No. 18-1447

In the Supreme Court of the United States

REPUBLIC OF HUNGARY, ET AL., PETITIONERS

v.

ROSALIE SIMON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

The Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1441(d), 1602 *et seq.*, provides that a foreign state and its agencies and instrumentalities are immune from the jurisdiction of federal and state courts in civil actions, subject to limited exceptions. The questions presented are:

1. Whether a court may invoke the doctrine of international comity to abstain from exercising jurisdiction under the FSIA.

2. Whether the court of appeals correctly applied the *forum non conveniens* doctrine to the facts of this case.

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the first question presented is worthy of this Court's review but would be better resolved in *Federal Republic of Germany* v. *Philipp*, No. 19-351 (filed Sept. 16, 2019). If the Court grants the petition for a writ of certiorari in *Philipp*, the Court should hold the petition in this case. If the Court denies the petition in *Philipp*, it should grant the petition in this case, limited to the first question presented.

STATEMENT

1. The Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1441(d), 1602 *et seq.*, provides the sole basis for jurisdiction in federal or state court in

a civil suit against a foreign state or its agency or instrumentality. See *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 434-435 & n.3 (1989); see also 28 U.S.C. 1603(a) (defining "'foreign state'" to include "an agency or instrumentality of a foreign state"). Under the FSIA, a foreign state is immune from jurisdiction unless it falls within one of the limited exceptions to immunity described in 28 U.S.C. 1605-1607. See 28 U.S.C. 1604. If one of those exceptions applies, "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. 1606.

This case involves the FSIA's expropriation exception to immunity from suit. That exception provides:

> (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—
>
> * * * * *
>
> (3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States.

28 U.S.C. 1605(a)(3).

2. a. Respondents are 14 Jewish survivors of the Hungarian Holocaust, all of whom were Hungarian nationals at the time of the events giving rise to their claims but subsequently obtained citizenship in other

countries. Pet. App. 2a, 48a-49a. Four of respondents are now U.S. citizens. *Id.* at 2a.

Respondents filed suit in the District Court for the District of Columbia against petitioners—the Republic of Hungary and the state-owned Hungarian railway, Magyar Államvasutak Zrt. (MÁV)—on behalf of a putative class of Hungarian Holocaust survivors and their heirs. Pet. App. 2a, 53a-54a. Respondents alleged that Hungary had collaborated with the Nazis to exterminate Hungarian Jews and expropriate their property, and that MÁV had assisted that effort both by transporting Hungarian Jews to death camps and by stripping them of their personal property at the point of embarkation. *Id.* at 51a-54a. As relevant here, respondents sought "compensation for the seizure and expropriation of [their] property as part of the Hungarian government's genocidal campaign." *Id.* at 2a. To that end, their complaint asserted, *inter alia*, common law property torts, including conversion and unjust enrichment. *Id.* at 54a.

b. The district court originally dismissed the case under 28 U.S.C. 1604, which provides that, "[s]ubject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune * * * except as provided in sections 1605 to 1607 of this chapter." 37 F. Supp. 3d 381, 408 (citation omitted). The court reasoned that an article of the 1947 Hungary-U.S. Peace Treaty, which obligated Hungary to provide restitution for Holocaust-era takings, deprived the court of subject-matter jurisdiction. *Id.* at 408-424; see Treaty of Peace with Hungary, Feb. 10, 1947, T.I.A.S. No. 1651, 41 U.N.T.S. 135.

The court of appeals reversed. 812 F.3d 127. The court determined that the mechanism provided under

the 1947 Treaty was not "the exclusive means by which Hungarian Holocaust victims can seek compensation for (or restoration of) property taken from them during the War." *Id.* at 137 (emphasis omitted). The court then addressed the applicability of the FSIA's expropriation exception, affirming the dismissal of respondents' "non-property claims," *id.* at 151, but reversing as to the common law property claims, *id.* at 140-141. The court acknowledged that a sovereign's expropriation of its own nationals' property is not a violation of international law under the "so-called 'domestic takings rule,'" *id.* at 144 (citation omitted), but held that "[e]xpropriations undertaken for the purpose of bringing about a protected group's physical destruction qualify as genocide," *id.* at 143. On that basis, the court concluded that respondents had adequately alleged takings that were "in violation of international law" within the meaning of the expropriation exception. 28 U.S.C. 1605(a)(3); see 812 F.3d at 143-145. The court remanded for the district court to consider any remaining arguments for dismissal, including "whether, as a matter of international comity, the court should decline to exercise jurisdiction unless and until the plaintiffs exhaust available Hungarian remedies." 812 F.3d at 149.

