

Fifth Amendment — Due Process — Personal Jurisdiction —
Fuld v. Palestine Liberation Organization

Academic commentators agree on little when it comes to personal jurisdiction.¹ But “the one point of consensus is that Supreme Court personal jurisdiction doctrine is deeply confused.”² Last Term, *Fuld v. Palestine Liberation Organization*³ supplied some newfound conceptual clarity, finally addressing a question the Court had long reserved: Although they “are, textually speaking, nearly identical,”⁴ the Fifth and Fourteenth Amendment Due Process Clauses do “not impose the same jurisdictional limitations” on federal and state exercises of personal jurisdiction.⁵ In reaching that conclusion, the opinion reflected notable consensus on the foundational constitutional roots of personal jurisdiction. The Court grounded personal jurisdiction in sovereign authority rather than liberty or fairness, embracing one side of a longstanding doctrinal divide.

This case was, as the petitioners’ lawyer observed at oral argument, “old enough to go to law school.”⁶ In 2004, eleven American families sued the Palestine Liberation Organization (PLO) and Palestinian Authority (PA) for terrorist attacks in Israel under the Anti-Terrorism Act of 1991.⁷ After an approximately six-week trial,⁸ a jury found both defendants liable and awarded the victims millions in damages.⁹ But that victory gave way to a series of defeats on the question of jurisdiction.

The Second Circuit applied Fourteenth Amendment tests to hold that neither general nor specific personal jurisdiction was available because defendants were not “‘essentially at home’ in the United States”¹⁰ (general jurisdiction) and the attacks “were unconnected to the forum

¹ See, e.g., Allan Erbsen, *Impersonal Jurisdiction*, 60 EMORY L.J. 1, 3 (2010) (“Even basic foundational questions are hotly contested despite more than two centuries of doctrinal evolution.”).

² James Weinstein, *The Federal Common Law Origins of Judicial Jurisdiction: Implications for Modern Doctrine*, 90 VA. L. REV. 169, 171 (2004).

³ 145 S. Ct. 2090 (2025).

⁴ *Id.* at 2103.

⁵ *Id.* at 2106.

⁶ Transcript of Oral Argument at 2, 30, *Fuld*, 145 S. Ct. 2090 (No. 24-20), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/24-20_f2bh.pdf [<https://perma.cc/EK4A-2VQX>].

⁷ 18 U.S.C. §§ 2331–2334; *Sokolow v. Pal. Liberation Org.*, No. 04-CV-00397, 2011 WL 1345086, at *1 (S.D.N.Y. Mar. 30, 2011). The Act gave U.S. nationals a cause of action to recover damages for international terrorist acts. 18 U.S.C. § 2333(a).

⁸ See *Sokolow v. Pal. Liberation Org.*, No. 04-CV-00397, 2015 WL 10852003, at *1 (S.D.N.Y. Oct. 1, 2015).

⁹ *Id.*

¹⁰ *Waldman v. Pal. Liberation Org.*, 835 F.3d 317, 333 (2d Cir. 2016) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014)). The case had been recaptioned *Waldman v. Palestine Liberation Organization*. *Waldman v. Pal. Liberation Org.*, 82 F.4th 64, 69 n.2 (2d Cir. 2023) (per curiam).

and were not expressly aimed at the United States”¹¹ (specific jurisdiction). The panel vacated and remanded the case for dismissal.¹²

Congress clarified — with the Anti-Terrorism Clarification Act of 2018¹³ — that defendants’ participation in specified U.S. activities should constitute consent to jurisdiction.¹⁴ But on a motion for reconsideration, the Second Circuit declined to reverse because the plaintiffs provided “no basis to conclude that a factual predicate of [the clarification statute] has been met.”¹⁵ The plaintiffs sought Supreme Court review.¹⁶

Meanwhile, Congress returned to the drawing board and landed on the statute before the Court in *Fuld*: the Promoting Security and Justice for Victims of Terrorism Act of 2019¹⁷ (PSJVTa). The legislation now referred to the PLO and PA by name.¹⁸ It specified that both organizations “shall be deemed to have consented to personal jurisdiction”¹⁹ (1) if they paid an individual or family for an act of terrorism that harmed an American or (2) if they maintained physical presence in the United States outside the United Nations.²⁰

