
CIVIL PROCEDURE — PERSONAL JURISDICTION — FIRST
CIRCUIT HOLDS THAT FEDERAL RULE OF CIVIL PROCEDURE
4(K)(1)(A)’S TERRITORIAL CONSTRAINTS APPLY TO ONLY THE
INITIAL SERVICE OF PROCESS. — *Waters v. Day & Zimmermann
NPS, Inc.*, 23 F.4th 84 (1st Cir.), *cert. denied*, 142 S. Ct. 2777 (2022).

Personal jurisdiction is in disarray. The doctrine is notoriously messy,¹ and it has recently become even messier for federal personal jurisdiction in particular. The Fourteenth Amendment’s Due Process Clause geographically limits a state court’s power to exercise personal jurisdiction over a defendant.² For a state court to exercise “specific” jurisdiction, the plaintiff’s claims must “arise out of or relate to” the defendant’s contacts with that state.³ And absent a federal statute to the contrary, federal courts relying on Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure⁴ for personal jurisdiction face this same territorial constraint: their jurisdictional reach is limited to “the reach of the state courts where they are geographically located.”⁵ Or so the thinking went.

Recently, in *Waters v. Day & Zimmermann NPS, Inc.*,⁶ the First Circuit held that Rule 4(k)(1)(A) does not limit federal courts’ personal jurisdiction over claims that are added after a defendant has been properly served with a federal summons.⁷ This means that federal courts in the First Circuit proceeding under Rule 4(k)(1)(A) are no longer bound by the Rule’s territorial constraints for claims added after a federal summons is served. The upshot is that these federal courts now *can* exercise jurisdiction over some claims that are beyond the reach of the

¹ See, e.g., Stephen E. Sachs, *How Congress Should Fix Personal Jurisdiction*, 108 NW. U. L. REV. 1301, 1302 (2014) (calling personal jurisdiction law “an irrational and unpredictable due process morass”); A. Benjamin Spencer, *Nationwide Personal Jurisdiction for Our Federal Courts*, 87 DENV. U. L. REV. 325, 328 (2010) (noting the doctrine is “notoriously confusing and imprecise”).

² *Ford Motor Co. v. Mont.* 8th Jud. Dist. Ct., 141 S. Ct. 1017, 1024 (2021).

³ *Id.* at 1025 (quoting *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1780 (2017)). State courts also have “general” jurisdiction over any claims brought against defendants whose affiliations with the forum state are “so continuous and systematic as to render them essentially at home” there. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (internal quotation marks omitted)).

⁴ The text of Rule 4(k)(1)(A) reads: “Serving a summons . . . establishes 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 . . .” FED. R. CIV. P. 4(k)(1)(A).

⁵ A. Benjamin Spencer, *The Territorial Reach of Federal Courts*, 71 FLA. L. REV. 979, 981 (2019); see also *Daimler*, 571 U.S. at 125 (“Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons.” (citing FED. R. CIV. P. 4(k)(1)(A))); Sachs, *supra* note 1, at 1315 (writing that federal courts proceeding under Rule 4(k)(1)(A) “must follow the same jurisdictional rules as the states in which they sit”).

⁶ 23 F.4th 84 (1st Cir.), *cert. denied*, 142 S. Ct. 2777 (2022).

⁷ *Id.* at 93.

state courts where they sit.⁸ Not only does this holding misinterpret Rule 4(k)(1)(A) and misconstrue existing Supreme Court precedent, but it also creates a loophole. Now, a plaintiff in the First Circuit who has properly served a defendant with a federal summons can freely amend her complaint to add new claims or parties that would otherwise violate Rule 4(k)(1)(A)'s territorial restrictions.

