No. 25-

In the

Supreme Court of the United States

CLEMENTE PROPERTIES, INC., *et al.*,

Petitioners,

v.

PEDRO R. PIERLUISI-URRUTIA,
GOVERNOR OF PUERTO RICO, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Puerto Rico took the trademark of baseball legend Roberto Clemente to generate roughly 15 million dollars in revenue. The Fifth Amendment protects property "without any distinction between different types." *Horne v. Department of Agriculture*, 576 U.S. 350, 358 (2015). But the First Circuit refused to apply *per se* principles that would ordinarily apply to an appropriation of a property right—all because the Clementes are seeking redress for a taking of their *intangible* property rights. The First Circuit endowed Puerto Rico with the sovereign immunity of the States and held that the Lanham Act did not properly abrogate that immunity—even though "it is difficult to see how the same inherent sovereign immunity that the States enjoy in federal court would apply to Puerto Rico." *Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 354 (2023) (Thomas, J., dissenting).

The questions presented are:

1. Whether the Fifth Amendment exempts intangible property from the *per se* rules that govern takings of tangible property.

2. Whether Puerto Rico enjoys any form of immunity from suit in federal court and, if so, whether the Lanham Act abrogates that immunity.

PARTIES

Petitioners, plaintiffs-appellants below, are Clemente Properties, Inc., 21 In Right, Inc., Roberto Clemente Jr., Luis Roberto Clemente, and Roberto Enrique Clemente. Respondents, defendants-appellees below, are Pedro R. Pierluisi-Urrutia, Governor of Puerto Rico, in his official and individual capacity and as representative of the Commonwealth of Puerto Rico; The Commonwealth of Puerto Rico; Eileen M. Vélez-Vega, Secretary of the Department of Transportation and Public Works, in her official and individual capacity; Francisco Parés Alicea, Secretary of the Department of the Treasury, in his official and individual capacity; Ray J. Quioñes-Vázquez, Secretary of the Department of Sports and Recreation, in his official and individual capacity.

The Puerto Rico Convention Center District Authority was a defendant-appellee in the proceedings below. Petitioners believe the District Authority has no interest in the outcome of this petition and has provided the notice required by Rule 12.6.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioners certify that Clemente Properties, Inc. and 21 In Right, Inc. have no parent corporations and no publicly held company owns 10% or more of the stock of either entity. Petitioners Roberto Clemente Jr., Luis Roberto Clemente, and Roberto Enrique Clemente are natural persons.

STATEMENT OF RELATED PROCEEDINGS

The proceedings in the federal district and appellate courts identified below are directly related to the above-captioned case in this Court.

Clemente Properties, Inc., et al. v. Pierluisi-Urrutia, et al., No. 3:22-cv-01373-GMM (D.P.R. Sept. 22, 2023).

Clemente Properties, Inc., et al. v. Pierluisi-Urrutia, et al., No. 23-1922 (1st Cir. Jan. 16, 2026).

Clemente Properties, Inc., et al. v. Pierluisi-Urrutia, et al., No. 23-1922 (1st Cir. Feb. 25, 2026) (en banc).

TABLE OF CONTENTS

Table of Contents

Page

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Constitutional Provisions

Statutes and Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Roberto Clemente is a baseball legend. Known for his work on and off the field, Clemente accrued his 3,000th hit in September 1972. Three months later, he died in a plane crash while delivering aid to earthquake victims in Nicaragua. Petitioners—the adult sons of Roberto Clemente and their companies—have used the Roberto Clemente trademark to protect their father's legacy.

Puerto Rico took the trademark for itself. It forced Puerto Rico motorists to pay for the Roberto Clemente trademark imprinted on license plates and tags, generating 15 million dollars for Puerto Rico and resentment toward the Clementes—who Puerto Ricans thought were to blame for a fee levied on them during dire economic times. To make matters worse, Puerto Rico intends to use the money to create a Roberto Clemente Sports District, an unauthorized imitation of a sports district that Clemente himself created long ago.

The First Circuit dismissed the Clementes' takings claim because it held that *per se* taking rules—which this Court routinely applies in cases involving government appropriation of property—could not apply because the property here is intangible. The panel also held that Puerto Rico officials could not be liable in their official capacities because Puerto Rico had the same sovereign immunity as the states, and the Lanham Act did not properly abrogate that immunity.

Both issues are worthy of this Court's review. *First*, this Court has never resolved whether *per se* rules that apply to "classic takings" of property cease to exist when the property the government has taken is intangible. This Court's recent *per se* cases involved tangible property. *See Cedar Point Nursery v. Hassid*, 594 U.S. 139, 143 (2021); *Horne*, 576 U.S. at 354. And its earlier decision in *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984), has been interpreted in different ways by different jurists. Conflicting decisions from the First Circuit, the Federal Circuit, and the Texas Supreme Court underscore the confusion on a question of undeniable importance. Left unanswered, the First Circuit's ruling would invite government to take trademarks on demand—checked only by a multi-factor balancing test that allows government to destroy much in value and pay nothing in return.

The Fifth Amendment protects both tangible and intangible property, *Monsanto*, 467 U.S. at 1003, "without any distinction between different types." *Horne*, 576 U.S. at 358. The government may not appropriate a right to exclude without triggering a *per se* requirement of compensation. *Cedar Point*, 594 U.S. at 149. And that right is even more important in the context of trademarks. A trademark reflects its owner's right to exclusive use, so a mark that "all are free to use cannot be a trademark." *Application of Deister Concentrator Co.*, 289 F.2d 496, 501 n.5 (C.C.P.A. 1961).

This Court should also resolve the immunity issue it reserved three years ago. *See Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 346 & n.2 (2023). "[I]t is difficult to see how the same inherent sovereign immunity that the States enjoy in federal court would apply to Puerto Rico." *Id.* at 354 (Thomas, J., dissenting). Puerto Rico is a territory. Although it "may retain common-law sovereign immunity against claims raised in its own courts under its own local laws," it cannot rely on immunity to shield it from "a suit in federal court based on federal law." *Ngiraingas v. Sanchez*, 495 U.S. 182, 205 (1990) (Brennan, J., dissenting). At a minimum, the Lanham Act abrogated Puerto Rico's common law immunity when it provided a clear statement that the Act waives the sovereign immunity of the United States, 15 U.S.C. § 1122(a), which includes territories like Puerto Rico. *See id.* § 1127.