The Court granted certiorari, vacated, and remanded for “further consideration in light of the [PSJVTa].”²¹ Three days later, the family of an American killed in the West Bank filed the second suit at issue here, directly invoking the PSJVTa as the basis for personal jurisdiction.²² Both district court judges considering the question, one on remand and another afresh, found that the PLO and PA satisfied the first predicate prong but held that the exercise of jurisdiction under either was unconstitutional.²³

On appeal, the panel affirmed that “the due process analyses under the Fifth and Fourteenth Amendments parallel one another.”²⁴ It then concluded the “deemed consent” provision of the statute did not accord

¹¹ *Waldman*, 835 F.3d at 337.

¹² *Id.* at 322.

¹³ Pub. L. No. 115-253, 132 Stat. 3183, 3183–85 (codified as amended at 18 U.S.C. §§ 2331, 2333–2334).

¹⁴ *See id.* § 4(a), 132 Stat. at 3184.

¹⁵ *Waldman v. Pal. Liberation Org.*, 925 F.3d 570, 575, 576 (2d Cir. 2019).

¹⁶ *Sokolow v. Pal. Liberation Org.*, 140 S. Ct. 2714, 2714 (2020) (mem.).

¹⁷ Pub. L. No. 116-94, § 903, 133 Stat. 3082, 3082–85 (codified as amended at 18 U.S.C. § 2334(e)).

¹⁸ *Id.* § 903(b)(5), 133 Stat. at 3083.

¹⁹ *Id.* § 903(c)(1), 133 Stat. at 3083.

²⁰ *See id.* § 903(c)(1), 133 Stat. at 3083–84.

²¹ *Sokolow*, 140 S. Ct. at 2714.

²² *Fuld v. Pal. Liberation Org.*, 578 F. Supp. 3d 577, 580–82 (S.D.N.Y. 2022).

²³ *See id.* at 583 & n.3, 595–96; *Sokolow v. Pal. Liberation Org.*, 607 F. Supp. 3d 323, 325, 326 (S.D.N.Y. 2022).

²⁴ *Fuld v. Pal. Liberation Org.*, 82 F.4th 74, 102 (2d Cir. 2023); *see also Waldman v. Pal. Liberation Org.*, 82 F.4th 64, 73–74 (2d Cir. 2023) (per curiam) (decided the same day and incorporating *Fuld*’s reasoning).

with due process.²⁵ Because defendants did not expressly consent to jurisdiction, and the PSJVTa's implied consent provision did not correspond to "litigation-related activities or reciprocal bargains,"²⁶ the court lacked constitutionally valid grounds for inferring consent to jurisdiction.²⁷

The Second Circuit denied rehearing en banc, and Judge Menashi dissented.²⁸ He wanted to reconsider circuit precedent that the Fifth and Fourteenth Amendments imposed the same jurisdictional limits.²⁹ He reasoned that "the federal government is not similarly situated to the state governments in the extraterritorial reach of its courts," so jurisdictional standards should not be equivalent.³⁰

After this protracted back-and-forth, the Supreme Court granted certiorari and reversed, upholding the PSJVTa under the Fifth Amendment.³¹ Chief Justice Roberts, joined by six, wrote for the Court.³² He explained that "[o]ur modern personal jurisdiction cases . . . have grappled only with the limitations imposed by the *Fourteenth* Amendment on state courts."³³ Under Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure, federal courts are typically bound by state limits on personal jurisdiction, meaning the Court had always applied its "familiar" Fourteenth Amendment *International Shoe*³⁴ framework to preceding federal cases under this subconstitutional rule.³⁵ But this PSJVTa action belonged to the "subset of federal cases . . . 'authorized by a federal statute'" under Rule 4(k)(1)(C).³⁶ It was thus governed solely by the *Fifth* Amendment's limitations on federal courts.³⁷

The Court decided that despite textual similarities to the Fourteenth, the Fifth Amendment called for a different analysis because the states and United States occupy distinct sovereign statuses.³⁸ It began with the two principles underlying Fourteenth Amendment limitations: (1) fairness to defendants and (2) interstate federalism.³⁹ The Court located this "framing" in "the principles of interstate federalism embodied in

²⁵ *Fuld*, 82 F.4th at 87.

²⁶ *Id.* at 90.