Day & Zimmermann provides services to power plants.⁹ It is incorporated in Delaware and headquartered in Pennsylvania.¹⁰ John Waters was an hourly employee at the company, earning \$55 an hour working as a mechanical supervisor in Plymouth, Massachusetts.¹¹ Waters claimed that the company failed to pay him at 150% of his hourly rate when he worked more than forty hours in a week,¹² a violation of the Fair Labor Standards Act¹³ (FLSA). Waters proceeded to file a collective action¹⁴ lawsuit pursuant to section 216 of the FLSA in federal court in Massachusetts, alleging that Day & Zimmermann failed to pay him and other similarly situated employees their FLSA-required overtime wages.¹⁵ Over 100 current and former Day & Zimmermann employees opted into this collective action.¹⁶

Day & Zimmermann moved to dismiss the claims brought by the opt-in plaintiffs who worked outside of Massachusetts.¹⁷ It argued that the district court lacked personal jurisdiction over these plaintiffs' claims under *Bristol-Myers Squibb Co. v. Superior Court*,¹⁸ a mass tort case in which the Supreme Court held that a California state court lacked jurisdiction over nonresidents' claims because there was no "connection between the forum and the specific claims at issue."¹⁹ The district court disagreed and denied the motion.²⁰ According to the district court, *Bristol-Myers* was inapplicable to the FLSA context.²¹ The court

⁸ *Contra* 4A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1069 (4th ed. 2022) ("Rule 4(k)(1)(A) authorizes personal jurisdiction in federal court only as far as would be authorized in state court.").

⁹ *Waters v. Day & Zimmermann NPS, Inc.*, 464 F. Supp. 3d 455, 456–57 (D. Mass. 2020).

¹⁰ *Id.*

¹¹ Complaint at 1, 3, *Waters*, 464 F. Supp. 3d 455 (No. 19-cv-11585).

¹² *Id.* at 4.

¹³ 29 U.S.C. §§ 201–219. Enacted in 1938, the FLSA "requires employers to pay certain minimum wages and to pay overtime at one and one-half times the employee's regular pay rate for work in excess of 40 hours in one week." 7 WILLIAM B. RUBENSTEIN, NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 23:36 (6th ed. 2022) (footnotes omitted); *see also* 29 U.S.C. § 207(a)(1).

¹⁴ A collective action under the FLSA is a lawsuit by a group of "similarly situated" employees. 7 RUBENSTEIN, *supra* note 13, § 23:37. Each employee must affirmatively opt in. *Id.*

¹⁵ *Waters*, 23 F.4th at 86.

¹⁶ *Id.*

¹⁷ *Id.* at 86–87.

¹⁸ 137 S. Ct. 1773 (2017).

¹⁹ *Id.* at 1781.

²⁰ *Waters*, 23 F.4th at 87.

²¹ *Waters v. Day & Zimmermann NPS, Inc.*, 464 F. Supp. 3d 455, 460 (D. Mass. 2020).

distinguished between mass tort cases and FLSA cases, noting that “unlike in a mass tort action, in an FLSA collective action there is only one suit: the suit between [the] Plaintiff and the Defendant.”²² Therefore, the court reasoned, because this suit was “between Waters and Day & Zimmermann,” the “appropriate jurisdictional analysis . . . [was] at the level of Waters’[s] claim.”²³ The court had jurisdiction over Waters’s claim,²⁴ and this was “all that [was] needed to confer personal jurisdiction over [the] defendant” with respect to the nonresidents’ claims as well.²⁵ Day & Zimmermann sought an interlocutory appeal.²⁶

The First Circuit affirmed.²⁷ Writing for the panel, Judge Dyk²⁸ began by establishing the court’s subject matter jurisdiction to hear this interlocutory appeal.²⁹ The panel then turned to personal jurisdiction, finding that the district court properly exercised jurisdiction over the nonresidents’ claims.³⁰ The court noted at the outset that “the Fourteenth Amendment does not *directly* limit a federal court’s jurisdiction.”³¹ The panel then rejected the argument that Rule 4(k) “incorporates the Fourteenth Amendment’s limits on the jurisdiction of federal courts wherever a federal statute does not provide for nationwide service of process.”³² The panel parsed the text of Rule 4(k)(1) and concluded that it “nowhere suggests that Rule 4 deals with anything other than service of a summons, or that Rule 4 constrains a federal court’s power to act once a summons has been properly served.”³³ Since all parties agreed that (i) Waters had properly served Day & Zimmermann and (ii) the nonresident plaintiffs were not obligated to do so, the panel found that the district court properly exercised jurisdiction over the nonresident opt-ins’ claims.³⁴ In Judge Dyk’s view, if the drafters of Rule 4 had intended it to govern more than the service of a summons, “they could have simply said that additional plaintiffs may be added to an action if they could have served a summons on a defendant consistent with Rule 4(k)(1)(A).”³⁵

²² *Id.* (quoting *Aiuto v. Publix Super Mkts., Inc.*, No. 19-CV-04803, 2020 WL 2039946, at *5 (N.D. Ga. Apr. 9, 2020) (alterations omitted)).