This case presents the Court with an excellent vehicle to address an important question. This case, unlike *Fin. Oversight & Mgmt. Bd.*, allows the Court to resolve Puerto Rico's immunity in a case in which Puerto Rico is a party. 598 U.S. at 346 n.2. Citizens in all fifty states know when they can take their government to federal court to redress violations of federal law. Puerto Ricans deserve the same kind of certainty.

OPINIONS BELOW

The court of appeals' order denying Respondents' petition for rehearing and rehearing en banc (App. 164a–165a) is unpublished. The panel opinion of the court of appeals (App. 1a–94a) is reported at 165 F.4th 1. The opinion of the district court (App. 95a–161a) is reported at 693 F.Supp.3d 215.

JURISDICTION

The United States Court of Appeals for the First Circuit entered judgment on January 16, 2026, and issued an order denying Respondents' motion for rehearing and rehearing en banc on February 25, 2026. Justice Jackson granted an extension to file the Petition for Certiorari to June 25, 2026. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides, "nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V.

Article IV, Section III of the U.S. Constitution provides, "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."

The Lanham Act specifies that "The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, shall not be immune from suit in Federal or State court by any person, including any governmental or nongovernmental entity, for any violation under this chapter." 15 U.S.C. § 1122(a). The Act further provides that, unless the contrary is plainly apparent from context, "[t]he United States includes and embraces all territory which is under its jurisdiction and control." 15 U.S.C. § 1127.

STATEMENT OF THE CASE

I. The Clementes and the Roberto Clemente Trademark

Roberto Clemente is a baseball legend. A native of Puerto Rico, Clemente won several batting titles, Gold Glove awards, two World Series championship trophies, a Most Valuable Player award in 1966, and a World Series Most Valuable Player award in 1971. Amended Complaint ¶ 3.2. Over his nearly two decades with the Pittsburgh Pirates, Clemente amassed 3,000 hits and became the first Latin-American player inducted into the National Baseball Hall of Fame. *Id.*; App. 4a.

Clemente was also a champion of humanitarian causes. App. 4a. In 1972, Clemente died in a plane crash while en route to deliver aid to earthquake victims in Nicaragua. *Id.* For the past 54 years, his widow (who passed away before the events in this case) and their three adult sons—Petitioners Roberto Clemente Junior, Luis Roberto Clemente, and Roberto Enrique Clemente—have worked tirelessly to protect Roberto Clemente's legacy and support the causes he believed in. *Id.*

To that end, the Clementes control two corporations, Petitioners Clemente Properties, Inc. and 21 In Right, Inc., which help to protect the Roberto Clemente trademark, safeguard his legacy, and promote his philanthropy.[1] *Id.*

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1. For ease of reference, this petition refers to Petitioners Roberto Clemente Junior, Luis Roberto Clemente, and Roberto Enrique Clemente as "the Clementes" and all Respondents as "Puerto Rico." The brief also uses "trademark" to denote "trademark, name, image, and likeness" unless context indicates otherwise.

The Clementes have diligently protected the mark—which has been in use since 1955—from misuse. Amended Compl. ¶¶ 3.3, 3.18–3.19. Clemente Properties registered the trademark with the United States Patent and Trademark Office, and 21 In Right licenses the mark. App. 4a. The Clementes retained the services of a leading intellectual property management agency, CMG Worldwide, Inc., to remedy unauthorized use of the Roberto Clemente mark. ¶ 3.19. The agency recently secured the domain name RobertoClemente.com from an unauthorized user. *Id.* ¶ 3.20. These efforts have maintained the value of the Roberto Clemente trademark, which is now routinely licensed for events, products, awards, and more. *Id.* ¶ 3.14. For instance, the Clementes use the trademark for the Roberto Clemente Foundation and the Roberto Clemente Museum in Pittsburgh to protect Roberto Clemente's legacy and continue his humanitarian work. *Id.* ¶ 3.13.

II. Puerto Rico's Trademark Theft

In 2021, Puerto Rico enacted two resolutions that allowed it to use the Roberto Clemente trademark without the Clementes' permission. App. 6a–7a. Resolution No. 16 forced Puerto Ricans acquiring a new license plate in 2022 to pay an additional 21 dollars for an image of Roberto Clemente with the number "21" (for Clemente's jersey number), the number "50," the word "anniversary," and the phrase "3,000 hits." App. 6a. Resolution No. 17 added a mandatory $5 surcharge to registration tags issued in 2022 in return for an image (featured in the tag) that commemorated the 50-year anniversary of Clemente's 3,000th hit. *Id.* The plate and tag included an image of Roberto Clemente; the words "Clemente," "anniversary," and "3000 hits";

and the numbers "21" and "50." *Id.* The Department of Transportation issued vehicle permits that referred to a Roberto Clemente fund, which is not associated with the Clemente family, next to the $5 charge. Amended Compl. ¶ 3.39. The Resolutions placed the money into a Roberto Clemente Sports District Fund, which the Department of Treasury administers for the exclusive use of the Department of Sports and Recreation. App. 6a–7a.[2]

These laws shocked the Clementes, who have been opposed to the fees imposed by Resolutions 16 and 17—particularly when many people in Puerto Rico were going through hard economic times. Amended Compl. ¶ 3.46. They proposed funding Ciudad Deportiva (a sports park created by Roberto Clemente himself) by issuing commemorative license plates, which would be available to the people of Puerto Rico in exchange for a *voluntary* donation of $2.10. *Id.* ¶ 3.50. The Clementes informed Governor Pierluisi that they never authorized the government to use Roberto Clemente's trademark in license plates or registration labels. *Id.* ¶ 3.52. Ignoring the Clementes' pleas, the Governor signed the resolutions into law. *Id.* ¶¶ 3.54–3.55. Puerto Rico's unauthorized use of the Roberto Clemente trademark netted the government 15 million dollars. *Id.* ¶ 3.110. None of it went to the Clementes.

2. Puerto Rico claims that it will create the Roberto Clemente Sports District to honor the memory of Roberto Clemente. But the Clementes have made it clear to government officials that they oppose Puerto Rico's creation of the district, ¶¶ 3.84–3.85, which would be an unauthorized use of the Clemente trademark for a replica of Ciudad Deportiva Roberto Clemente.