3. On remand, respondents amended their complaint to assert that the alleged takings by petitioners were "themselves genocide." Pet. App. 60a (citation omitted). Petitioners again moved to dismiss. *Ibid.* As relevant here, they contended that the district court should abstain from exercising jurisdiction as a matter of international comity until respondents exhaust their remedies in Hungary and, relatedly, that the court should dismiss the case under *forum non conveniens*

because respondents' claims would be more appropriately litigated in Hungary. *Id.* at 60a-61a.

The district court dismissed on both grounds. Pet. App. 48a-95a. The court first determined that "'[e]xhaustion of domestic remedies is preferred in international law as a matter of comity'" and that respondents were therefore required to show that they had "exhausted [Hungary's] own domestic remedies, or that to do so would be futile." *Id.* at 66a (quoting *Fischer* v. *Magyar Államvasutak Zrt.*, 777 F.3d 847, 859 (7th Cir.), cert. denied, 135 S. Ct. 2817 (2015)). Because respondents acknowledged that they had not pressed their claims in Hungary, the court proceeded to the futility inquiry. *Id.* at 67a. The court found that "Hungary is an adequate alternative forum for [respondents'] claims," concluding that Hungarian courts enforce international law and provide damages for the types of property claims asserted here. *Id.* at 75a. The court then determined, in the alternative, that the doctrine of *forum non conveniens* would "dictate the same result." *Id.* at 83a. The court relied on its prior finding that "Hungary is both an available and adequate alternative forum," *id.* at 85a, and reasoned that the private- and public-interest factors weighed in favor of adjudicating the dispute there, *id.* at 85a-95a.

4. A divided panel of the court of appeals reversed. Pet. App. 1a-47a. The court held both that the FSIA foreclosed the exercise of international-comity-based abstention, *id.* at 13a-16a, and that the district court had abused its discretion in dismissing the action on *forum non conveniens* grounds, *id.* at 17a-35a.

a. The court of appeals' comity analysis followed that court's recent holding in *Philipp* v. *Federal Republic of Germany*, 894 F.3d 406 (D.C. Cir. 2018), petition

for cert. pending, No. 19-351 (filed Sept. 16, 2019), that the FSIA "leaves no room for a common-law exhaustion doctrine based on * * * considerations of comity." *Id.* at 416; see Pet. App. 14a-16a. The court in this case further reasoned that a "substantial risk" existed that respondents' "exhaustion of any Hungarian remedy could preclude them by operation of *res judicata* from ever bringing their claims in the United States," and that abstention would thus "amount to a judicial grant of immunity from jurisdiction in United States courts." Pet. App. 14a. And because "'any sort of immunity defense made by a foreign sovereign in an American court must stand on the [FSIA]'s text,'" the court believed that permitting comity-based abstention would amount to "judicial reinstatement of immunity that Congress expressly withdrew." *Id.* at 15a (quoting *Republic of Argentina* v. *NML Capital, Ltd.*, 573 U.S. 134, 141-142 (2014)). The court also believed that the comity doctrine on which petitioners relied was not among the historical legal doctrines that Congress preserved when it enacted the FSIA because, in the court's view, such a doctrine "lacks any pedigree in domestic or international common law." *Id.* at 16a.