²³ *Id.* at 461.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *See Waters*, 23 F.4th at 87 (describing the procedural history).

²⁷ *Id.*

²⁸ Judge Dyk, of the U.S. Court of Appeals for the Federal Circuit, was sitting by designation. Judge Dyk was joined by Judge Thompson.

²⁹ The panel concluded that it had subject matter jurisdiction over the appeal because the opt-in plaintiffs had become parties to the proceeding when they filed their opt-in forms. *Waters*, 23 F.4th at 88–91.

³⁰ *Id.* at 93.

³¹ *Id.* at 92 (emphasis added). Instead, the panel explained, the Fifth Amendment does. *Id.*

³² *Id.*

³³ *Id.* at 93–94.

³⁴ *Id.* at 94.

³⁵ *Id.*

The panel then turned to the history of Rule 4(k) and the structure of the Federal Rules of Civil Procedure.³⁶ In the court's view, Rule 4(k)'s history "shows that its limited purpose was to govern service of a summons, not to limit the jurisdiction of the federal courts after a summons has been served."³⁷ Earlier versions of Rule 4(k), according to Judge Dyk, "show that the rule evolved to simplify service, not to govern jurisdiction after service."³⁸ And as for structure: the panel declined to read Rule 4(k)(1)(A) as limiting the district court's jurisdiction over the opt-in plaintiffs because Rule 20 — which "sets the limit for allowing additional parties to join a pre-existing lawsuit"³⁹ — "already defines that authority."⁴⁰ In the present case, the panel reasoned, the FLSA's "similarly situated" requirement for collective actions "displaces Rule 20 and limits the range of individuals who may be added as opt-in plaintiffs by requiring that they be 'similarly situated.'"⁴¹ This requirement preempted Rule 4(k)(1)(A).⁴²

Judge Barron dissented "for reasons independent of the merits of the majority's reasoning."⁴³ In his view, this was not the right time to decide this "significant question of first impression," given the case's interlocutory posture.⁴⁴ Judge Barron argued that the majority's time-of-service-based interpretation of Rule 4(k)(1)(A) was "internally coherent" but "controversial."⁴⁵ He highlighted the circuit split that the ruling created,⁴⁶ and noted that he was not "aware of any other case in which any court . . . has ever read Rule 4(k)(1)(A) in the narrow, time-of-service-limited way that the majority reads it."⁴⁷ Judge Barron favored a "more cautious approach" that would lead to dismissing the appeal.⁴⁸ Following this restrained course, he reasoned, accorded with the First Circuit's "general reluctance to hear appeals from denials of motions to dismiss."⁴⁹ Judge Barron found that Day & Zimmermann had made "little more than a conclusory showing about the need for [the court] to weigh in now"⁵⁰ and emphasized that the company was not presently "at risk of

³⁶ *Id.* at 94–96.

³⁷ *Id.* at 94.

³⁸ *Id.* at 95.

³⁹ *Id.* at 96.

⁴⁰ *Id.*

⁴¹ *Id.* (citing *Cruz v. Bristol-Myers Squibb Co.*, PR, 699 F.3d 563, 569 (1st Cir. 2012); *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1104–05 (9th Cir. 2018)).

⁴² *See id.*

⁴³ *Id.* at 100 (Barron, J., dissenting).

⁴⁴ *Id.*

⁴⁵ *Id.* at 102.

⁴⁶ *Id.* at 102–03 (citing *Canaday v. Anthem Cos.*, 9 F.4th 392, 400 (6th Cir. 2021); *Vallone v. CJS Sols. Grp., LLC*, 9 F.4th 861, 865 (8th Cir. 2021)).

⁴⁷ *Id.* at 103.

⁴⁸ *Id.* at 104.

