

ALERT MEMORANDUM

U.S. Supreme Court Rules On Fifth Amendment Due Process Analysis For Personal Jurisdiction When Authorized By Federal Statute

July 8, 2025

On June 20, 2025, the United States Supreme Court issued its decision in *Fuld v. Palestine Liberation Organization*,¹ declining to apply the familiar “minimum contacts”-based analysis developed in the context of the Fourteenth Amendment to the subset of cases where personal jurisdiction is authorized by a federal statute.

The Supreme Court held that, despite their essentially identical language, the Fifth Amendment Due Process Clause does not limit federal courts’ exercise of personal jurisdiction to the same extent that the Fourteenth Amendment limits state courts’ jurisdiction.

The Supreme Court declined to define the outer bounds of personal jurisdiction in such cases and seemingly rejected the argument by the plaintiffs that there was no limit at all, but found that the narrow jurisdiction provision of the 2019 Promoting Security and Justice for Victims of Terrorism Act (“PSJVTa”) was constitutional.

¹ *Fuld v. Palestine Liberation Org.*, 606 U.S. ____ (June 20, 2025).
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Background

Fuld emerges from a long-running back-and-forth between the Second Circuit and Congress over the scope of personal jurisdiction in Anti-Terrorism Act (“ATA”) cases. In 2019, Congress enacted the PSJVTA, which specifically names the PLO and PA and provides that these entities “shall be deemed to have consented to personal jurisdiction” in certain cases if they (1) make payments to individuals who committed an act of terrorism that killed or injured U.S. nationals or to their families; or (2) maintain an office or conduct activity in the U.S., other than activity necessary to participate in the United Nations.²

The constitutionality of the PSJVTA was challenged in *Waldman v. PLO*, a case that was initiated in 2015 prior to the enactment of the PSJVTA, and *Fuld v. PLO*, a new ATA action against the PLO and PA for aiding and abetting a terrorist attack in the West Bank. The district court dismissed both cases, finding that the PSJVTA was unconstitutional under the Fifth Amendment Due Process Clause.³

In two separate opinions in 2023, the Second Circuit affirmed the district court’s holdings that the conduct deemed to constitute consent to personal jurisdiction under the PSJVTA could not “support a fair and reasonable inference of the defendants’ voluntary agreement to proceed in a federal forum,” and “lack[ed] any of the indicia of valid consent previously recognized in the case law.”⁴ The Second Circuit explained that the personal jurisdiction analysis under the Fifth Amendment Due Process Clause—

which constrains action by the federal government—is “basically the same” as it is under the Fourteenth Amendment—which constrains actions by states.⁵

After the Second Circuit denied a rehearing *en banc* in a consolidated appeal,⁶ the Supreme Court granted *certiorari* to consider whether the personal jurisdiction provision of the PSJVTA violates the Fifth Amendment Due Process Clause.⁷

The Supreme Court’s Decision

Chief Justice Roberts, writing for a seven-Justice majority, held that the PSJVTA’s personal jurisdiction provision does not violate the Fifth Amendment Due Process Clause.⁸ The majority ruled that the Fifth Amendment Due Process Clause does not limit federal courts’ jurisdiction to the same extent that the Fourteenth Amendment limits state courts’ jurisdiction.⁹ In doing so, the Supreme Court rejected the application of familiar standards developed in *International Shoe*, which require certain “minimum contacts” between the defendant and the forum.¹⁰ This decision upsets the longstanding and essentially uniform view of the federal appellate courts that the personal jurisdiction analysis under the Fifth and Fourteenth Amendment Due Process Clauses were broadly interchangeable.¹¹

The Supreme Court reasoned that the due process limitations imposed by the Fourteenth Amendment serve two functions—“(1) ‘treating defendants fairly,’ and (2) ‘protecting interstate federalism.’”¹² Given the “distinct territorial reach of the Federal Government’s sovereign power” as compared to the states, interstate

² PSJVTA, Pub. L. No. 116-94, § 903(c), 133 Stat. 2534, 3082.

³ *Sokolow v. Palestine Liberation Org.*, 590 F. Supp. 3d 589, 595 (S.D.N.Y. 2022); *Fuld v. Palestine Liberation Org.*, 578 F. Supp. 3d 577, 580 (S.D.N.Y. 2022).

⁴ *Fuld v. Palestine Liberation Org.*, 82 F.4th 74, 91 (2d Cir. 2023); see also *Waldman v. Palestine Liberation Org.*, 82 F.4th 64, 73 (2d Cir. 2023) (per curiam).

⁵ *Fuld*, 82 F.4th at 86.

⁶ See generally *Fuld v. Palestine Liberation Org.*, 101 F.4th 190 (2d Cir. 2024).

