

US Supreme Court Opens the Door to More Flexible Personal Jurisdiction Test for Foreign Defendants

Client Alerts

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The longstanding view of most courts of appeals has been that federal and state courts are bound by the same constitutional standards for the exercise of personal jurisdiction, each requiring the plaintiff to show that the defendant had sufficient “minimum contacts” with the forum. However, courts, originalist scholars, and practitioners have recently challenged this view, arguing that differences between the Fourteenth Amendment (applicable to states) and Fifth Amendment (applicable to the federal government) mean that the jurisdictional standards drawn from them should similarly vary.

On June 20, 2025, in *Fuld v. Palestine Liberation Organization*, the Supreme Court weighed in, holding unanimously that the Palestine Liberation Organization (“PLO”) was subject to personal jurisdiction in US courts on the basis of a federal statute, the Promoting Security and Justice for Victims of Terrorism Act (PSJVTA).¹ Lower courts had found the statute unconstitutional for premising jurisdiction on conduct insufficiently tied to the United States, measured against the familiar minimum contacts standards judicially derived from the Fourteenth Amendment.² Reversing, the Supreme Court rejected the position of at least seven Courts of Appeals, which had held that the Fourteenth Amendment’s minimum contacts standard for personal jurisdiction applies equally in cases, like this one, arising under the Fifth Amendment.³ As the Court explained, states and the federal government occupy “categorically different sovereign spheres,” so the Fifth Amendment’s Due Process Clause necessarily permits “a more flexible jurisdictional inquiry” in line with the federal government’s broader sovereign authority.⁴

Fuld is a victory for plaintiffs pursuing lawsuits against foreign defendants in US courts. When a federal statute or rule of civil procedure premises jurisdiction on the defendant’s contacts with the United States as a whole, rather than a particular state, *Fuld* reduces the barriers to securing personal jurisdiction. Although the Supreme Court has left the precise Fifth Amendment standard to be elucidated in future cases, the Court’s ruling suggests that any future test is likely to be more plaintiff-friendly than before.

Background

Personal jurisdiction refers to a court's authority to adjudicate the rights of a particular party in a particular court. There are two types of personal jurisdiction: general and specific. General jurisdiction exists in the forum where a defendant is domiciled or regarded as "at home."⁵ Specific jurisdiction, the doctrine explored in *Fuld*, concerns the defendant's contacts with the forum. Related to these contacts, specific jurisdiction has a constitutional component. In state courts and federal courts applying state law, the defendant must have suit-related "minimum contacts" with the forum under the Fourteenth Amendment.⁶ When a federal court applies federal law, jurisdiction is predicated on the lawsuit's relationship to the United States writ large, rather than a particular state.⁷ In that case, the constitutional component is analyzed under the Due Process Clause of the Fifth Amendment, rather than the Fourteenth Amendment.

This case involved two civil Antiterrorism Act ("ATA") suits—*Fuld* and *Sokolow*—brought against the PLO and the Palestinian Authority by US citizen victims of terrorist attacks in Israel and the West Bank.

After a jury in the Southern District of New York ruled for the Plaintiffs in the *Sokolow* action, awarding them \$655.5 million in damages, the Second Circuit vacated the jury verdict and directed dismissal for a lack of personal jurisdiction.⁸ The Court of Appeals held that the Defendants were not subject to personal jurisdiction because the acts of terrorism in question did not explicitly target the United States and were not otherwise sufficiently connected to the United States.⁹

Congress responded by passing the Anti-Terrorism Clarification Act of 2018 (ATCA), which sought to overturn the Second Circuit's decision by providing that defendants in ATA cases will be deemed to have consented to personal jurisdiction if they maintain, establish, or procure a facility or establishment in the United States or accept certain forms of US foreign assistance.¹⁰ In light of the ATCA, the *Sokolow* Plaintiffs asked the Second Circuit to recall its decision, but the court declined.¹¹

