on constitutional grounds.”). At the very least, the Court of Appeals invalidated the application of this federal Act in this case. Thus, certiorari review should be granted to determine the validity of the Second Circuit’s decision. *E.g.*, *United States v. Edge Broad. Co.*, 509 U.S. 418, 425 (1993). More importantly, this Court’s review is necessary because the decision of the Second Circuit has a detrimental effect on United States citizens at home and abroad. *C.f.*, *Bush v. Gore*, 531 U.S. 98, 103, 121 S. Ct. 525, 529, 148 L. Ed. 2d 388 (2000).

B. The Second Circuit’s holding raises fundamental issues of foreign affairs.

Certiorari review is appropriate because this case involves issues important “to the Government in its conduct of the Nation’s foreign affairs.” *Christopher v. Harbury*, 536 U.S. 403, 412 (2002). The ATA falls

² See Brief for the United States as Amicus Curiae Supporting Petitioner at 3 n.1, *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (No. 11-965) (noting that the Supreme Court “has consistently reserved the question whether its Fourteenth Amendment personal jurisdiction precedents would apply in a case governed by the Fifth Amendment”).

within the category of foreign affairs as it affects situations entirely external to the United States. *Accord United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 315, 57 S. Ct. 216, 218, 81 L. Ed. 255 (1936) (reasoning that the resolution was within the “category of foreign affairs” because “the whole aim of the resolution is to affect a situation entirely external to the United States.”). Section 2331 defines “international terrorism” as activities in violation of the criminal laws of the United States that occurred primarily outside the territorial jurisdiction of the United States.³

Unquestionably, Congress has the authority to regulate “conduct occurring abroad.” *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1665, 185 L. Ed. 2d 671 (2013) (citing 18 U.S.C. § 1091(e), which

³ As used in this chapter—

- (1) the term “international terrorism” means activities that—
 - (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
 - ...
 - (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.”

18 U.S.C. § 2331 (2016).

“provid[es] jurisdiction over the offense of genocide ‘regardless of where the offense is committed’ if the alleged offender is, among other things, ‘present in the United States’”); *see e.g., United States v. California*, 332 U.S. 19, 35, 67 S. Ct. 1658, 1666, 91 L. Ed. 1889, (1947) (The United States “must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars waged on or too near its coasts.”).

For ATA claims, Congress granted federal courts jurisdiction to adjudicate acts of international terrorism against United States nationals. *See* 18 U.S.C. §§ 2333(a), 2334 (a), (d). Section 2333(a) grants a cause of action to United States citizens:

Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney’s fees.

18 U.S.C. § 2333(a). Section 2334(a) establishes the service of process requirements pursuant to which federal courts can exercise *in personam* jurisdiction over perpetrators of acts of international terrorism:

Any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district where any plaintiff resides or where any defendant resides or is served, or has an agent. Process in such a civil action may be served in

any district where the defendant resides, is found, or has an agent.

Subsection (d) limits the discretion of federal courts to dismiss Section 2333 claims based on the inconvenience of the forum:

The district court shall not dismiss any action brought under section 2333 of this title on the grounds of the inconvenience or inappropriateness of the forum chosen, unless—

- (1) The action may be maintained in a foreign court that has jurisdiction over the subject matter and over all the defendants;
- (2) that foreign court is significantly more convenient and appropriate; and
- (3) that foreign court offers a remedy which is substantially the same as the one available in the courts of the United States.

18 U.S.C. § 2334(d). Congressional intent here is clear: US victims of international terrorism have a claim for damages in federal court and perpetrators can be served in any district where they reside, are found, or have an agent.

In applying the Due Process standards of the Fourteenth Amendment, the Second Circuit erroneously departed from the *Curtiss-Wright's* rationale about “the differences between the powers of the federal government in respect of foreign or external affairs and those in respect of domestic or internal affairs. That there are differences between them, and that these differences are fundamental, may not be

doubted.” 299 U.S. 304, 315, 57 S. Ct. 216, 219, 81 L. Ed. 255 (1936).⁴ Here, the Second Circuit applied the case law of the Fourteenth Amendment as if the power of the Federal Government were equal to the power of the States.