Even worse, Puerto Rico tarnished the Roberto Clemente trademark. Confused Puerto Ricans now resented the Clementes for contributing to the impoverishment of Puerto Rico by collecting money during the financial crisis—even though the Clementes had *opposed* Puerto Rico's Roberto Clemente license plate and registration label program and received none of its proceeds. *Id.* ¶¶ 3.45–3.47. And the trademark has become embroiled in the dispute between the government and the Clementes—one that the Clementes sought to avoid through private discussions with the Governor's office. *Id.* ¶ 3.99. All in all, Puerto Rico's misuse of the Clemente trademark hinders the Clementes' ability to do business, generate income, and protect Roberto Clemente's legacy. *Id.* ¶¶ 3.103, 3.108.

III. Proceedings below

The Clementes sued in the United States District Court for the District of Puerto Rico. As relevant here, the Clementes asserted that Puerto Rico's appropriation of the Roberto Clemente trademark violated the Takings Clause of the Fifth Amendment and several provisions of the Lanham Act. The Clementes sought monetary relief against Puerto Rico and its officials in both their individual and official capacities.[3]

The district court dismissed. The court first noted that it was bound by First Circuit precedent extending

3. The Authority, the Secretary of the Department of Sports and Recreation, and the other Puerto Rico officials separately moved to dismiss, *see* Dkt. 36, 38, 42, which the Clementes opposed in separate responses. *See* Dkt. 44, 45, 53.

the doctrine of state sovereign immunity to Puerto Rico. App. 117a–18a. The court held that the Clementes' claims could not go forward against Respondents in their official capacities because it thought that neither the Lanham Act nor the Takings Clause abrogates Puerto Rico's sovereign immunity. App. 119a–24a, 147a. And the court refused to allow the Clementes' claims against Respondents in their personal capacities to proceed because the court held that the Clementes didn't allege a plausible violation of the Fifth Amendment or the Lanham Act. App. 155a. As for the Lanham Act claims, the court cited a First Amendment case as support for its conclusion that "issuing motor vehicle license plates and tags cannot be considered commercial use, as it is a clear government activity." App. 136a (citing *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015)). The court also thought the Clementes' takings claim could be "easily dismissed." App. 147a. In a single sentence of analysis, the court reasoned that Puerto Rico's unauthorized use of the Clemente trademark did not "deprive Plaintiffs of any use of their trademarks" since "Plaintiffs remain free to use their trademarks as they wish." App. 148a.

The First Circuit affirmed in part and reversed in part. As relevant here, the panel affirmed dismissal against Respondents in their official capacities. The court held that it was bound by circuit precedent that Puerto Rico "has [sovereign] immunity to suits in federal court equal to that of the states." App. 66a–67a. It also rejected the Clementes' claim that Section 1122(a), which waives sovereign immunity for the United States and "all territory which is under its jurisdiction and control," 15 U.S.C. § 1127, waived Puerto Rico's immunity. App. 77a–82a. Instead, the panel held that it was "more plausible that Puerto Rico's covered by Section 1122(b)," App. 82a, which waives the immunity of "[a]ny state." 15 U.S.C. § 1122(b).

The panel affirmed dismissal of the takings claim. As the court noted, this Court's precedents distinguish between "physical takings and regulatory takings." App. 55a (citing *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 321 (2002)). Physical takings, which occur when "government physically takes possession of an interest in property for some public purpose," trigger "a categorical duty to compensate the former owner" and "can be resolved via the straightforward application of *per se* rules." App. 55a (quotation marks omitted). "By contrast, regulatory takings generally involve ad hoc, factual inquiries that allow careful examination and weighing of all the relevant circumstances." App. 55a (quotation marks omitted); *see also Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978). A less common type of regulatory taking, which also triggers a categorical duty to compensate, occurs where a "regulation denies all economically beneficial or productive use" of the plaintiff's property. App. 56a (citing *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992)).

The panel rejected the Clementes' argument that Puerto Rico's appropriation of the Clemente trademark triggered Puerto Rico's categorical duty to pay just compensation. As the panel saw it, "infringement of intangible intellectual property" could not "be analyzed using the same categorical approach as takings involving the physical possession or occupation of property." App. 58a. It reasoned that "intrusion onto [physical] property . . . ousts the property owner of their rights in a way that infringement of intangible property does not." App. 58. The panel was not persuaded by the Clementes' argument that Puerto Rico's appropriation of their trademark destroyed their right to exclude and amounted to a *per se* taking under this Court's precedent in *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021). The panel acknowledged the argument's "first-blush allure," App. 59a, but thought it "conceptually meaningful that as long as an organizer was physically present on the property, it meant that the owners could not use or occupy whatever square foot of land that organizer's boots were planted on." App. 61a. The panel refused to apply *per se* rules in this case because "the property is intangible." App. 61a.[4]

The panel reversed other portions of the district court's decision. The court held that the Clementes pled a plausible violation of several provisions of the Lanham Act. App. 15a–53a. The panel concluded (over a partial dissent) that Respondents waived any argument on qualified immunity because they failed to raise it when they moved to dismiss. *See* App. 83a–87a. It remanded the case to the district court so that the Clementes could press their case against Respondents in their individual capacities. Respondents petitioned the First Circuit for rehearing, which the court summarily denied. App. 165a.

4. The panel saw no need to decide the immunity issues given its resolution of the takings claims on the merits. App. 54a.

REASONS FOR GRANTING THE PETITION

I. The Panel's Conclusion That There Can Never be a Categorical Taking of Intangible Property Exacerbates Confusion Among Lower Courts on an Important Issue That is Squarely Presented in This Case

A. This Case Presents a Question That Has Perplexed Lower Courts and That This Court Has Not Conclusively Resolved

This Court has never resolved whether owners of intangible property can assert *per se* takings claims under the Fifth Amendment. In *Ruckelshaus v. Monsanto Co.*, the Court held that the government's use and disclosure of trade secrets could constitute a taking under the Fifth Amendment. 467 U.S. 986, 1016 (1984). Although trade secrets were "admittedly intangible," this Court recounted that it has found many "other kinds of intangible interests to be property for purposes of the Fifth Amendment's Taking Clause." *Id.* at 1003 (listing liens and contracts as examples). And the Court emphasized that treating trade secrets as property protected by the Fifth Amendment "is consonant with a notion of property that extends beyond land and tangible goods and includes the products of an individual's [labor] and invention." *Id.* (quotation marks omitted).

After concluding that Monsanto had a property interest in the data it had submitted to the EPA, this Court confronted the question of whether the EPA's use and disclosure of the data constituted a taking. *See id.* at 1004. Although this Court recited the *Penn Central* factors, it held that the force of one factor was so overwhelming that it disposed of the entire takings claim. *Id.* at 1005.