²⁷ *Id.* at 90–91.

²⁸ *Fuld v. Pal. Liberation Org.*, 101 F.4th 190, 193 (2d Cir. 2024). The panel consolidated the *Fuld* and *Sokolow* appeals. *Id.*

²⁹ See *id.* at 205 (Menashi, J., dissenting from the denial of rehearing en banc). Judge Menashi was joined by Chief Judge Livingston and Judge Park, with Judge Sullivan joining as to Part I.

³⁰ *Id.*

³¹ *Fuld*, 145 S. Ct. at 2101, 2110.

³² *Id.* at 2099. Chief Justice Roberts was joined by Justices Alito, Sotomayor, Kagan, Kavanaugh, Barrett, and Jackson.

³³ *Id.* at 2102.

³⁴ *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

³⁵ *Fuld*, 145 S. Ct. at 2102–03.

³⁶ *Id.* at 2102 (quoting FED. R. CIV. P. 4(k)(1)(C)).

³⁷ See *id.*

³⁸ See *id.* at 2103–04.

³⁹ *Id.* at 2103.

the Constitution,’ and the related protections of due process.”⁴⁰ Under the Fourteenth Amendment, “State sovereign authority is bounded by the States’ respective borders,”⁴¹ so due process ensures their distinct “spheres of activity are enforced and protected by the Constitution.”⁴² The “territorial limitations”⁴³ on state power produced personal jurisdiction limitations that “functionally ‘ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns.’”⁴⁴

But personal jurisdiction requires a “sovereign-by-sovereign . . . analysis,” and the United States’ authority is greater in kind.⁴⁵ No analogous constitutional constraints confine the federal government’s sovereign power. So rather than “mechanically import” the Fourteenth Amendment’s minimum contacts approach, the Court determined the Fifth Amendment “necessarily permits a more flexible jurisdictional inquiry commensurate with the Federal Government’s broader sovereign authority” and “distinct territorial reach.”⁴⁶

The Court rejected the defendants’ argument that, nevertheless, “considerations of fairness and individual liberty”⁴⁷ justified transposing Fourteenth Amendment limits.⁴⁸ The Court recognized it has “occasionally framed” personal jurisdiction doctrine as protecting the defendant.⁴⁹ But it cast these statements as “best understood . . . to reflect the principle that ‘due process protects the individual’s right to be subject only to lawful power’” — which, at bottom, is a function of “whether the sovereign has authority to render it.”⁵⁰

The Court upheld jurisdiction under the PSJVT.⁵¹ In support, Chief Justice Roberts cited the federal government’s broad foreign affairs power and interests in combating terrorism against Americans.⁵² He also noted that the statute was the product of careful deliberation by the political branches.⁵³

The Court chose not to define “the outer bounds of the Federal Government’s power, consistent with due process, to hale foreign defendants into U.S. courts.”⁵⁴ Its cautious approach followed the Solicitor

⁴⁰ *Id.* at 2103 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980)).

⁴¹ *Id.* at 2104.

⁴² *Id.* (quoting *Burnet v. Brooks*, 288 U.S. 378, 404 (1933)).

⁴³ *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)).

⁴⁴ *Id.* (quoting *World-Wide Volkswagen*, 444 U.S. at 292).

⁴⁵ *Id.* at 2105 (alteration in original) (quoting *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) (plurality opinion)).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 2105–06.

⁴⁹ *Id.* at 2105.

⁵⁰ *Id.* (quoting *Nicastro*, 564 U.S. at 884).

⁵¹ *Id.* at 2110.

⁵² *Id.* at 2104.

⁵³ *Id.* at 2107.

⁵⁴ *Id.* at 2106.