The Circuit Court’s “misapprehension consists not in a misconception as to what the cases relied on decided, but in taking for granted that because the doctrine stated has been applied and enforced in many decisions with respect to the ... power of the states, that the same principle is applicable to and controlling as to the United States in the exercise of its powers.” *United States v. Bennett*, 232 U.S. 299, 305, 34 S. Ct. 433, 436–37, 58 L. Ed. 612 (1914).⁵ This was in error because “[t]he two classes of powers are different, both in respect of their origin and their nature.”

The broad statement that the federal government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect of our internal affairs. In that field, the primary purpose of the Constitution was to carve from the general mass of legislative powers then possessed by the

⁴ *United States v. Texas*, 339 U.S. 707, 718, 70 S. Ct. 918, 923, 94 L. Ed. 1221 (1950) (“In external affairs the United States became the sole and exclusive spokesman for the Nation.”).

⁵ See Ariel Winawer, *Too Far from Home: Why Daimler’s “At Home” Standard Does Not Apply to Personal Jurisdiction Challenges in Anti-Terrorism Act Cases*, 66 *Emory L.J.* 161, 176 (2016).

states such portions as it was thought desirable to vest in the federal government, leaving those not included in the enumeration still in the states. That this doctrine applies only to powers which the states had is self-evident.

Curtiss-Wright, 299 U.S at 315–16, 57 S. Ct. 216, 219, 81 L. Ed. 255 (1936) (citation omitted). In contrast, “the investment of the federal government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution.”

The powers to declare and wage war, to conclude peace, to make treaties, to maintain diplomatic relations with other sovereignties, if they had never been mentioned in the Constitution, would have vested in the federal government as necessary concomitants of nationality. Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law. As a member of the family of nations, the right and power of the United States in that field are equal to the right and power of the other members of the international family. Otherwise, the United States is not completely sovereign. The power to acquire territory by discovery and occupation, the power to expel undesirable aliens, the power to make such international agreements as do not constitute treaties in the constitutional sense, none of which is expressly affirmed by the

Constitution, nevertheless exist as inherently inseparable from the conception of nationality. This the court recognized, and in each of the cases cited found the warrant for its conclusions not in the provisions of the Constitution, but in the law of nations.

Id., 318, 57 S. Ct. 216, 220, 81 L. Ed. 255 (1936) (citations omitted). It should be clear then that the power of the Federal Government in regulating conduct occurring outside of the United States is not co-extensive to the power of the States. The impact of the Due Process limitation therefore would have a more circumscribed effect on the broader powers of the Federal Government in the foreign affairs arena. For example, an alienage classification that is inherently suspect and therefore subject to strict scrutiny review at the state level, *Graham v. Richardson*, 403 U.S. 365, 372, 91 S. Ct. 1848, 1852, 29 L. Ed. 2d 534 (1971), receives rational basis review at the federal level because Congress has the power to regulate immigration. *Mathews v. Diaz*, 426 U.S. 67, 79, 96 S. Ct. 1883, 1891, 48 L. Ed. 2d 478 (1976).

The Second Circuit's view on the Due Process Clause of the Fifth Amendment (i.e. that it has the same effect on the foreign affairs power of the Federal Government as the Fourteenth Amendment does on the power of the States) is wrong, and it severely impinges upon the prerogative of Congress and the President to conduct foreign affairs in the national interests. See e.g., Pub. L. No. 114-222, § 2(a)(6), 136 Stat. 852 (2016) ("Persons, entities, or countries that knowingly or recklessly contribute material support or resources, directly or indirectly, to persons or organizations that

pose a significant risk of committing acts of terrorism that threaten the security of nationals of the United States or the national security, foreign policy, or economy of the United States, necessarily direct their conduct at the United States, and should reasonably anticipate being brought to court in the United States to answer for such activities.”). Accordingly, this Court should grant review to correct the error of the Second Circuit.

II. THE FOURTEENTH AMENDMENT’S JURISPRUDENCE DOES NOT APPLY TO ATA CLAIMS ARISING OUTSIDE OF THE UNITED STATES.

Generally, the Fourteenth Amendment does not apply to the Federal Government. *See e.g., Bolling v. Sharpe*, 347 U.S. 497 (1954) (applying the reverse incorporation doctrine because the Fourteenth Amendment does not apply to the District of Columbia). For personal jurisdiction purposes, however, “[f]ederal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons.” *Daimler AG v. Bauman*, 134 S. Ct. 746, 753, 187 L. Ed. 2d 624 (2014).