⁴⁹ *Id.*

⁵⁰ *Id.*

being held liable” because this was an interlocutory appeal.⁵¹ By dismissing the appeal, Judge Barron concluded, the court would ensure that it did not “decid[e] a major question about the meaning of the Federal Rules of Civil Procedure in a case in which it may turn out not to be necessary for [the court] to decide that question at all.”⁵²

Not only did *Waters* decide that question unnecessarily, it also decided it wrongly. By opting for a narrow, service of process–based reading of Rule 4(k)(1)(A), *Waters* misinterpreted the Rule. And by declining to impose the Fourteenth Amendment’s personal jurisdiction limits on the district court, *Waters* misapplied Supreme Court precedent. The result is that *Waters* effectively reads a nationwide service of process provision into the FLSA for opt-in plaintiffs. But *Waters*’s ramifications do not stop there. Now, plaintiffs in the First Circuit who have properly served a defendant with a federal summons can simply amend their complaint to add new claims or parties that would have otherwise been blocked by Rule 4(k)(1)(A).

Before a federal court may exercise personal jurisdiction over a defendant, that defendant must be served with a valid summons.⁵³ The effectiveness of this summons is determined by Rule 4(k).⁵⁴ Because the FLSA does not authorize nationwide jurisdiction,⁵⁵ and because *Waters* did not join Day & Zimmermann under Rules 14 or 19,⁵⁶ the *Waters* court was left with Rule 4(k)(1)(A). And if it is true that Rule 4(k)(1)(A) “simply tracks state-court jurisdiction,”⁵⁷ *Waters* should have followed state law in determining the district court’s jurisdiction over Day & Zimmermann with respect to both *Waters*’s and the opt-in plaintiffs’ claims.⁵⁸ The Fourteenth Amendment’s Due Process Clause restricts state court jurisdiction over corporations that are neither incorporated nor headquartered in that state to only those claims that “arise out of or relate to the defendant’s contacts with the forum.”⁵⁹ The non-residents’ claims do not pass this test. These claims are not connected to Massachusetts because the nonresidents did not work in Massachusetts and therefore were not underpaid in Massachusetts.⁶⁰ Yet *Waters* held

⁵¹ *Id.*

⁵² *Id.* at 105.

⁵³ *Omni Cap. Int’l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987).

⁵⁴ FED. R. CIV. P. 4(k).

⁵⁵ See generally 29 U.S.C. §§ 201–219; FED. R. CIV. P. 4(k)(1)(C).

⁵⁶ See generally Complaint, *supra* note 11; FED. R. CIV. P. 4(k)(1)(B).

⁵⁷ Stephen E. Sachs, *The Unlimited Jurisdiction of the Federal Courts*, 106 VA. L. REV. 1703, 1745 (2020); see also Scott Dodson, *Personal Jurisdiction and Aggregation*, 113 NW. U. L. REV. 1, 37 (2018) (“Rule 4(k)(1) thus limits personal jurisdiction in federal court to the scope that would exist in the state in which the federal court sits . . .”).

⁵⁸ See *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014) (“Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons.”).

⁵⁹ *Ford Motor Co. v. Mont.* 8th Jud. Dist. Ct., 141 S. Ct. 1017, 1025 (2021) (quoting *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1780 (2017) (internal quotation marks omitted)); *id.* at 1024.

⁶⁰ *Cf. Bristol-Myers*, 137 S. Ct. at 1781 (engaging in analogous reasoning).

that jurisdiction was proper, arguing that Rule 4(k)(1)(A) does not “constrain[] a federal court’s power to act once a summons has been properly served.”⁶¹ But there are three reasons why that is not so.

First, the text of the Rule forecloses that interpretation. Rule 4 governs two distinct things: (i) the method of service; and (ii) a defendant’s amenability to service.⁶² The bulk of Rule 4 is dedicated to the method of service, establishing the rules for what a summons must contain and how it must be served.⁶³ But Rule 4(k) is different: it outlines when a federal summons “establishes personal jurisdiction over a defendant.”⁶⁴ Rule 4(k)(1)(A) further specifies that jurisdiction is proper only when the defendant is “subject to the jurisdiction of [state courts]” in the forum state.⁶⁵ And, in most cases, the only way that state courts can have jurisdiction over a corporation that is neither headquartered nor incorporated in that state is if they have specific personal jurisdiction over that company⁶⁶ — an inquiry that takes place *at the level of the claim*.⁶⁷ Because state courts must engage in a claim-by-claim analysis when determining whether they have specific personal jurisdiction over a defendant,⁶⁸ the requirement in Rule 4(k)(1)(A) that defendants be “subject to the jurisdiction of [state courts]” must also be at the level of the claim when specific personal jurisdiction is involved. It follows that summonses served under Rule 4(k)(1)(A) that rely on specific personal jurisdiction can establish jurisdiction over defendants only at the level of the claim, for that is the only level where they are “subject to the jurisdiction of [state courts].” As a result, holding that Rule 4(k)(1)(A) applies only to the initial claim makes the Rule internally inconsistent in cases like *Waters*: it establishes blanket jurisdiction over a defendant who can be “subject to the jurisdiction of a [state court]” only at the level of the claim.