General's request that the Court stop short of petitioners' "maximalist theory" — that "the Fifth Amendment imposes *no* territorial limits on personal jurisdiction."⁵⁵

The Court did not consider whether the PSJVTAs accorded with case law governing consent to jurisdiction, such as *Mallory v. Norfolk Southern Railway Co.*⁵⁶ Nor did the Court determine whether the Fifth Amendment, like the Fourteenth, required evaluating the "reasonableness"⁵⁷ of asserting jurisdiction because regardless, that standard was met: The government had a strong interest in deterring terrorism; the plaintiffs sought justice through damages; and the defendants were sophisticated, with notice of the statute.⁵⁸

Justice Thomas concurred in the judgment.⁵⁹ First, he confessed skepticism that the PLO and PA have constitutional rights or qualify as "person[s]" under the Fifth Amendment.⁶⁰ Next, he examined the scholarly debate over whether the Due Process Clause historically limited legislative power in addition to executive action but concluded it was merely academic because regardless, the statute would stand.⁶¹

Finally, joined by Justice Gorsuch, he argued the Fifth Amendment imposed no constraints on the federal government's power to "extend its jurisdiction beyond the Nation's borders."⁶² As an originalist matter, any extraterritorial limits on jurisdiction derived not from the Constitution but from "general principles of international law."⁶³ And those were limits "Congress could override."⁶⁴ Possible consequences of broad jurisdictional assertions, such as retaliation, were not constitutional concerns but problems to be worked out by the "political branches," perhaps as "bargaining chip[s] in foreign policy."⁶⁵ He noted approvingly that "[t]he Court's opinion [did] not foreclose the 'maximalist theory of federal jurisdiction' compelled by the original understanding of the Fifth Amendment" and called for this originalist approach moving forward.⁶⁶

Before *Fuld*, the Supreme Court had — multiple times — reserved decision on what Fifth Amendment due process required for personal jurisdiction.⁶⁷ Navigating a doctrinal thicket long lamented for

⁵⁵ *Id.*

⁵⁶ 143 S. Ct. 2028 (2023); *Fuld*, 145 S. Ct. at 2109.

⁵⁷ *Fuld*, 145 S. Ct. at 2109 (quoting *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 115 (1987)).

⁵⁸ *Id.* at 2109–10.

⁵⁹ *Id.* at 2110 (Thomas, J., concurring in the judgment).

⁶⁰ *Id.* at 2111 (alteration in original) (quoting U.S. CONST. amend. V).

⁶¹ *Id.* at 2114–15.

⁶² *Id.* at 2115.

⁶³ *Id.*

⁶⁴ *Id.* at 2119.

⁶⁵ *Id.* at 2120.

⁶⁶ *Id.* at 2121.

⁶⁷ See, e.g., *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 268–69 (2017); *Omni Cap. Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 102 n.5 (1987); *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 113 n.* (1987).

providing “minimal guidance,”⁶⁸ the circuits surprisingly converged on an answer to this open question, measuring Fifth Amendment jurisdiction under the same framework as Fourteenth.⁶⁹ And the Court likely could have upheld the statute under existing Fourteenth Amendment precedents, as both the government and petitioners agreed.⁷⁰ But the *Fuld* Court instead overturned “[e]very circuit to reach the issue”⁷¹ by adopting a distinct Fifth Amendment framework to uphold the PSJVT. In the process, it worked a subtle reframing of its precedents, explaining why courts before *Fuld* took a different tack. A seven-Justice majority situated its analysis primarily in considerations of sovereign authority rather than individual liberty or fairness, privileging a forum-centric view of jurisdictional limits over a defendant-centric one. Although *Fuld*’s specific holding is modest, the Court clarified the conceptual underpinnings of personal jurisdiction limitations in *both* Due Process Clauses. The opinion signals unusual consensus on one side of a doctrinal dialectic that, if it endures, raises practical questions that future personal jurisdiction cases may confront.

To understand where the Court has emerged, it is helpful to turn back the clock. The Court first located personal jurisdiction in the Due Process Clause in *Pennoyer v. Neff*.⁷³ There, it anchored jurisdictional limitations to state sovereignty.⁷⁴ Justice Field articulated “two well-established principles of public law”: that “every State possesses exclusive jurisdiction and sovereignty over persons and property *within* its territory,” and that “no State can exercise direct jurisdiction and authority over persons or property *without* its territory.”⁷⁵ As “[t]he several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others,”⁷⁶ the Court concluded that “[a]ny exertion of authority . . . beyond this [territorial] limit . . . is a mere nullity”⁷⁷ — without due process of law and challengeable under

⁶⁸ William M. Richman, *Understanding Personal Jurisdiction*, 25 ARIZ. ST. L.J. 599, 601 (1993).