This is so because of Federal Rule of Civil Procedure 4(k)(1)(A), which makes service of process effective to “establish[] personal jurisdiction over a defendant . . . who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.” Because state courts’ jurisdiction is limited by the Fourteenth Amendment, federal courts’ jurisdiction is also governed by the same case law under this provision.

Rule 4(k), however, provides other bases for service of process.⁶ Under Rule 4(k)(1)(C), service of process “establishes personal jurisdiction over a defendant . . . when authorized by a federal statute.” In addition, Rule 4(k)(2) states the two requirements for the validity of service of process “[f]or a claim that arises under federal law:” that “the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction;” and “exercising jurisdiction is consistent with the United States Constitution and laws.” Fed. R. Civ. P. 4(k)(2).

In the ATA, Congress authorized service of process “in any district where the defendant resides, is found, or has an agent.” 18 U.S.C. § 2334(a). Accordingly, this case is not within the purview of Rule 4(k)(1)(A)—and

⁶ (1) *In General*. Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

(2) *Federal Claim Outside State-Court Jurisdiction*. For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

Fed. R. Civ. P. 4(k).

therefore not within the scope of the Fourteenth Amendment. Rather, it is governed by Rule 4(k)(1)(C).

The Fourteenth Amendment’s case law on personal jurisdiction should not be applied in this Fifth Amendment case without any consideration of the different Constitutional powers of the Federal Government and the States.

More importantly, *Goodyear-Daimler*’s “at home” test is not the controlling precedent for the general jurisdiction analysis because of the substantial differences between *Goodyear* and *Daimler*, and this case.⁷ First, this case deals with the power of the federal government unlike *Goodyear* and *Daimler*.⁸ Second, the ATA—unlike *Daimler*’s Alien Tort Statute—contains a “clear indication of

⁷ Thomas C. Arthur & Richard D. Freer, *Be Careful What You Wish For: Goodyear, Daimler, and the Evisceration of General Jurisdiction*, 64 Emory L. J. Online 2001, 2002 (2014) (arguing that this Court “should restrict the novel ‘at home’ test to cases that have no relation at all, not even the plaintiff’s residence, to the forum state”).

⁸ *Daimler AG v. Bauman*, 134 S. Ct. 746, 753, 187 L. Ed. 2d 624 (2014) (“We granted certiorari to decide whether, consistent with the Due Process Clause of the Fourteenth Amendment, Daimler is amenable to suit in California courts for claims involving only foreign plaintiffs and conduct occurring entirely abroad.”); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918, 131 S. Ct. 2846, 2850, 180 L. Ed. 2d 796 (2011) (“This case concerns the jurisdiction of state courts over corporations organized and operating abroad.”).

extraterritoriality”⁹ because it defines “international terrorism” as activities that “occur primarily outside the territorial jurisdiction of the United States.” 18 U.S.C. § 2331(1)(C). Lastly, this Court should not apply the “at home” test in this case as it would deprive U.S. citizens of the federal forum to vindicate federal claims.¹⁰ And this Court has already recognized the right of U.S. citizens to invoke the jurisdiction of federal courts in analogous circumstances. *See e.g., Barrow S.S. Company v. Kane*, 170 U.S. 100, 112 (1898) (“The fact that the legislature of the state of the New York has not seen fit to authorize like suits to be brought in its own courts by citizens and residents of the other states cannot deprive such citizens of their right to invoke the jurisdiction of the national courts under the constitution and laws of the United States.”).

This Court should adopt the framework of Justice Breyer’s concurring opinion in *Kiobel* to determine when federal courts can exercise jurisdiction under the ATA. *Kiobel*, 133 S. Ct. at 1671 (Justice BREYER, with whom Justice GINSBURG, Justice SOTOMAYOR and Justice KAGAN join, concurring in the judgment.) (“I would find jurisdiction under [the ATS] where (1) the alleged tort occurs on American soil, (2) the defendant is an American national, or (3) the defendant’s conduct

⁹ *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1665, 185 L. Ed. 2d 671 (2013).

¹⁰ See Richard D. Freer, *Some Specific Concerns with the New General Jurisdiction*, 15 Nev. L.J. 1161, 1179–80 (2015) (“In the international context, though, the stakes are higher and the Court may have put American plaintiffs in a very difficult position.”).

substantially and adversely affects an important American national interest.”).

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be granted.

Respectfully submitted,

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