The court of appeals acknowledged, however, that "the ancient doctrine of *forum non conveniens* is not displaced by the FSIA." Pet. App. 17a. But the court held that the district court had abused its discretion in applying that doctrine here. *Id.* at 18a-19a. The court of appeals determined that the district court had accorded insufficient deference to respondents' choice of forum and had otherwise misallocated the burden of proof. *Id.* at 19a-25a. The court also reassessed the relevant public- and private-interest factors, finding that

each weighed in favor of litigating the case in the United States. *Id.* at 25a-35a.

b. Judge Katsas dissented. Pet. App. 37a-47a. He did not discuss the comity question, on which he dissented from the denial of rehearing en banc in *Philipp*. See *Philipp* v. *Federal Republic of Germany*, 925 F.3d 1349, 1355-1357 (D.C. Cir. 2019) (per curiam) (Katsas, J., dissenting from the denial of rehearing en banc), petition for cert. pending, No. 19-351 (filed Sept. 16, 2019). Instead, he concluded that the district court "permissibly applied the settled law of *forum non conveniens*" to conclude that "this foreign-cubed case—involving wrongs committed by Hungarians against Hungarians in Hungary—should be litigated in Hungary." Pet. App. 37a. In his view, "[t]he district court correctly stated the governing law and reasonably weighed the competing considerations in this case," which sufficed under the deferential standard of appellate review. *Id.* at 47a.

DISCUSSION

Both the petition for a writ of certiorari in this case and the petition in *Federal Republic of Germany* v. *Philipp*, No. 19-351 (filed Sept. 16, 2019), raise the first question presented: whether a court may invoke the doctrine of international comity to abstain from exercising jurisdiction under the FSIA. To be clear at the outset, the United States deplores the atrocities committed against victims of the Nazi regime and its allies, and supports efforts to provide those victims with remedies for the wrongs they have suffered. Since Hungary's transition from Communism, the United States has worked in numerous ways to achieve some measure of justice for Holocaust victims and their heirs, and—with the United States' encouragement—the Hungarian

government has provided some relief to compensate Holocaust survivors and other victims of the Holocaust.

Nevertheless, in the decision below and in *Philipp*, the D.C. Circuit erred in concluding that the FSIA prevents courts from abstaining from exercising jurisdiction as a matter of international comity. See Pet. App. 13a-16a; *Philipp* v. *Federal Republic of Germany*, 894 F.3d 406, 414-416 (D.C. Cir. 2018), petition for cert. pending, No. 19-351 (filed Sept. 16, 2019). That conclusion conflicts with the Seventh Circuit's contrary holding in *Fischer* v. *Magyar Államvasutak Zrt.*, 777 F.3d 847, cert. denied, 135 S. Ct. 2817 (2015). Certiorari is warranted to resolve the conflict on that important question, which may have significant foreign-policy consequences.

Although both cases would be appropriate vehicles for considering the first question presented here, the United States recommends that the Court grant the petition for a writ of certiorari in *Philipp* and hold the petition here. *Philipp* also presents the jurisdictional question whether the FSIA's expropriation exception applies to claims that a foreign state has taken the property of its own nationals—*i.e.*, whether such a domestic taking can qualify as a "tak[i]n[g] in violation of international law," 28 U.S.C. 1605(a)(3), when the claims are related to a violation of international human rights law in connection with the taking. Although the court of appeals in this case resolved that jurisdictional question in a prior decision, see 812 F.3d 127, petitioners have not sought this Court's review of that decision. Because the petition in *Philipp* expressly raises both questions, it would be the better vehicle for considering those important issues.

Meanwhile, the second question presented in this case—concerning the court of appeals' reversal of the district court's *forum non conveniens* dismissal—is a factbound claim of error that does not merit further review.

A. The First Question Presented Warrants This Court's Review But Would Be Better Addressed In *Philipp*

1. As explained at greater length in the United States' amicus brief in *Philipp*, filed contemporaneously with this brief, the first question presented here—whether a court may invoke the doctrine of international comity to abstain from exercising jurisdiction under the FSIA—warrants this Court's review. See U.S. Amicus Brief at 15-22, *Philipp*, *supra* (No. 19-351). The court of appeals incorrectly decided that important question, which has divided two courts of appeals and is unlikely to generate significant additional percolation.