⁶⁹ Stephen E. Sachs, *The Unlimited Jurisdiction of the Federal Courts*, 106 VA. L. REV. 1703, 1705 & n.6 (2020) (collecting cases and explaining the analogous Fifth Amendment test “require[d] at least the sorts of national contacts that the Fourteenth Amendment requires of a state,” *id.* at 1705).

⁷⁰ See Transcript of Oral Argument, *supra* note 6, at 22, 28–30 (plaintiffs arguing jurisdiction could be sustained under a version of minimum contacts); *id.* at 47 (government arguing it could be justified under consent case law).

⁷¹ Brief for Respondents at 48, *Fuld*, 145 S. Ct. 2090 (No. 24-20).

⁷² See *id.* at 5–9, 48–49.

⁷³ 95 U.S. 714 (1878).

⁷⁴ See Jeffrey M. Schmitt, *Rethinking the State Sovereignty Interest in Personal Jurisdiction*, 66 CASE W. RES. L. REV. 769, 774 (2016) (noting “sovereignty occupied center stage under the *Pennoyer* framework”).

⁷⁵ *Pennoyer*, 95 U.S. at 722 (emphasis added).

⁷⁶ *Id.*

⁷⁷ *Id.* (quoting JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS § 539).

the Fourteenth Amendment.⁷⁸ *Pennoyer* justified a state's assertion of jurisdiction over defendants based on presence or property within its borders.⁷⁹

But *Pennoyer*'s territorialism became increasingly untenable as commerce boomed and transportation improved.⁸⁰ *International Shoe* ushered in the next revolution, supplanting "presence" with "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"⁸¹ Turning to an abstract framework enabled the Court to assess the appropriateness of jurisdiction through additional criteria like fairness.⁸²

The Court first embraced a full-fledged defendant-centric notion of due process in *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*,⁸³ where it framed jurisdictional limitations as safeguarding a personal right. In allowing defendants to waive objections, the Court concluded that "[t]he personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty."⁸⁴ It added that its previous language about "federalism and the character of state sovereignty vis-à-vis other States" was "a function of the individual liberty interest preserved by the Due Process Clause" and not an independent constitutional limit.⁸⁵

As Chief Justice Roberts recounted in *Fuld*, forum-centric and defendant-centric conceptualizations of due process have both animated personal jurisdiction doctrine.⁸⁶ Each offers a distinct justification for

⁷⁸ *Id.* at 733. Hence began the development of federal personal jurisdiction jurisprudence, as these claims increasingly populated the federal courts. Stephen E. Sachs, *Pennoyer Was Right*, 95 TEX. L. REV. 1249, 1288 (2017) ("In short, the Fourteenth Amendment effectively federalized the law of jurisdiction without anyone necessarily intending to.").

⁷⁹ It articulated some additional paths to jurisdiction, such as voluntary answer of suit or consent. See Patrick J. Borchers, *The Death of the Constitutional Law of Personal Jurisdiction: From Pennoyer to Burnham and Back Again*, 24 U.C. DAVIS L. REV. 19, 35 (1990).

⁸⁰ See Christopher D. Cameron & Kevin R. Johnson, *Death of a Salesman? Forum Shopping and Outcome Determination Under International Shoe*, 28 U.C. DAVIS L. REV. 769, 782 (1995).

⁸¹ *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

⁸² Jesse M. Cross, *Rethinking the Conflicts Revolution in Personal Jurisdiction*, 105 MINN. L. REV. 679, 692–93 (2020) (collecting cases and arguing *International Shoe* "marked the Court's shift to a jurisdictional test focused upon issues of 'fairness' rather than issues of 'sovereignty'").

⁸³ 456 U.S. 694 (1982); see Harold S. Lewis, *Three Deaths of State Sovereignty and the Curse of Abstraction in the Jurisprudence of Personal Jurisdiction*, 58 NOTRE DAME L. REV. 699, 700–01 (1983).

⁸⁴ *Bauxites*, 456 U.S. at 702.

⁸⁵ *Id.* at 702 n.10.