From 1972 to 1978, the statute prohibited the EPA from disclosing or considering trade secrets from applicants such as Monsanto. *See id.* at 1010–11. This formed the basis of a reasonable investment-backed expectation over Monsanto's trade-secret data, which EPA would frustrate with use or disclosure. *Id.* at 1011. This Court rejected the notion—now common in regulatory takings cases—that there could be no taking because Monsanto held residual value in its data even after they are disclosed. *See id.* at 1012 (noting that it was "irrelevant" that Monsanto could still use data as bases from which to develop new products or refine old products, as marketing and advertising tools, or as information necessary to obtain registration in foreign countries). Instead, what mattered was that "the right to exclude others is central to the very definition of the property interest" in a trade secret. *Id.* at 1011. The holder thus loses his property interest once the secret is divulged or others are allowed to use it. *Id. Monsanto* has confused judges. The panel below thought that it called for a multi-factor balancing test to analyze whether the appropriation of intangible property works a taking. *See* App. 64a (concluding that *Monsanto* analyzed a trade secrets-based claim under the *Penn Central* factors). As another judge saw it, *Monsanto*'s analysis "mirror[ed] a per se takings analysis." *Philip Morris, Inc. v. Reilly*, 312 F.3d 24, 51 n.26 (1st Cir. 2002) (Selya, J., concurring).

This Court's more recent cases have not conclusively resolved the question. In *Horne v. Department of Agriculture*, this Court held that a law requiring growers to set aside a portion of their crops for the government constituted a *per se* taking. 576 U.S. 350, 354, 361 (2015). The Court reinforced "the longstanding distinction between government acquisitions of property and regulations." *Id.* at 361 (quotation marks omitted). Where the government appropriates (rather than regulates) property, it works a "*per se* taking that requires just compensation." *Id.* at 358. Citing a precedent involving an alleged appropriation of a patent, this Court rejected the notion that "personal property was any less protected against physical appropriation than real property." *Id.* at 359 (citing *James v. Campbell*, 104 U.S. 356, 358 (1882)). Instead, the Takings Clause "protects 'private property' without any distinction between different types." *Id.* at 358.

In *Cedar Point Nursery v. Hassid*, this Court held that a regulation requiring agricultural employers to allow union organizers intermittent access onto their property constituted a *per se* taking. 594 U.S. 139, 143, 152 (2021). The Court again distinguished between government appropriation of "private property for itself or a third party" and "regulations that restrict an owner's ability to use his own property." *Id.* at 148. "Whenever a regulation results in a physical appropriation of property, a *per se* taking has occurred, and *Penn Central* has no place." *Id.* at 149. This Court emphasized that it has "long treated government-authorized physical invasions as takings requiring just compensation" *because* of "the central importance to property ownership of the right to exclude." *Id.* at 150. What mattered was that the growers would have had the right to exclude union organizers without the regulation, and the regulation took that right from the growers. The logic of *Horne* and *Cedar Point* would afford *per se* treatment to government appropriation of intangible property—particularly where it destroys the owner's right to exclude. The panel below, however, thought *Horne* and *Cedar Point* should be cabined to cases involving tangible property. App. 58a.

1. The panel decision exacerbates confusion among lower courts of last resort. As reflected in the decision below, the **First Circuit** now recognizes a "meaningful difference" between government appropriation of tangible and intangible property. App. 60a–61a. Although the panel below recognized that the Takings Clause protects both forms of property, App. 63a, it held that *per se* rules were categorically inapplicable to takings involving intangible property. App. 63a–64a.

Judge Selya would have disagreed with that conclusion. *Philip Morris, Inc. v. Reilly*, 312 F.3d 24, 51 (1st Cir. 2002) (Selya, J., concurring). He saw "no principled reason to refrain from extending per se takings analysis to alleged takings" of intangible property. *Id.* (trade secrets). Although this Court discussed the *Penn Central* factors in concluding that there was a taking in *Monsanto*, its "actions speak louder than words." *Id.* at 51 n.26. The *Monsanto* Court's analysis "mirror[ed] a per se takings analysis" because once it found that the "trade secret holder possessed a reasonable investment-backed expectation in its trade secrets, the Court determined that such a taking, if not justly compensated, would be unconstitutional." *Id.* In Judge Selya's view, confining "per se takings analysis to cases involving real property" establishes "a crude boundary with no compelling basis in the law." *Id.* at 51.

Like the panel below, the **Supreme Court of Texas** bars intangible property owners from prevailing on a *per se* takings claim. *See* App. 58a–61a. In *Jim Olive Photography v. University of Houston System*, that court rejected a professional photographer's claim that a university's infringement of his copyright amounted to a *per se* taking. 624 S.W.3d 764, 768, 777 (Tex. 2021). The court interpreted *Monsanto* as applying a "multi-factor regulatory taking analysis to determine that a federal statute" effected a taking. *Id.* at 773. The court distinguished this Court's *per se* taking precedents by positing that they involved "tangible property where rights are more closely bound to the physical thing." *Id.* at 774. Because the government "does not take possession or control of, or occupy," a copyright, the court thought it impossible to apply the *per se* taking doctrine in cases of copyright infringement. *Id.*; *see also id.* at 776 (concluding that "copyright is nonrivalrous, meaning that another person can use it without simultaneously depriving anyone else of its use") (quotation marks omitted).

2. The **Federal Circuit** takes a different view. In *King v. United States*, the court held that a law that reduced the plaintiffs' pension benefits did not work a taking. 151 F.4th 1348, 1351 (Fed Cir. 2025). In discussing *per se* takings, the court distinguished between "[p]hysical or intangible personal property on the one hand, and third-party contract rights on the other." *Id.* at 1360. Thus, while the court ruled against the plaintiffs because their case involved the "modification of contractual obligations owed by third parties," it suggested that the *per se* test would apply in cases involving "the government's appropriation of specific physical or intangible property for its own use or the use of others." *Id.* at 1362.

B. The Fifth Amendment Does Not Exempt Intangible Property from Per Se Takings Rules

The Fifth Amendment protects property "without any distinction between different types." *Horne v. Department of Agriculture*, 576 U.S. 350, 358 (2015). As this Court has explained, property owners do not lose their Fifth Amendment rights merely because the property they own is intangible. *See Monsanto*, 467 U.S. at 1003 (collecting cases).