Congress then acted a second time, passing the PSJVTA in 2019 in another attempt to overturn the Second Circuit's decision. The Act deems the PLO and PA to consent to personal jurisdiction in civil ATA suits based on certain actions not necessarily taking place on US soil, such as making payments to individuals jailed by Israel for committing terrorism.¹²

The *Fuld* Plaintiffs thereafter filed their suit, invoking the PSJVTA as the basis for personal jurisdiction.¹³ The district court held that the exercise of jurisdiction under the PSJVTA was unconstitutional.¹⁴ The Second Circuit consolidated *Sokolow* and *Fuld* and affirmed the dismissal for lack of personal jurisdiction, holding that Congress had exceeded the limits of the Fifth Amendment's Due Process Clause by creating jurisdiction on the basis of conduct inadequately tied to the United States.¹⁵ Plaintiffs argued before the Second Circuit that the Fifth Amendment

imposes “comparatively looser requirements for the exercise of personal jurisdiction,” but the Court adopted the prevailing view in the courts of appeals that a similar analysis to the Fourteenth Amendment’s applied.¹⁶

The Supreme Court’s Opinion

The Supreme Court reversed.¹⁷ It held that the “minimum contacts” analysis for personal jurisdiction—which the Second Circuit had invoked in holding the PSJVTA unconstitutional—does not apply under the Fifth Amendment.¹⁸ Although the Court declined to delineate the bounds of the Fifth Amendment’s requirements, it found that under any standard, the exercise of jurisdiction in *Fuld* was constitutional given deference to the prerogative of the federal government’s political branches.¹⁹

Writing for the Court, Chief Justice Roberts highlighted two driving principles of Fourteenth Amendment personal jurisdiction doctrine: protecting interstate federalism and treating defendants fairly.²⁰ The Court noted that the interstate federalism principle stems from the idea that state sovereign authority is bounded by the states’ respective borders.²¹ The Fourteenth Amendment minimum contacts standard ensures that states do not transgress the limits of their jurisdiction by encroaching on the sovereignty of other states.²²

While the Fourteenth Amendment imposes limits on the authority of *state* courts, the distinct sovereignty of the federal government means that applying the same limitations vis-à-vis the Fifth Amendment makes little sense.²³ The Constitution gives the federal government both nationwide and extraterritorial authority, including the authority to open US courts to claims involving conduct that took place abroad.²⁴ This is distinct from state sovereignty, which is defined in relation to other states and the federal government.²⁵ The Court opined that the Fifth Amendment’s Due Process Clause, accordingly, requires “a more flexible jurisdictional inquiry” that aligns with the federal government’s broader sovereign authority.²⁶

The Court also reasoned that the second principle of Fourteenth Amendment personal jurisdiction doctrine—treating defendants fairly—did not compel equal jurisdictional limits under the Fifth Amendment.²⁷ “Due process protects the individual’s right to be subject only to lawful power,” and power is lawful only if the sovereign has authority to render a judgment.²⁸ Therefore, the fairness of subjecting a defendant to the jurisdiction of a court necessarily depends on whether a state has a legitimate interest in the claims at issue.²⁹

The Court left open the question of whether the Fifth Amendment imposes *any* territorial limits on personal jurisdiction, stating that because the PSJVTA “ties federal jurisdiction to conduct closely related to the United States that implicates important foreign policy concerns,” there was no need to

“reach further” and “delineate the outer bounds of the federal government’s power.”³⁰ Justice Thomas’s concurrence, which Justice Gorsuch joined, adopted the Plaintiffs’ position that the Fifth Amendment places *no* boundaries on the federal government’s power to extend personal jurisdiction over Defendants.³¹