⁸⁶ *Fuld*, 145 S. Ct. at 2103. At times, the Court has invoked a third justification for asserting jurisdiction: pure precedent or tradition. See, e.g., *Burnham v. Superior Court*, 495 U.S. 604, 615 (1990) (plurality opinion); *Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028, 2037 (2023). But these cases describe historical assertions of jurisdiction that still seem to have one of two normative justifications at bottom. Tag cases (*Burnham*) are arguably rooted in territorial sovereignty. Consent cases (*Mallory*) are arguably grounded in a sense of fairness.

the existence of jurisdictional limits. The forum-centric conceptualization, embodied in *Pennoyer*, roots personal jurisdiction in sovereignty: A forum can exercise jurisdiction according to its constitutional competence. The Court has described this theoretical basis as “physical power” shaped by “the coordinate authority of sister States.”⁸⁷ The defendant-centric notion, captured by *Bauxites*, conceptualizes jurisdictional limits as liberty- or fairness-based constraints: A defendant cannot be subjected to jurisdiction when it would violate his rights. The Court has described these normative underpinnings in different ways: protection for the defendant “against the burdens of litigating in a distant or inconvenient forum”;⁸⁸ reciprocal desert when the defendant “purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws”;⁸⁹ or a demand for “fair warning that a particular activity may subject [defendant] to the jurisdiction of a foreign sovereign.”⁹⁰

While different Justices have favored each explanation in different measures, no majority opinion has fully eschewed defendant-centric liberty or fairness concerns following *International Shoe*.⁹¹ The Court’s forum-centric language in *Fuld* was undoubtedly traceable to past opinions dating to *Pennoyer*, but those opinions either did not command a majority or concurrently emphasized the defendant-centric conception. Justice Kennedy wrote for only a plurality in *J. McIntyre Machinery, Ltd. v. Nicaastro*⁹² when he rejected the notion that “fairness and foreseeability”⁹³ should be “the touchstone of jurisdiction”⁹⁴ and instead centered it around “the sovereign’s exercise of power.”⁹⁵ And in *Bristol-Myers Squibb Co. v. Superior Court*,⁹⁶ the Court affirmed that the “federalism interest” in limiting state sovereignty “may be decisive”⁹⁷ but simultaneously emphasized that the “primary concern” is the “burden

⁸⁷ *Hanson v. Denckla*, 357 U.S. 235, 246 (1958); see also Erbsen, *supra* note 1, at 66–67 (arguing horizontal federalism should be the foundation of the Court’s personal jurisdiction doctrine).

⁸⁸ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980); see also Martin H. Redish, *Due Process, Federalism, and Personal Jurisdiction: A Theoretical Evaluation*, 75 NW. U. L. REV. 1112, 1133 (1981) (arguing personal jurisdiction should focus on “the extent to which a state’s assertion of jurisdiction might cause injustice or undue harm to the individual litigant”).

⁸⁹ *Hanson*, 357 U.S. at 253; see also *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (“[I]t may well be unfair to allow [defendants] to escape having to account in other States for consequences that arise proximately from such activities . . .”).

⁹⁰ *Burger King*, 471 U.S. at 472 (quoting *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring in the judgment)).

⁹¹ See Appendix, HARV. L. REV., <https://harvardlawreview.org/print/vol-139/appendix-for-fuld-v-palestine-liberation-organization/> [<https://perma.cc/4FQ5-52F9>].

⁹² 564 U.S. 873 (2011) (plurality opinion).

⁹³ *Id.* at 882.

⁹⁴ *Id.* at 883 (“[J]urisdiction is in the first instance a question of authority rather than fairness . . .”).

⁹⁵ *Id.* at 880.

⁹⁶ 582 U.S. 255 (2017).

⁹⁷ *Id.* at 263.

on the defendant.”⁹⁸ The Court’s recent cases have suggested that both defendant- and forum-centric concerns provide conceptual grounding for jurisdictional limits in the Due Process Clause.⁹⁹

Given these twin themes, it is perhaps no surprise that all lower courts to consider the question treated the Fifth Amendment like the Fourteenth by imposing defendant-centric limits despite the difference between state and federal forums. After all, if personal jurisdiction is framed as a matter of *both* sovereignty and liberty, defendant-centric limitations would exist even if the forum changed.