The first step in the takings analysis is discerning whether government is "appropriating private property" or merely regulating its use. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 148 (2021). A court must balance different factors to determine "whether a use restriction effects a taking." *Id.* (citing *Penn Central*, 438 U.S. at 124). By contrast, government appropriation of private property trigger "a simple, *per se* rule: The government must pay for what it takes." *Id.*

There is no reason why *per se* taking rules cannot cover takings of intangible property. Government may just as easily take rights in intangible property as it may do so in tangible property. *See id.* at 158 ("[A]ppropriation" means "*taking* as one's own") (citing 1 Oxford English Dictionary 587 (2d ed. 1989)) (emphasis in original). This case is a prime example. Trademark owners establish their trademarks through use, *Hanover Star Milling Co. v. Metcalf*, 240 U.S. 403, 413 (1916), and thus possess a valuable property interest in maintaining the goodwill that they have built through their work. *See McLean v. Fleming*, 96 U.S. 245, 252 (1877). This endeavor is dependent on the ability of a trademark owner to exclude others from using his mark. *See id.* "If the law will not protect one's right to exclude others from using an alleged trademark, then he does not own a 'trademark,' for that which all are free to use cannot be a trademark." *Application of Deister Concentrator Co.*, 289 F.2d 496, 501 n.5 (C.C.P.A. 1961); *see also Monsanto*, 467 U.S. at 1011 ("[T]he right to exclude" is also "central" to a trade secret). Whenever "a person uses another's mark, the owner is robbed of the fruits of the reputation that he had successfully labored to earn." *Vidal v. Elster*, 602 U.S. 286, 306 (2024) (citation omitted).

Here, the Clementes have worked for decades to maintain the goodwill that their father built through athletic achievement and humanitarian work. Puerto Rico took advantage of that goodwill—making roughly 15 million dollars from its year-long campaign to sell the Roberto Clemente trademark. App. 49a. Puerto Rico's use of the Clemente mark also harmed the Clementes. Angry Puerto Ricans resented the fees and thought (incorrectly) the Clementes were to blame. App. 7a–8a. Puerto Rico's actions constitute an appropriation of the Clementes' property rights. No one can seriously dispute that the Clementes had a right to exclude others from using their registered mark and that Puerto Rico enacted resolutions that took that right from them. *See Cedar Point*, 594 U.S. at 155.

By contrast, one could not portray Puerto Rico's appropriation of the Clemente trademark as a use restriction without "us[ing] words in a manner that deprives them of all their ordinary meaning." *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 831 (1987). A classic example of a use *restriction* limits what a property owner can do with her property in efforts to curtail some purported harm. *See Penn Cent. Transp. Co.*, 438 U.S. at 117–18 (preventing the construction of an office tower to preserve a landmark). Here, however, Puerto Rico is itself *using* the Roberto Clemente trademark so that it can benefit from the goodwill that Clemente and his family generated through decades of work.

History confirms that the government may work a *per se* taking of intangible property. All agree that the Fifth Amendment protects tangible and intangible property rights alike. *See Monsanto*, 467 U.S. at 1003. This Court's *per se* takings doctrine is "as old as the Republic." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 322 (2002). Its regulatory takings jurisprudence "is of more recent vintage." *Id.* Thus, a rule that takings of intangible property are categorically exempt from *per se* rules would mean that the Fifth Amendment protected only tangible property until the 20th century. Not so. In *Monongahela Navigation Co. v. United States*, this Court held that a "vested franchise to receive tolls for its use" was "as much a vested right of property as the ownership of the tangible property." 148 U.S. 312, 344–45 (1893). Thus, "just compensation requires payment for the franchise to take tolls, as well as for the value of the tangible property." *Id.* at 345. In *West River Bridge Company v. Dix*, the Court observed that a distinction between an appropriation of corporeal (tangible) property and the like power in government to extinguish intangible property "ha[d] no foundation in reason." 47 U.S. 507, 533–34 (1848). No historical basis exists for the First Circuit's conclusion that takings of "intangible intellectual property" could not "be analyzed using the same categorical approach as takings involving the physical possession or occupation of property." App. 58a

In holding that *per se* rules are categorically inapplicable in cases involving intangible property, the decision below veered off course in many places. The panel concluded that this Court's *per se* takings cases "emphasize[] the unique nature of a property owner's rights over physical property and of any physical possession or intrusion onto such property, which ousts the property owner of their rights in a way that infringement of intangible property does not." App. 58a. In support, the panel cited a Texas Supreme Court decision, which the panel took to explain "how the 'nonrivalrous' nature of copyright undermines any analogy between state copyright infringement and physical takings cases." App. 58a–59a (citing *Jim Olive Photography*, 624 S.W.3d at 776). But the scholarship that the Texas Supreme Court relies on for that conclusion refutes the conclusion that only owners of physical property can assert a *per se* taking. *See* Thomas F. Cotter, *Do Federal Uses of Intellectual Property Implicate the Fifth Amendment?*, 50 Fla. L. Rev. 529, 562–63 (1998). As the author acknowledges, some forms of intellectual property, such as the right of a celebrity to "market her image under the right of publicity" or "the right to protect one's trademark from dilution" may be at least somewhat rivalrous because they "depend[] in part upon the exclusive nature of that right" *Id.* at 563 & n.206.

In any event, no basis exists for fixating on "physical property" and "physical possession." *But see* App. 58a. The Takings Clause protects rights, not things. *See United States v. General Motors Corp.*, 323 U.S. 373, 377–78 (1945); *see also id.* at 378 (the Takings Clause protects "every sort of interest the citizen may possess."). Government appropriation of an easement, for example, constitutes a *per se* taking even if "no particular individual is permitted to station himself permanently upon the premises." *Nollan*, 483 U.S. at 832. Because the taking of an easement destroys the owner's *right* to exclude, this Court has never suggested that takings of easements would be subject to a multi-factor balancing test only if those who were allowed access declined to enjoy them. The reasoning behind this Court's *per se* takings cases can easily be applied in cases involving intangible property. Indeed, the government's destruction of the right to exclude may sometimes cause more harm to owners of intangible property. A small, sporadically used easement on the side of a massive, uninhabited property might do little to deprive the owner of her use. But whenever "a person uses another's mark," he robs the owner "of the fruits of the reputation that he had successfully labored to earn." *Vidal*, 602 U.S. at 306.