In the decision below, the court of appeals erroneously concluded that the FSIA leaves "no room" for a court to abstain from exercising jurisdiction as a matter of international comity. Pet. App. 15a; see *Philipp*, 894 F.3d at 416. This Court has long recognized the doctrine of international comity, which permits U.S. courts to notice the "legislative, executive or judicial acts of another nation," giving "due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." *Hilton* v. *Guyot*, 159 U.S. 113, 164 (1895). One strand of comity is "adjudicatory comity," under which a U.S. court may abstain from exercising jurisdiction in deference to adjudication in a foreign forum. See *Mujica* v. *AirScan Inc.*, 771 F.3d 580, 599 (9th Cir. 2014), cert. denied, 136 S. Ct. 690 (2015). That prudential, non-immunity doctrine remains available under the

FSIA, which provides that, for any claim for which a foreign state is not immune from suit, the foreign state "shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. 1606; cf. *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 490 n.15 (1983) (observing that the FSIA "does not appear to affect the traditional doctrine of *forum non conveniens*"). Yet the court of appeals incorrectly characterized international-comity-based abstention as a species of sovereign immunity displaced by the FSIA. See Pet. App. 14a-16a; see also *Philipp*, 894 F.3d at 414-416.[1]

The court of appeals' decisions below and in *Philipp* also create a circuit conflict. The Seventh Circuit has concluded, in a suit similar to the one here, that "the comity at the heart of international law required plaintiffs either to exhaust domestic remedies in Hungary or to show a powerful reason to excuse the requirement." *Fischer*, 777 F.3d at 858. As that court emphasized, abstaining to allow plaintiffs to take advantage of a foreign forum is not a form of sovereign immunity: "If plaintiffs attempt to bring suit in Hungary and are blocked arbitrarily or unreasonably, United States courts could once again be open to these claims." *Id.* at 865-866.[2]

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[1] Although courts may apply the doctrine of international-comity-based abstention in suits brought under the FSIA, the United States has not taken a position on the fairness or adequacy of the proceedings that respondents could invoke in a Hungarian forum. See U.S. C.A. Amicus Br. 10-11.

[2] The Seventh Circuit, however, mistakenly described its application of international-comity principles as "impos[ing] an *exhaustion requirement* that limits where plaintiffs may assert their international law claims." *Fischer*, 777 F.3d at 857 (emphasis added). International-comity-based abstention is better characterized as a prudential doctrine recognizing that, in a particular case, a foreign

The decisions below and in *Philipp* thus "create a circuit split on a sensitive foreign-policy question." *Philipp* v. *Federal Republic of Germany*, 925 F.3d 1349, 1357 (D.C. Cir. 2019) (per curiam) (Katsas, J., dissenting from the denial of rehearing en banc), petition for cert. pending, No. 19-351 (filed Sept. 16, 2019); see Resp. Br. in Opp. 14 (acknowledging that "the Seventh Circuit's decision in *Fischer* does conflict with the decision below and in *Philipp*"). And the FSIA's venue provision, 28 U.S.C. 1391(f)(4), which provides that a civil action may always be brought "in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof," reduces the prospect of substantial further percolation in the courts of appeals. See Pet. 14.

This Court's review is warranted to resolve that circuit conflict. Litigation against foreign sovereigns frequently raises foreign-policy concerns, and U.S. interests may be particularly sensitive where, as here, the claims allege serious human-rights abuses on the part of a foreign state. Moreover, as relevant here, the

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sovereign may have a greater interest in resolving the dispute than the United States, and that U.S. interests may be better served by deferring to that foreign sovereign's interests. That may mean deferring to an alternative forum, *e.g.*, *Ungaro-Benages* v. *Dresdner Bank AG*, 379 F.3d 1227, 1237-1238 (11th Cir. 2004); deferring to a foreign law that precludes plaintiffs' standing to bring suit, *e.g.*, *Bi* v. *Union Carbide Chems. & Plastics Co.*, 984 F.2d 582, 586 (2d Cir.), cert. denied, 510 U.S. 862 (1993); or giving conclusive weight to the foreign state's resolution of a dispute, *e.g.*, *Mujica*, 771 F.3d at 614-615. But in any of those scenarios, a court should make a case-specific assessment of "the particular facts, sovereign interests, and likelihood that resort to [alternative] procedures will prove effective." *Société Nationale Industrielle Aérospatiale* v. *United States District Court*, 482 U.S. 522, 543-544 (1987).