For instance, the defendant-protective account motivated an en banc Fifth Circuit to apply a Fourteenth Amendment test to jurisdictional assertions under the Fifth. It reasoned that “[b]oth Due Process Clauses use the same language and serve the same purpose, protecting individual liberty by guaranteeing limits on personal jurisdiction.”¹⁰⁰ In response to the litigants’ sovereignty arguments, the court concluded that “‘federalism’ is a proxy for the abstract burden of a defendant’s submitting to the coercive power of a forum with little interest in the dispute.”¹⁰¹ And in *Fuld* itself, the Second Circuit reasoned that the Constitution’s personal jurisdiction limitations “must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause,”¹⁰² which also has a “vital purpose[] of . . . ensur[ing] fairness to the defendant.”¹⁰³

Fuld thus reflects a subtle but perceptible conceptual realignment, in which a seven-Justice majority favored the view that jurisdictional limits are constitutionally grounded in sovereign power. The majority announced that courts “derive their authority” from their respective “sovereign spheres.”¹⁰⁴ It rooted Fourteenth Amendment limitations in “principles of interstate federalism”¹⁰⁵ and Fifth Amendment ones in the United States’ “nationwide and extraterritorial authority.”¹⁰⁶ And it understood due process as protecting an individual right in the sole sense of “subject[ing the defendant] only to lawful power,” which “depends on whether the sovereign has authority to render it.”¹⁰⁷ Thus conceived,

⁹⁸ *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)). The Court proceeded mostly to analyze the forum state’s relationship with the claims, however. *See id.* at 264–69.

⁹⁹ For the presence of both in the Court’s three most recent cases, see *Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028, 2043 (2023); *Ford Motor Co. v. Mont.* 8th Jud. Dist. Ct., 141 S. Ct. 1017, 1025 (2021); and *Bristol-Myers Squibb Co.*, 582 U.S. at 263.

¹⁰⁰ *Douglass v. Nippon Yusen Kabushiki Kaisha*, 46 F.4th 226, 235 (5th Cir. 2022) (en banc).

¹⁰¹ *Id.* at 236.

¹⁰² *Fuld v. Pal. Liberation Org.*, 82 F.4th 74, 103 (2d Cir. 2023) (quoting *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.10 (1982)).

¹⁰³ *Id.* (quoting *Livnat v. Palestinian Auth.*, 851 F.3d 45, 55 (D.C. Cir. 2017)).

¹⁰⁴ *Fuld*, 145 S. Ct. at 2105.

¹⁰⁵ *Id.* at 2103 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980)).

¹⁰⁶ *Id.* at 2104.

¹⁰⁷ *Id.* at 2105 (quoting *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) (plurality opinion)).

the right has no independent content; the forum's power is the single theoretical grounding. Although the Court reserved the "prospect" that the Fifth Amendment might require a reasonableness analysis, which would account for the defendants' interests and a general sense of fairness,¹⁰⁸ it flatly rejected the notion that individual liberty and fairness justified imposing analogous Fourteenth Amendment jurisdictional limitations.¹⁰⁹

The sovereign conception of personal jurisdiction is *Fuld's* ratio decidendi, compelling its conclusion that Fifth Amendment jurisdictional constraints should be different from Fourteenth. Undoubtedly, *Fuld's* specific holding was limited to the "narrow" jurisdictional provisions of the particular statute before it.¹¹⁰ But in its decisional logic, the Court articulates a generalized theory of personal jurisdiction's due process roots. Should this forum-centric framework persist, courts may wrestle with its implications in future cases.

In the Fifth Amendment context, a forum-centric analysis could enable more expansive federal jurisdiction. If the primary barometer remains sovereign authority, Congress could hale international defendants into U.S. courts under its broad constitutional powers in areas like antitrust, securities, and criminal conspiracy.¹¹¹ As long as the reasonableness analysis continues to bear little or no weight, *Fuld* suggests Congress can permissibly legislate more sweeping jurisdiction in line with its greater sovereign reach. Alternatively, different statutes and circumstances might test the limits of *Fuld's* logic, prompting the Court to bring fairness considerations back into the fold — such as in so-called foreign-cubed cases where U.S. laws appear to give federal courts jurisdiction over claims by foreign victims against foreign companies.¹¹²

In the Fourteenth Amendment context, the Court's renewed emphasis on interstate federalism raises new questions. The *Fuld* Court was construing the Fifth Amendment, so its discussion of the Fourteenth is technically dicta and need not disturb any precedents. But taking *Fuld's* ratio decidendi seriously means squaring its theoretical basis with Fourteenth Amendment case law. The Court has previously trained its forum-centric analysis in the Fourteenth Amendment context on a "connection between the nonresidents' claims and the forum,"¹¹³ or "interests at stake" in the forum state.¹¹⁴ But it is unclear whether the interests of

¹⁰⁸ *Id.* at 2109.