The panel took the view that destruction of the right to exclude only constitutes a *per se* taking when it destroys the owner's entire bundle of property rights. App. 58a–59a. This Court's cases say otherwise. Both the dissent and the Ninth Circuit's (later overruled) decision in *Cedar Point* asserted that the plaintiffs "undermine[d] their contention that the access regulation effects a taking because they only allege that the regulation affects 'one strand of the bundle' of property rights." *Cedar Point Nursery v. Shiroma*, 923 F.3d 524, 533 (9th Cir. 2019); *see also Cedar Point*, 594 U.S. at 172 (Breyer, J., dissenting) (concluding that "a taking is not inevitably found just because the interference with property . . . affects the right to exclude.”). But this Court held that the “right to exclude falls within the category of interests that the Government cannot take without compensation.” *Id.* at 151 (majority opinion) (quotation marks and brackets omitted).[5]

Monsanto does not call for a different result. Although that decision recited the balancing factors, this Court ended its analysis once it found a protected trade secret and that the statutory assurances of confidentiality gave rise to reasonable investment-backed expectations. 467 U.S. at 1012–13. This Court’s analysis turned not on a multi-factor balancing test, but on the destruction of a core property right—the right to exclude others from valuable proprietary information. *Id.* Here, too, this Court’s analysis can begin and end with the government’s destruction of a core property right for trademarks: the right to exclude others from using the mark.

In the end, the decision below rests on a distinction between tangible and intangible property that this Court’s precedents have never recognized. The panel’s decision impermissibly relegated intangible property rights to second-tier status. The Takings Clause, however, protects private property “without any distinction between different types.” *Horne*, 576 U.S. at 358. This Court should reverse.

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5. The panel’s premise that Puerto Rico’s appropriation of the trademark did not affect the Clementes’ use strains credulity. A trademark holder possesses a right to *exclusive* use of a trademark. Puerto Rico’s destruction of that right tarnished the mark and obliterated the goodwill that the Clementes have worked to build for decades.

C. The Issue Presented is Important and This Case is an Excellent Vehicle for Addressing It

The issue presented is important. Trademarks protect an individual's "right to the continued enjoyment of his trade reputation and the goodwill that flows from it." *Hanover Star Milling Co.*, 240 U.S. at 413; *see also Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 198 (1985) (trademarks "secure to the owner of the mark the goodwill" of her business). This makes trademarks a valuable form of property. One recent study put the value of the median trademark at over $20 million. Pranav Desai et al., *The Value of Trademarks* 2 (2025). The decision below invites government to act like an unaccountable rival to businesses and nonprofits by appropriating valuable trademarks because it can do so without triggering a categorical duty to compensate the trademark owner.

The technical availability of a *Penn Central* claim provides little comfort to trademark owners. The Ninth Circuit has "observed that diminution in property value because of governmental regulation ranging from 75% to 92.5% does not constitute a taking." *Colony Cove Properties, LLC v. City of Carson*, 888 F.3d 445, 451 (9th Cir. 2018). The Federal Circuit is "aware of no case in which a court has found a taking where diminution in value was less than 50 percent." *CCA Assocs. v. United States*, 667 F.3d 1239, 1246 (Fed. Cir. 2011) (citation omitted). Under the *Penn Central* test, trademark holders could lose millions in value and not receive a penny in compensation.

The issue is cleanly presented. The panel below was squarely confronted with the claim that Puerto Rico's appropriation of the Clemente trademark constituted a *per se* taking. App. 57a–58a. The Clementes argued that there was no need for the panel to resort to a multi-factor balancing test because Puerto Rico appropriated the Roberto Clemente trademark for itself and destroyed the Clementes' right to exclude. App. 57a. The panel agreed that the Takings Clause protects intangible property. App. 63a. As the panel saw it, however, this Court's *per se* takings cases concern the "unique nature of a property owner's rights over physical property and of any physical possession or intrusion onto such property, which ousts the property owner of their rights in a way that infringement of intangible property does not." App. 58a. The panel thus affirmed the district court's dismissal of the takings claim solely because it disagreed with Petitioners on the issue presented.

This case involves the most egregious form of trademark theft. Puerto Rico appropriated the trademark pursuant to laws it enacted and sold the trademark for 15 million dollars over the course of a year. Thus, to the extent that there's any difference, Puerto Rico's misconduct was not an "isolated instance[] of infringement" but instead systematic "infringement that prevented the trademark owner from exercising their right to exclude." App. 62a n.32.

That right is particularly important for trademark holders. "If the law will not protect one's claim of right to exclude others from using an alleged trademark, then he does not own a 'trademark,' for that which all are free to use cannot be a trademark." *In re Deister Concentrator Co.*, 289 F.2d 496, 501 n.5 (C.C.P.A. 1961). This is particularly true here because this case involves the trademark of an international sports and humanitarian hero: Roberto Clemente. The "connection between a trademark and reputation is even stronger when the mark contains a person's name." *Vidal*, 602 U.S. at 1521–22.

That this case involves a trademark also makes it a superior vehicle because trademarks, unlike copyrights and patents, are property rights exclusively based on the laws of the states and common law. *In re Trade-Mark Cases*, 100 U.S. 82, 93–94 (1879). Trademarks share even more of the features of traditional property rights because they flow from the goodwill inherent in brand names and services engaged in market competition. *See id.* at 94. And trademarks, unlike copyrights and patents, may provide perpetual rights in the mark. *Qualitex Co. v. Jacobson Products Co., Inc.*, 514 U.S. 159, 165 (1995).

There are no procedural hurdles that impede this Court's review. Although the panel declined to consider whether sovereign immunity could bar a self-executing takings claim, it held that Respondents waived their qualified immunity defense by failing to properly assert it below. App. 86a; *see also* App. 86a & n.45 ("[T]he only argument made regarding the takings claim in [Respondents'] initial motion [to dismiss] was that it was barred by sovereign immunity.").[6] Thus, regardless of whether this Court grants review to determine whether sovereign immunity shields Respondents from liability in their official capacities, the parties will litigate the claims

6. To be sure, the panel states that it does not reach qualified immunity with respect to the takings claim, App. 64a, but its reasoning would doubtless lead to the same conclusion that Respondents failed to preserve any qualified immunity defense to the takings claim.

against Respondents in their individual capacities. This Court should grant review so that Petitioners can press their takings claim alongside their statutory claims on remand.

II. Sovereign Immunity Does Not Bar the Clementes' Claims

A. Puerto Rico is Not Entitled to Sovereign Immunity

1. As Justice Thomas recently observed, "it is difficult to see how the same inherent sovereign immunity that the States enjoy in federal court would apply to Puerto Rico." *Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 354 (2023) (Thomas, J., dissenting).[7] Sovereign immunity "is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution." *Alden v. Maine*, 527 U.S. 706, 713 (1999). Because States "entered the Union with their sovereign immunity intact," federal courts may not entertain a person's suit against a state "absent waiver or valid abrogation." *Virginia Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 253–54 (2011).