United States has urged foreign partners to establish appropriate redress and compensation mechanisms for Holocaust victims. See, *e.g.*, Bureau of European and Eurasian Affairs, U.S. Dep't of State, *Prague Holocaust Era Assets Conference: Terezin Declaration* (June 30, 2009), https://2009-2017.state.gov/p/eur/rls/or/126162.htm (emphasizing importance of property restitution and compensation, and supporting national programs to address Nazi-era property confiscations). The exercise of jurisdiction by U.S. courts in some such cases may undermine the ability of the United States to advance its foreign-policy objectives.

2. The United States recommends that the Court grant the petition for a writ of certiorari in *Philipp* and hold the petition in this case because *Philipp* is the better vehicle for this Court's review. See U.S. Amicus Brief at 21-22, *Philipp*, *supra* (No. 19-351).

Respondents' allegations in this case implicate the jurisdictional question whether a state's taking of property from its own nationals amounts to a taking "in violation of international law" under the FSIA's expropriation exception, 28 U.S.C. 1605(a)(3). See 812 F.3d at 140-143. That question is directly presented in the *Philipp* petition. See Pet. at i, *Philipp*, *supra* (No. 19-351). And as the United States explains in its amicus brief in *Philipp*, the particular jurisdictional question about the reach of the expropriation exception warrants this Court's review. See U.S. Amicus Brief at 7-14, *Philipp*, *supra* (No. 19-351).

In the petition here, however, petitioners have not raised that jurisdictional question. Their failure to do so counsels against granting review in this case. To be sure, this Court has held that federal courts may "by-

pass[] questions of subject-matter and personal jurisdiction" in order to dismiss an action pursuant to a prudential-abstention doctrine. *Sinochem Int'l Co.* v. *Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 432, 436 (2007) (*forum non conveniens*); see *Levin* v. *Commerce Energy, Inc.*, 560 U.S. 413, 432 (2010) (state-taxation comity doctrine). But the Court need not take that course in the cases before it here, as the jurisdictional question is independently worthy of its review.

Accordingly, to ensure that the Court has both the jurisdictional and the comity questions before it, the United States recommends granting the petition for a writ of certiorari in *Philipp*. If the Court does so, the United States recommends that the Court hold the petition in this case pending its disposition of *Philipp*. If, however, the Court determines not to grant review in *Philipp*, then the United States recommends granting the petition in this case, limited to the first question presented for the reasons discussed below.

B. The Second Question Presented Does Not Warrant This Court's Review

The second question presented concerns the district court's alternative dismissal on *forum non conveniens* grounds. See Pet. App. 83a-95a. The court of appeals reversed, concluding that the "district court committed material legal errors at each step of its analysis" and thereby abused its discretion. *Id.* at 3a; see *id.* at 25a-26a. Although some doubt exists about whether the court of appeals applied an appropriately deferential standard of review, that question does not warrant this Court's review.

Petitioners seek (Pet. 23-30) this Court's review of whether a court, in undertaking a *forum non conveniens* analysis, (1) must defer to the plaintiffs' choice of

forum where the only connection to the United States is that some of the plaintiffs became U.S. citizens after the time relevant to the complaint; and (2) may defer to a foreign state's interest in having its own courts resolve the dispute on its own soil and having the plaintiffs exhaust their domestic remedies before suing in another nation's courts. But the court of appeals did not purport to establish either of the categorical legal rules that petitioners attack. Instead, the court's decision involved a case-specific application of "the settled law of *forum non conveniens*." Pet. App. 37a (Katsas, J., dissenting).