¹⁰⁹ *Id.* at 2106.

¹¹⁰ *Id.* at 2107–08.

¹¹¹ *U.S. Supreme Court Rules on Fifth Amendment Due Process Analysis for Personal Jurisdiction When Authorized by Federal Statute*, CLEARY GOTTLIEB (July 8, 2025), <https://www.clearygottlieb.com/news-and-insights/publication-listing/us-supreme-court-rules-that-the-fsia-does-not-require-minimum-contacts-analysis-for> [<https://perma.cc/T97C-8JXE>].

¹¹² See, e.g., *Morrison v. Nat'l Austl. Bank Ltd.*, 547 F.3d 167, 172 (2d Cir. 2008) (dismissed on these facts for lack of subject matter jurisdiction, *id.* at 177).

¹¹³ *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 265 (2017).

¹¹⁴ *Ford Motor Co. v. Mont.* 8th Jud. Dist. Ct., 141 S. Ct. 1017, 1030 (2021).

other, non-forum states have independent analytical significance, as the *Fuld* Court's discussion of horizontal federalism might suggest.¹¹⁵ For example, is it more likely that a state can assert jurisdiction over an international defendant when no other state claims a meaningful connection, because fellow state sovereignty is not impinged upon? And the Court's reinvigorated concern with enforcing "limits of State power . . . in view of the relation of the States to each other in the Federal Union"¹¹⁶ seems inconsistent with its recent holding in *Mallory*, which ostensibly allowed one state to increase its jurisdiction at the expense of others through consent-procurement statutes consistent with due process.¹¹⁷ Justice Alito suggested that the dormant commerce clause could independently limit the constitutionality of such statutes,¹¹⁸ but he wrote for only himself — and that particular limit is outside the Due Process Clause, whereas interstate federalism falls squarely within the Clause as the Court tells it in *Fuld*. And the Court's decision not to assess the deemed-consent provisions of the PSJVTa under *Mallory*'s consent framework — unlike the courts below — might signal some uncertainty about the contours of the case.

Justice Gorsuch spoke for generations of Civil Procedure students when he wrote in a recent opinion: "I readily admit that I finish these cases with even more questions than I had at the start."¹¹⁹ *Fuld* leaves many of those questions "for another day."¹²⁰ And it is a modest holding that may, in time, embody nothing more than the "tumbleweed" of personal jurisdiction law, "blown from place to place with the winds of whatever verbal formulation strikes the Court's fancy."¹²¹ Yet for a Court that often fractures over personal jurisdiction, a seven-Justice consensus on its conceptual origins may prove less a tumbleweed than a lodestar.

¹¹⁵ Note that state sovereignty and interstate federalism are often treated together but could, and perhaps should, be delinked. See Haley S. Anderson, *The Sovereignty of Personal Jurisdiction*, 83 WASH. & LEE L. REV. (forthcoming 2026) (manuscript at 43–44), <https://ssrn.com/abstract=5374629> [<https://perma.cc/XC3L-3GYW>].

¹¹⁶ *Fuld*, 145 S. Ct. at 2104 (quoting *Burnet v. Brooks*, 288 U.S. 378, 401 (1933)).

¹¹⁷ See *Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028, 2058 (2023) (Barrett, J., dissenting); Scott Dodson, *Personal Jurisdiction and Federalism*, 103 WASH. U. L. REV. 1, 13 (2025) ("States have long extracted consent in a variety of contexts, and the Court in *Mallory* permitted those efforts, even in the face of severe mangling of the idea of interstate federalism.").

¹¹⁸ *Mallory*, 143 S. Ct. at 2052 (Alito, J., concurring in part and concurring in the judgment).

¹¹⁹ *Ford Motor Co.*, 141 S. Ct. at 1039 (Gorsuch, J., concurring in the judgment).

¹²⁰ *Fuld*, 145 S. Ct. at 2110 (Thomas, J., concurring in the judgment).

¹²¹ Borchers, *supra* note 79, at 78.