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7. Since "the plain text of the Eleventh Amendment applies only to lawsuits brought against a State by citizens of another State," Justice Thomas has assumed the First Circuit meant the "sovereign immunity that is inherent in the 50 States" when referring to "Eleventh Amendment immunity." *Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 598 U.S. at 353–54 (Thomas, J., dissenting); *see also* App. 65a–66a n.34 (using sovereign immunity and Eleventh Amendment immunity to refer to the immunity that states enjoy).

Puerto Rico is different. Because Puerto Rico joined the United States as a territory, *Commonwealth of Puerto Rico v. Sanchez Valle*, 579 U.S. 59, 63 (2016), it did not obtain sovereign immunity by being "admi[tted] into the Union upon an equal footing with the other States." *Alden*, 527 U.S. at 713. Territories "are not sovereigns distinct from the United States." *Sanchez Valle*, 579 U.S. at 71 (citation omitted). They are subject to the plenary power of Congress.[8] *See D.C. v. Carter*, 409 U.S. 418, 430 (1973); *see also* Art. IV, § 3, cl. 2 (allowing Congress to "make all needful Rules and Regulations respecting the Territory . . . belonging to the United States.").

2. The First Circuit has never articulated any persuasive reason why Puerto Rico is entitled to the same sovereign immunity as the states. Its earlier decisions concluding that Puerto Rico has sovereign immunity offer little reasoning. In *Ezratty v. Com. of Puerto Rico*, the First Circuit concluded, without explanation, that "principles of the Eleventh Amendment" are "fully applicable to the Commonwealth of Puerto Rico." 648 F.2d 770, 776 n.7 (1st Cir. 1981). A district court case cited by the First Circuit posits that Puerto Rico had immunity from suit before the creation of the Commonwealth. *Ursulich v. Puerto Rico Nat. Guard*, 384 F. Supp. 736, 737 (D.P.R.

8. The United States manages Puerto Rico's affairs in ways that would be unimaginable if Puerto Rico were a state. Congress set up a system "for overseeing Puerto Rico's finances," and a board that "approves and enforces the Commonwealth's fiscal plans and budgets, and supervises the Commonwealth's borrowing." *Fin. Oversight & Mgmt. Bd.*, 598 U.S. at 342–43. The Act requires Puerto Rico to send the Board the text of each new law and allows the Board to prevent the enforcement of laws significantly inconsistent with its fiscal plan. 48 U.S.C. § 2144(a).

1974). But the cases the court relies on only support a lesser, common law immunity. In *People of Porto Rico v. Rosaly y Castillo*, for example, this Court concluded that Puerto Rico was immune from a lawsuit concerning Puerto Rico law and in a Puerto Rico court. 227 U.S. 270, 273 (1913). But the case said nothing about whether Puerto Rico had sovereign immunity inherent in *state* sovereignty. *Cf. Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 598 U.S. at 346 (reserving the question).

Justice Brennan understood the difference. Dissenting from a holding that territories are not "person[s]" under 42 U.S.C. § 1983, he explained that *Rosaly* stood for the proposition that territories "may retain common-law sovereign immunity against claims raised in [their] own courts under [their] own *local* laws." *Ngiraingas v. Sanchez*, 495 U.S. 182, 205 (1990) (Brennan, J., dissenting) (emphasis in original). But territories cannot rely on immunity to shield them from "a suit in federal court based on federal law." *Id.*

In the alternative, Puerto Rico enjoys common law immunity. *Cf. Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (describing tribal immunity as a "common-law immunity from suit traditionally enjoyed by sovereign powers" as "a necessary corollary to Indian sovereignty and self-governance") (citations omitted). That common law immunity, which Puerto Rico would be able to assert in federal court, credits the Commonwealth's "power of local self-determination." *Ursulich*, 384 F. Supp. at 737. But it also recognizes Congress's plenary power over territories, *see* Art. IV, § 3, cl. 2, and allows Congress to abrogate that immunity with a clear statement of abrogation. *Cf. Lac du Flambeau Band of Lake Superior*

Chippewa Indians v. Coughlin, 599 U.S. 382, 387–88 (2023) (applying clear statement rule in tribal immunity case).[9]

B. If Puerto Rico has Some Form of Immunity in Federal Court, the Lanham Act Abrogates It

Even if Puerto Rico had common law immunity from suit in federal court, the Lanham Act provides a clear statement of Congressional intent to abrogate it. That conclusion holds regardless of whether Congress did so in Section 1122(a), which covers the United States, or Section 1122(b), which covers the states.

1. Section 1122(a) abrogates Puerto Rico's immunity. The statute provides that the United States, which the Lanham Act elsewhere defines as including "all territory which is under its jurisdiction and control," 15 U.S.C. § 1127, "shall not be immune from suit in Federal or State court" for violations of the Lanham Act. That language makes congressional intent to abrogate immunity "unmistakably clear," *Lac du Flambeau*, 599 U.S. at 387, and resembles language that, as this Court noted, "could not have been any clearer" in expressing "Congress's intent to abrogate." *Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank*, 527 U.S. 627, 635 (1999) (evaluating

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9. All agree that government can't rely on sovereign immunity to prevent individuals from seeking prospective relief against government officials in their official capacity. *See Ex Parte Young*, 209 U.S. 123 (1908). The panel's dismissal of the Clementes' claim for prospective relief rested on a theory of waiver that overlooked the arguments that the Clementes made below. *See* Pltfs' Opposition at 19–20, *Clemente Props., Inc. v. Pierluisi Urrutia*, ECF No. 45, No. 22-1373 (D.P.R. Feb. 24, 2023).

the language: “Any State . . . shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court”). Thus, federal courts hear Lanham Act cases against the United States. *See*, *e.g.*, *Trusted Integration, Inc. v. U.S.*, 679 F.Supp.2d 70, 78–79 (D.D.C. 2010).