⁷ *Fuld v. Palestine Liberation Org.*, 145 S. Ct. 610 (2024).

⁸ See generally *Fuld v. Palestine Liberation Org.*, 606 U.S. _____, 2025 WL 1716140 (June 20, 2025).

⁹ *Id.* at *6–9.

¹⁰ *Id.* (citing *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)).

¹¹ *Livnat v. Palestinian Auth.*, 851 F.3d 45, 54–55 (D.C. Cir. 2017); *Douglass v. Nippon Yusen Kabushiki Kaisha*, 46 F.4th 226, 235 (5th Cir. 2022) (en banc); *Carrier Corp. v. Outokumpu Oyj*, 673 F.3d 430, 449 (6th Cir. 2012); *Abelesz v. OTP Bank*, 692 F.3d 638, 660 (7th Cir. 2012); *Oldfield v. Pueblo de Bahia Lora, S.A.*, 558 F.3d 1210, 1219 n.25 (11th Cir. 2009).

¹² *Fuld*, 2025 WL 1716140, at *7.

federalism concerns are not relevant to the personal jurisdiction analysis under the Fifth Amendment, and “a more flexible jurisdictional inquiry” is therefore permitted.¹³ The Supreme Court also rejected the Second Circuit’s view that considerations of “fairness and individual liberty justify the application of equivalent jurisdictional limitations” under the Fifth and Fourteenth Amendments.¹⁴

As to the PSJVTA specifically, the Court held that the statute permissibly “ties the assertion of personal jurisdiction to conduct closely related to the United States that implicates important foreign policy concerns.”¹⁵ Observing that the coordinated action of the Executive and Congress in foreign affairs receives “the strongest of presumptions and the widest latitude of judicial interpretation,” the Court concluded that the PSJVTA reflects a “balanced judgment” weighing “a strong [federal] interest in permitting American victims of international terror to pursue justice in domestic courts” against fairness to the PLO and PA.¹⁶ As a result, the Court also concluded that it did not need to evaluate the PSJVTA through “the lens of consent” that the Second Circuit relied upon.¹⁷

While the Court addressed the narrow question of whether the PSJVTA’s personal jurisdiction provision was constitutional, it declined the plaintiffs’ invitation to hold that the Fifth Amendment Due Process Clause imposes *no* constraints on the exercise of personal jurisdiction by federal courts—leaving “for another day the task of defining the ‘Fifth Amendment’s outer limits on the territorial jurisdiction of federal courts.’”¹⁸ The Court also left open that the Fifth Amendment might entail an “inquiry into the reasonableness of the assertion of jurisdiction.”¹⁹

Concurring in the judgment, Justice Thomas, joined by Justice Gorsuch, observed that the Fifth

Amendment Due Process Clause places no boundaries on the federal government’s power to exercise personal jurisdiction at all.²⁰ Instead, any such limits stemmed from “general principles of international law” that were “defeasible, subconstitutional rules that the sovereign could override through clear command.”²¹ Under this reasoning, presumably, a federal statute authorizing personal jurisdiction could not be viewed as unconstitutional.

Takeaways

Before *Fuld v. PLO*, it was the widely held view of the federal courts that personal jurisdiction analyses under the Fifth and Fourteenth Amendments were congruent, except that courts could consider the defendant’s contacts with the United States as a whole under the Fifth Amendment, as opposed to only the contacts with the forum state under the Fourteenth Amendment.²² The Supreme Court has now held that the analyses diverge. The decision suggests, however, that there are limitations on the exercise of personal jurisdiction under the Fifth Amendment.

One limitation that could be gleaned from the Court’s analysis is that for the exercise of personal jurisdiction to be constitutional, there must be some “meaningful relationship” between the predicate conduct and the United States.²³ In its analysis of the PSJVTA, the Court emphasized the nexus among (i) the PLO’s and PA’s payments to terrorists’ families and other activities in the United States, (ii) the causes of action for which such conduct creates personal jurisdiction—namely, civil remedies “only for Americans injured as a result of acts of international terrorism,” and (iii) the United States’s interest in combating terrorism.²⁴ Thus, the inquiry into the defendants’ “meaningful relationship” with the United States—including the nexus between the defendant’s

¹³ *Id.* at *8–9.

¹⁴ *Id.*

¹⁵ *Id.* at *12; *see id.* at *9–13.

¹⁶ *Id.* at *10–11.

¹⁷ *Id.* at *12.

¹⁸ *Id.* at *13 (concurrence, Thomas, J.). This limitation was consistent with the urging of the Solicitor General, who advocated that the Court not announce a broad holding. *See*

Brief for the Federal Petitioner at 46–48, *Fuld v. Palestine Liberation Org.*, 2025 WL 1716140 (U.S. June 20, 2025).