***Fuld’s* Implications**

- **By declining to extend the more robust Fourteenth Amendment minimum contacts analysis to the Fifth Amendment, *Fuld* is a victory for plaintiffs bringing lawsuits against foreign defendants in US courts.** The impact of this case will not be limited to bespoke jurisdictional statutes such as the PSJVTA. For instance, *Fuld’s* new approach to personal jurisdiction will impact cases arising under Federal Rule of Civil Procedure 4(k)(2), which grants personal jurisdiction over defendants for claims arising under federal law if the defendant is not subject to jurisdiction in the courts of any state, so long as jurisdiction is consistent with the Fifth Amendment.³² Another example is the Racketeer Influenced and Corrupt Organizations Act (RICO), which provides for nationwide service of process.³³ Courts have interpreted this provision as establishing personal jurisdiction based on contacts with the United States as a whole, subject to the Fifth Amendment’s constitutional limits.³⁴
- **Coupled with another recent decision, *Fuld* may also make it easier to obtain jurisdiction over foreign state defendants.** *Fuld* was decided on the heels of *CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.*, in which the Supreme Court held that minimum contacts is not an implied statutory requirement of the Foreign Sovereign Immunities Act.³⁵ The FSIA grants personal jurisdiction over foreign states whenever an immunity exception applies and the foreign defendant is properly served.³⁶ *Antrix* left unanswered questions regarding the Fifth Amendment’s *constitutional* due process requirements, and regarding whether foreign states have any due process rights at all, but *Fuld* now makes clear that the Fifth Amendment test will be comparatively flexible. Taken together, these decisions remove several potential obstacles to obtaining personal jurisdiction over foreign states.
- ***Fuld* leaves open the Fifth Amendment’s outer limits with respect to personal jurisdiction.** While the specific statute at issue in *Fuld* was treated as an easy question, future cases will involve different statutes. Courts will immediately be asked to decide whether and to what extent the Fifth Amendment places constitutional limits on jurisdiction.

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Footnotes

[1] No. 24-20., slip op. at 21 (Jun. 20, 2025).

[2] *Fuld*, slip op. at 3-7.

[3] *Fuld*, slip op. at 12.

[4] *Id.*

[5] *Daimler AG v. Bauman*, 571 U.S. 117, 121 (2014).

[6] *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *Daimler*, 571 U.S. at 125 (citing Fed. R. Civ. P. 4(k)(1)(A)) (“Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons.”).

[7] See Fed. R. Civ. P. 4(k)(1)(C) (providing jurisdiction “when authorized by a federal statute”); Fed. R. Civ. P. 4(k)(2) (providing jurisdiction over defendants who are “not subject to jurisdiction in any state’s courts of general jurisdiction”).

[8] *Fuld*, slip op. at 3; see also *Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 322 (2d Cir. 2016).

[9] *Fuld*, slip op. at 3; *Waldman*, 835 F.3d at 337.

[10] *Fuld*, slip op. at 3; Anti-Terrorism Clarification Act of 2018, 132 Stat. 3183.

[11] *Fuld*, slip op. at 4.

[12] 18 U.S.C. § 2334(e)(1)(B), (e)(3)(A)-(B).

[13] *Id.*

[14] *Id.* at 6.

[15] *Id.*

[16] *Fuld v. Palestine Liberation Org.*, 82 F.4th 74, 102 (2d Cir. 2023).

[17] *Fuld*, slip op. at 21.

[18] *Id.* at 12.

[19] *Id.* at 21.

[20] *Id.*

[21] *Id.* at 10.

[22] *Id.*

[23] *Id.* at 12.

[24] *Id.* at 11.

[25] *Id.* at 10.

[26] *Id.* at 12.

[27] *Id.*

[28] *Id.* at 13 (citing *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) (plurality opinion)).

[29] *Id.* at 13-14.

[30] *Id.* at 14.

[31] *Fuld*, slip op. at 2 (Thomas, J., concurring).

[32] Fed. R. Civ. P. 4(k)(2).

[33] 18 U.S.C.A. § 1965(b).

[34] *See, e.g., Laurel Gardens, LLC v. Mckenna*, 948 F.3d 105 (3d Cir. 2020).

[35] *CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.*, No. 23-1201., slip op. at 7 (Jun. 5, 2025).

[36] 28 U.S.C.A. § 1330.

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