The panel below agreed that Section 1122(a) unequivocally waives the United States’s immunity, App. 79a, but concluded that it did not clearly abrogate Puerto Rico’s immunity merely because “territory” was “open to multiple interpretations.” App. 79a. The panel’s conclusion contravened this Court’s instruction that the clear-statement “rule is not a magic-words requirement” and “Congress need not state its intent in any particular way.” *See Lac du Flambeau*, 599 U.S. at 388 (citation omitted). In *Lac du Flambeau*, for example, this Court held that the Bankruptcy Code unequivocally abrogates tribal immunity by abrogating the sovereign immunity of “governmental unit[s].” 599 U.S. at 387–92. In so doing, this Court did not take the clear statement rule to require it to credit every possible interpretation of “government” that did not include tribes. *See id.* at 392–93. Rather, it looked to how Congress and the Court ordinarily characterized tribes. *Id.*

The panel’s analysis was inconsistent with this approach. The language in Section 1127 mirrors Chief Justice Marshall’s description of the territories as being “within the power and jurisdiction of the United States.” *Am. Ins. Co. v. 356 Bales of Cotton*, 26 U.S. 511, 542–43 (1828). It makes no difference that Section 1127 puts “territory” in the singular. *But see* App. 80a. The

Constitution itself allows Congress to "dispose of and make all needful Rules and Regulations respecting the *Territory* . . . belonging to the United States." Art. IV, § 3, cl. 2 (emphasis added). Under an ordinary reading of Section 1127, "'The United States includes and embraces all territory which is under its jurisdiction and control,' including the Commonwealth of Puerto Rico." *Windmar PV Energy, Inc. v. Solar Now Puerto Rico, LLC*, No. CV 24-1570 (RAM), 2025 WL 725078, at *10 n.2 (D.P.R. Mar. 6, 2025).

The decision below asserted that Puerto Rico's status has changed "from that of a mere territory to the unique status of Commonwealth." App. 79a–80a. But this Court continues to describe Puerto Rico as a territory. *See United States v. Vaello Madero*, 596 U.S. 159, 162 (2022) ("Congress sometimes legislates differently with respect to the Territories, including Puerto Rico, than it does with respect to the States."). As this Court explained, Congress approved the Puerto Rico Constitution to "enable a territory's people to make large-scale choices about their own political institutions." *Sanchez Valle*, 579 U.S. at 65, 77. But Congress did not fundamentally change Puerto Rico's status.

The First Circuit's reliance on its precedent in *Jusino Mercado v. Commonwealth of Puerto Rico*, 214 F.3d 34, 42 (1st Cir. 2000), is also misplaced. *Jusino Mercado* evaluated a provision of the Fair Labor Standards Act that expressly defined "State" to include "any Territory or possession of the United States." 29 U.S.C. § 203(c). By contrast, the Lanham Act does not mention "territory" in its definition of states, 15 U.S.C. § 1122(b), but in its definition of the United States. 15 U.S.C. § 1127. In all, to the extent that Puerto Rico has immunity from suit in federal court, Section 1122(a) provides a clear statement of Congress's intent to abrogate it.

2. Even if the panel was correct that Section 1122(b) encompasses Puerto Rico, that provision should have abrogated Puerto Rico's immunity. All agree that Section 1122(b), which provides that states "shall not be immune" from suit in federal court, reflects Congress's "unmistakable intent to abrogate state sovereign immunity for Lanham Act claims." App. 70a (citation omitted). The panel took a wrong turn, however, when it then required the Clementes to establish a proper abrogation of *state* sovereign immunity under Section 5 of the Fourteenth Amendment. App. 72a. Because the Territory Clause gives Congress plenary power over territories, *see* Art. IV, § 3, cl. 2, Congress is not limited to its power to "enforce" the Fourteenth Amendment when it attempts to abrogate Puerto Rico's immunity. *Allen v. Cooper*, 589 U.S. 248, 260 (2020). Thus, if Section 1122(b) applies to Puerto Rico, it also abrogates its immunity by providing a clear statement of Congress's intent to do so.

C. This Case Presents an Excellent Vehicle to Address an Issue of Vast Importance

This case presents an excellent vehicle to determine whether Puerto Rico is immune from suit in federal court. Unlike *Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Centro de Periodismo Investigativo, Inc.*, in which the Court "agreed to tackle only the abrogation question," the Court can grant certiorari to explicitly decide this issue. 598 U.S. 339, 346 n.2 (2023). As the panel acknowledged, the Clementes explicitly preserved this question for review, App. 67a n.35, and the question is presented here directly. Moreover, unlike *Fin. Oversight & Mgmt. Bd. for Puerto Rico*, which was "a singularly inapt vehicle to resolve Puerto Rico's immunity" because Puerto Rico did not play a role in that case, Puerto Rico will play a central role here because it and its officials are parties to the suit. 598 U.S. at 346 n.2.

The extent of Puerto Rico's immunity is extremely important. For decades, the First Circuit has vested Puerto Rico with state sovereign immunity without providing a compelling reason for doing so. The court's holdings are not just misguided in theory, but harmful in practice. *In re San Juan Dupont Plaza Hotel Fire Litigation* concerned a fire in a hotel in Puerto Rico that resulted in 96 deaths, other severe injuries, and property damage. 888 F.2d 940, 941 (1st Cir. 1989). Thousands of plaintiffs had their claims against the Tourism Company of Puerto Rico dismissed because the First Circuit determined it was an arm of Puerto Rico. *Id.* at 940–41, 943 (1st Cir. 1989). In *Maysonet-Robles v. Cabrero*, homeowners and low-income housing tenants saw their claims based on the presence of asbestos and lead within units dismissed on sovereign immunity grounds. 323 F.3d 43, 46–47 (1st Cir. 2003). According to the court, "the actions of the Puerto Rico executive agencies and legislature here have continued a distressing pattern of activity in seeking to avoid millions of dollars of established or potential liability." *Id.* at 54. Puerto Rico's reliance on "Eleventh Amendment immunity" to escape accountability continues. *See, e.g.*, *Miya Water Projects Netherlands B.V. v. Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 138 F.4th 49, 51–52, 54, 56 (1st Cir. 2025) (suit barred by immunity after Financial Oversight and Management Board for Puerto Rico refused to provide records about a cancelled water infrastructure project).

Puerto Ricans deserve better. Citizens in 50 states know the rules that, for better or worse, dictate the remedies they can obtain against their state governments in federal court. Puerto Ricans, however, do not have clarity on this important issue—which affects the entire political and legal system of the Commonwealth. This Court's intervention is thus needed to provide them with the certainty that those who live in the 50 states already enjoy. The decision below, predicated on an indefensible view of Puerto Rico's immunity from suit, defies both constitutional structure and congressional intent. This Court should correct this decades-long folly.

CONCLUSION

The petition for a writ of certiorari should be granted.

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Respectfully submitted,

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