Second, *Waters*’s reading of the Rule overlooks constitutional limits on personal jurisdiction. The Supreme Court explained in *Bristol-Myers* that specific personal jurisdiction requires “a connection between

⁶¹ *Waters*, 23 F.4th at 94.

⁶² See *Omni Cap. Int’l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 103 n.6 (1987) (“There is no objection to the method of service in this litigation; the objection is only to amenability to service.”); *SEC v. Ross*, 504 F.3d 1130, 1138–39 (9th Cir. 2007) (distinguishing between the concepts).

⁶³ See FED. R. CIV. P. 4(a)–(j), (l)–(m).

⁶⁴ *Id.* at 4(k).

⁶⁵ *Id.* at 4(k)(1)(A).

⁶⁶ In *Daimler AG v. Bauman*, 571 U.S. 117 (2014), the Court left open the possibility that a corporation could be subject to the general jurisdiction of a state because of its “continuous and systematic” contacts with the forum. *Id.* at 133 n.11. A corporation could also consent to personal jurisdiction. *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982).

⁶⁷ See *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1781 (2017) (“What is needed — and what is missing here — is a connection between the forum and the specific claims at issue.”).

⁶⁸ *Vallone v. CJS Sols. Grp., LLC*, 9 F.4th 861, 865 (8th Cir. 2021) (“Personal jurisdiction must be determined on a claim-by-claim basis.” (citing *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 274–75 (5th Cir. 2006); *Phillips Exeter Acad. v. Howard Phillips Fund*, 196 F.3d 284, 289 (1st Cir. 1999))).

the forum and the *specific claims* at issue.”⁶⁹ It is a distinction without a difference that *Bristol-Myers* involved a state court applying state law rather than a federal court applying federal law. For “[w]hen Rule 4(k)(1)(A) is the basis for personal jurisdiction in federal court, the federal court must apply the state’s long-arm statute and the Fourteenth Amendment due process test that would apply in state court.”⁷⁰ And applying the Fourteenth Amendment due process test means applying *Bristol-Myers*. By reading Rule 4(k)(1)(A) as a limitation on only the original claim, then, *Waters* disregarded *Bristol-Myers*’s requirement that specific personal jurisdiction be based on the individual claims at issue.⁷¹

Third, *Waters*’s time-of-service-based interpretation of the Rule turns the ability to amend complaints into a “gaping loophole to the ordinary territorial restrictions on federal court jurisdiction that Rule 4(k) imposes.”⁷² At a minimum, *Waters* has written a nationwide service of process provision into the FLSA for opt-in plaintiffs. So long as the lead plaintiff can properly serve the defendant with process, opt-ins across the country can now join that suit notwithstanding their lack of connection to the forum state.⁷³ To be sure, this result makes FLSA collective actions more efficient. But expanding federal courts’ jurisdiction is a job for Congress, not the judiciary.⁷⁴ And, indeed, Congress has already created nationwide personal jurisdiction for many federal statutes.⁷⁵ The FLSA is not one of them.⁷⁶ What’s more, Congress has amended the FLSA several times since its enactment, and each time it has declined to authorize nationwide service of process.⁷⁷ Congress’s silence “argues forcefully that such authorization was not its intention.”⁷⁸ Future plaintiffs in FLSA collective actions would thus be wise to bring their original claim in the First Circuit, as this would allow opt-in plaintiffs to sidestep Rule 4(k)(1)(A)’s territorial limits. And the forum shopping concerns do not stop there.