To begin, the parties and the courts below share substantial common ground as to the appropriate legal framework for a *forum non conveniens* analysis. All agree that a court may appropriately apply the *forum non conveniens* doctrine in a suit brought under the FSIA. See Pet. App. 17a ("[T]he ancient doctrine of *forum non conveniens* is not displaced by the FSIA."); *id.* at 83a; Pet. 31; Resp. Br. in Opp. 24; see also U.S. C.A. Amicus Br. 25 (contending that a district court may abstain from exercising FSIA jurisdiction under *forum non conveniens*). In applying that doctrine, a court must begin with a presumption in favor of the plaintiff's choice of forum. See Pet. App. 17a, 83a; Pet. 24; Resp. Br. in Opp. 24. That presumption is rebuttable upon a sufficient showing by the defendant that an adequate alternative forum exists and that the convenience of litigating the case in that forum predominates over the plaintiff's preference to litigate in his or her chosen forum. Pet. App. 18a, 83a; Pet. 36; Resp. Br. in Opp. 24. The relevant considerations for that balancing test are the "private interest" and "public interest" factors first enumerated in *Gulf Oil Corp.* v. *Gilbert*, 330 U.S. 501, 508 (1947), in which this Court "fully crystallized" the

forum non conveniens doctrine, *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235, 248 (1981). Pet. App. 18a, 84a; Pet. 36; Resp. Br. in Opp. 24-25.

The parties part ways over the lower courts' application of those undisputed principles to the facts of this case. Petitioners contend (Pet. 24-30) that the court of appeals was overly deferential to respondents' choice of forum and gave short shrift to factors that, in their view, favored their proposed alternative forum—principally, petitioners' "comity interests" in litigating this case in Hungary. But, contrary to petitioners' framing, the court of appeals did not hold that district courts must categorically defer to a U.S. plaintiff's choice of forum when performing a *forum non conveniens* analysis. Instead, the court of appeals determined that the district court erred in this case by affording insufficient deference to respondents' choice of forum when "nearly a third of the plaintiffs are from the United States"; "*no* plaintiff resides" in Hungary; Hungary "made no effort to show how * * * the United States is a less convenient forum than Hungary"; and it was "inconvenient to further delay the elderly [respondents'] almost decades-long pursuit of justice." Pet. App. 19a-21a. Similarly, the court of appeals did not preclude consideration of a foreign sovereign defendant's comity interests; it simply found those considerations insufficient on the facts here. See *id.* at 29a-35a (describing, *inter alia*, the perceived delays and deficiencies in Hungary's compensation schemes, the absence of named plaintiffs in Hungary, the failure to identify any Hungarian class members or witnesses, and the fact that neither party advocated for applying current Hungarian law). As respondents therefore correctly observe (Br. in Opp. 24-25), the court did not adopt any generally applicable legal rule

that might conflict with the prevailing rule in other courts of appeals.

That said, petitioners raise substantial arguments (Pet. 35-36) that the court of appeals erred in finding that the district court abused its discretion and in reversing that court's *forum non conveniens* determination. "The *forum non conveniens* determination is committed to the sound discretion of the trial court," and the trial court's "decision deserves substantial deference." *Piper Aircraft Co.*, 454 U.S. at 257. The court of appeals' close scrutiny of the district court's decision here was arguably inconsistent with that deferential standard of review. Compare Pet. App. 18a (concluding that "[t]he district court committed a number of legal errors that so materially distorted its analysis as to amount to a clear abuse of discretion"), with *id.* at 39a-40a (Katsas, J., dissenting) (assessing in context the district court's application of deference); *id.* at 41a (explaining that the district court's statements about the parties' burdens "made good sense in the context of [the district court's] overall analysis"); *id.* at 43a (concluding that "[t]he district court reasonably balanced the private and public interests involved"). But the question whether the court of appeals properly applied the deferential abuse-of-discretion standard is not directly presented here, and that case-specific question would not merit further review even had petitioners raised it.

Because petitioners at bottom assert only a "misapplication of a properly stated rule of law," the second question presented does not warrant this Court's review. Sup. Ct. R. 10.

CONCLUSION

If the Court grants the petition for a writ of certiorari in *Federal Republic of Germany* v. *Philipp*, No. 19-351, it should hold the petition in this case pending disposition of *Philipp*. If the Court denies the petition in *Philipp*, it should grant the petition in this case, limited to the first question presented.

Respectfully submitted.

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