¹⁹ *Fuld*, 2025 WL 1716140, at *12.

²⁰ *Id.* at *16–24 (concurrence, Thomas, J.).

²¹ *Id.* at *17 (concurrence, Thomas, J.).

²² *See supra* note 11.

²³ *Fuld*, 2025 WL 1716140, at *10–12.

²⁴ *Id.*

conduct and the cause of action—may limit the exercise of personal jurisdiction where federal statutes authorize personal jurisdiction based on provisions that differ from the PSJVTa’s narrow jurisdictional grant.

The Supreme Court also left open that the “reasonableness” analysis that courts apply in the Fourteenth Amendment context would also apply in cases where jurisdiction is governed by the Fifth Amendment.²⁵ The Court noted that it did not determine whether such analysis is constitutionally required because the PSJVTa comported with traditional reasonableness factors considered under the Fourteenth Amendment, including “the burden on the defendant, the interests of the forum State, and the plaintiff’s interest in obtaining relief.”²⁶ The reasonableness factors that the Court has refined over several decades proceed from the basic proposition that the exercise of jurisdiction by a federal court must accord with “traditional notions of fair play and substantial justice.”²⁷ While it can be expected that plaintiffs in future cases will resist the application of these standards, it would be generally consistent with the Court’s recent due process jurisprudence to apply a “reasonableness” standard to the assertion of jurisdiction in particular cases. For instance, in *Daimler*, the Supreme Court noted that “considerations of international rapport” and the “risks to international comity” may weigh against the exercise of personal jurisdiction over a foreign corporation.²⁸

In *Fuld*, the Court was careful to explain that “any difference between the Fifth and Fourteenth

Amendment” is only implicated in a “subset of federal cases” “in which personal jurisdiction is . . . authorized by a federal statute” under Federal Rule of Civil Procedure 4(k)(1)(C), because those are the cases in which the Fifth Amendment analysis governs.²⁹ By contrast, in the absence of a federal statute that provides for personal jurisdiction, a federal district court’s authority to exercise personal jurisdiction is determined by whether courts in the state in which the federal court sits could properly exercise personal jurisdiction,³⁰ which requires an analysis under the Fourteenth Amendment.³¹ The overall scope of the decision remains to be seen and it will likely be the subject of extensive litigation in the coming years, as evidenced by the fact that courts are already relying on *Fuld* to rule on personal jurisdiction motions in federal cases,³² or requesting supplemental briefing on the implications of the decision. In the coming months, the cases that are most likely to involve the application of *Fuld* include those brought against foreign defendants under the securities and commodities laws (including, potentially, government enforcement actions),³³ antitrust laws,³⁴ the federal bankruptcy code,³⁵ RICO,³⁶ and other similar federal statutes that have been construed to permit federal jurisdiction to the limits of due process based on the authorization of nationwide service of process.

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²⁵ *Id.* at *12.

²⁶ *Id.*

²⁷ *Asahi Metal Indus. Co. v. Superior Ct. of California, Solano Cnty.*, 480 U.S. 102, 113–14 (1987).

²⁸ *Daimler AG v. Bauman*, 571 U.S. 117, 141–42 (2014).

²⁹ *Fuld*, 606 U.S. ___, 2025 WL 1716140, at *6 (citing Fed. R. Civ. P. 4(k)(1)(C), which establishes personal jurisdiction in federal courts when “authorized by a federal statute”).

³⁰ *Id.* (citing Fed. R. Civ. P. 4(k)(1)(A), which establishes personal jurisdiction in federal courts when a defendant is “subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located”).

³¹ *Id.* (citing *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014), in which the Supreme Court applied a Fourteenth

Amendment analysis to evaluate personal jurisdiction in federal court).

³² See *Caplan v. Dollinger*, No. 24-CV-7996 (JMF), 2025 WL 1808530, at *3–6 (S.D.N.Y. June 30, 2025) (dismissing state law claims but allowing securities fraud claim to proceed because plaintiffs allege sufficient contacts with the U.S. to support personal jurisdiction under *Fuld*).

³³ 15 U.S.C. §§ 77v(a), 78aa(a) (2012); see, e.g., *Leasco Data Processing Equip. Corp. v. Maxwell*, 468 F.2d 1326 (2d Cir. 1972).

³⁴ 15 U.S.C. § 22 (2012); see, e.g., *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 425–26 (2d Cir. 2005).

³⁵ See Fed. Bankr. 7004(f).

³⁶ 18 U.S.C. § 1965; see, e.g., *PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65, 71 (2d Cir. 1998).