⁶⁹ *Bristol-Myers*, 137 S. Ct. at 1781 (emphasis added); see also *Canaday v. Anthem Cos., Inc.*, 9 F.4th 392, 400 (6th Cir. 2021) (emphasizing the same phrase).

⁷⁰ 4A WRIGHT ET AL., *supra* note 8, § 1069; see also *id.* (“Thus, for constitutional purposes, a federal court proceeding under Rule 4(k)(1)(A) must assess the defendant’s contacts with the forum state (rather than with the United States as a whole).”).

⁷¹ *Bristol-Myers*, 137 S. Ct. at 1781.

⁷² A. Benjamin Spencer, *Out of the Quandary: Personal Jurisdiction over Absent Class Member Claims Explained*, 39 REV. LITIG. 31, 43 (2019).

⁷³ *Waters*, 23 F.4th at 94.

⁷⁴ See *Omni Cap. Int’l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 110 (1987) (“[A]s statutes and rules have always provided the measures for service, courts are inappropriate forums for deciding whether to extend them.”).

⁷⁵ Sachs, *supra* note 1, at 1315 & n.86 (collecting statutes).

⁷⁶ See generally 29 U.S.C. §§ 201–219.

⁷⁷ Adam Drake, Note, *The FLSA’s Bristol-Myers Squibb Problem*, 89 FORDHAM L. REV. 1511, 1546 (2021).

⁷⁸ *Omni Cap.*, 484 U.S. at 106.

Nothing in *Waters* necessarily cabins the holding to the FLSA context. True, the opinion noted that “[i]nterpreting the FLSA to bar collective actions by out-of-state employees” would frustrate the purpose of a collective action.⁷⁹ And it argued that “[h]olding that a district court lacks jurisdiction over the non-resident opt-in claims . . . is not what the FLSA contemplated.”⁸⁰ But these statements are pure dicta. They have nothing to do with the holding of the case: that Rule 4(k)(1)(A) does not limit a federal court’s jurisdiction after the initial complaint has been properly served.⁸¹ In fact, a district court in the First Circuit has already applied *Waters* to a non-FLSA case.⁸² The upshot is that plaintiffs in the First Circuit who have properly served a defendant with process now can amend their complaint to add new claims or parties that would otherwise be barred under Rule 4(k)(1)(A). In *Tassinari v. Salvation Army National Corp.*,⁸³ for example, the defendant waived service only for the plaintiff to turn around and amend his complaint to add three new plaintiffs.⁸⁴ Citing *Waters*, the court held that the defendant could not invoke Rule 4(k)(1)(A) to challenge the court’s jurisdiction over these newly added plaintiffs.⁸⁵ There is no reason to think that plaintiffs will stop using this end run around the Rule any time soon. The loophole is open.

The First Circuit has now become an unusually attractive forum to serve a defendant with process. Only the initial claim must satisfy Rule 4(k)(1)(A); subsequently added claims and parties need not do so. *Waters* has thus written a quasi-nationwide service of process provision into not only the FLSA, but all other federal statutes as well. Here, though, what’s done can be undone. Congress can close this loophole by amending Rule 4(k) to clarify that the Rule’s territorial constraints remain in effect beyond the initial service of process.⁸⁶ But in the interim, plaintiffs in the First Circuit rejoice.

⁷⁹ *Waters*, 23 F.4th at 97.

⁸⁰ *Id.*

⁸¹ *Id.* at 93–94; see also Michael C. Dorf, *Dicta and Article III*, 142 U. PA. L. REV. 1997, 2003 (1994) (“A dictum is a statement which is not ‘necessary’ to the decision in the precedent case.”).

⁸² See *Tassinari v. Salvation Army Nat’l Corp.*, No. 21-10806, 2022 WL 2397542, at *1, *4 (D. Mass. June 22, 2022) (applying *Waters* to claims brought under the Americans with Disabilities Act, Fair Housing Act, and Rehabilitation Act).

⁸³ No. 21-10806, 2022 WL 2397542 (D. Mass. June 22, 2022).

⁸⁴ *Id.* at *4.

⁸⁵ See *id.*

⁸⁶ See *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (plurality opinion) (“Congress . . . has ultimate authority over the Federal Rules of Civil Procedure[.]”). Alternatively, the Supreme Court could also amend the Rule under the Rules Enabling Act, 28 U.S.C. § 2072.