No. 21-_____

IN THE

Supreme Court of the United States

CARTER PAGE; GLOBAL ENERGY CAPITAL LLC;
AND GLOBAL NATURAL GAS VENTURES LLC,

Petitioners,

v.

DEMOCRATIC NATIONAL COMMITTEE; DNC SERVICES CORPORATION; PERKINS COIE LLP; MARC ELIAS; AND MICHAEL SUSSMANN,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case involves a defamation suit brought by Carter Page, a U.S. citizen domiciled in Oklahoma, and his two solely-owned limited liability companies (which are likewise deemed citizens of Oklahoma) against several non-Oklahoma entities and individuals, including Perkins Coie LLP, an international law firm partnership. Although none of the defendants, and no Perkins Coie partner, is domiciled in Oklahoma, the court below nevertheless held that because a few U.S. citizen partners of Perkins Coie having no involvement with the matters at issue in the case but who are currently domiciled in Beijing, China, the "complete diversity" necessary for jurisdiction under 28 U.S.C. § 1332(a) was destroyed.

This Court held in *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195 (1990), that partnerships are citizens of every state in which an individual partner is a citizen. And it held in *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828-29 (1989), that U.S. citizens domiciled abroad may not be sued in diversity because they are essentially stateless—neither a citizen of a State nor a citizen or subject of a foreign state. The court below inferred from those two holdings that because a stateless citizen cannot be sued in diversity, a partnership with even one such stateless citizen destroys complete diversity even though no defendant shares the domicile of any plaintiff. The question presented is thus:

> Whether a U.S. Citizen domiciled abroad who is a member of a partnership defendant destroys the complete diversity required by 28 U.S.C. § 1332(a), when no defendant or partner of the partnership defendant shares domicile with any plaintiff.

PARTIES TO THE PROCEEDING

Petitioners: Carter Page, Global Energy Capital LLC, and Global Natural Gas Ventures LLC, were plaintiffs in the District Court and appellants in the Court of Appeals.

Respondents: Democratic National Committee, DNC Services Corporation, Perkins Coie LLP, Michael Sussmann, and Marc Elias were defendants in the District Court and appellees in the Court of Appeals.

CORPORATE DISCLOSURE

Petitioner Global Energy Capital LLC has no parent corporation and no publicly-held corporation has a 10% or greater ownership interest in it. Petitioner Global Natural Gas Ventures LLC has no parent corporation and no publicly-held corporation has a 10% or greater ownership interest in it.

RELATED CASES

- *Page, et al. v. Democratic National Committee, et. al.*, No. 1:20-cv-671, U.S. District Court for the Northern District of Illinois. Judgement entered August 17, 2020.
- *Page, et al. v. Democratic National Committee, et. al.*, No. 20-2781, U.S. Court of Appeals for the Seventh Circuit. Judgement entered June 21, 2021.

TABLE OF CONTENTS

APPENDICES

TABLE OF AUTHORITIES

Cases

Statutes and Constitutional Provisions

Other Authorities

Rules

PETITION FOR WRIT OF CERTIORARI

Petitioners Carter Page, Global Energy Capital LLC, and Global Natural Gas Ventures LLC respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

INTRODUCTION

This case arises from the attempt by Respondents Democratic National Committee, DNC Services Inc., Perkins Coie LLP, Marc Elias, and Michael Sussmann to influence voters in the 2016 U.S. presidential election by a "plan to stir up a scandal against U.S. Presidential candidate Donald Trump by tying him to [Russia President Vladimir] Putin."[1] They advanced this objective by, *inter alia*, defaming one of the Trump campaign's volunteers, Dr. Carter Page. Complaint ¶ 69, Pet.App.45a. The DNC retained international law firm Perkins Coie LLP to "dig up dirt" ("create dirt," Complaint ¶ 86, Pet.App,49a, is more accurate) about so-called "Russian collusion" on then-candidate Donald Trump's campaign. Pet.App.18a. Perkins Coie in turn paid investigative firm Fusion GPS to produce the infamous Steele Dossier consisting of uncorroborated and unverified false allegations that Dr. Page discussed lifting U.S. sanctions with Russian officials and business executives while serving as

[1] U.S. Senate Judiciary Cmte., "Chairman Graham Releases Information from DNI Ratcliffe on FBI's Handling of Crossfire Hurricane" (Sept. 29, 2020), https://www.judiciary.senate.gov/press/rep/releases/chairman-graham-releases-information-from-dni-ratcliffe-on-fbis-handling-of-crossfire-hurricane.

an informal foreign policy advisor to the Trump campaign. *Id.* at 18a-19a. In what is surely one of the biggest political scandals in our nation's history, U.S. Government officials in the Obama administration then used the defamatory claims about Dr. Page and other unverified information from the Steele Dossier to "spy" on the campaign of the opposition party's candidate for President. Complaint ¶ 6, Pet.App.30a; *see also*, *e.g.*, Andrew C. McCarthy, *Behind the Obama administration's shady plan to spy on the Trump campaign*," New York Post (April 15, 2019).

The DNC and Perkins Coie used the national media to spread their defamatory claims and turn the unknown Dr. Page into a presumed traitor to his country. The resulting threats to his life forced Dr. Page into hiding and destroyed his existing and future business opportunities. Complaint ¶ 5, Pet.App.30a.

Already, the false narrative perpetrated by Respondents has resulted in indictments against key players involved in the "Russiagate" scandal, including Michael Sussmann, one of the named respondents here. *See United States v. Michael A. Sussmann*, No. 1:21-cr-00582 (D.D.C. Sept. 16, 2021); *see also United States v. Igor Y. Danchenko*, No. 1:21-CR-245 (E.D. Va. Nov. 3, 2021); *United States v. Kevin Clinesmith*, No. 1:20-cr-00165 (D.D.C. Aug. 14, 2020, guilty plea entered Aug. 19, 2020).

Relying on the Article III and statutory diversity jurisdiction of the federal courts, Dr. Page brought this defamation case to hold accountable those whose actions began the entire scandal and caused immeasurable harm to Dr. Page and his reputation. *See*, *e.g.*, T.A. Frank, "The Steele Dossier Was a Case Study in

How Reporters Get Manipulated," NY Magazine (July 14, 2021).[2]

OPINIONS BELOW

The Seventh Circuit's opinion (Pet.App.1a) is reported at 2 F.4th 630. The District Court's opinion (Pet.App.17a) is unpublished, but available at 2020 WL 8125551.

STATEMENT OF JURISDICTION

The Seventh Circuit issued its decision on June 21, 2021. Pet.App.1a. Pursuant to this Court's orders of July 19, 2021, and March 19, 2020, the deadline to file a petition for writ of certiorari for decisions issued prior to July 19, 2021, was extended to 150 days from the date of that decision. This petition is therefore timely filed on or before November 18, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article III, Section 2 of the U.S. Constitution provides, in relevant part:

> The Judicial Power shall extend to … Controversies … between Citizens of different States, … and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

28 U.S.C. § 1332(a) provides, in relevant part:

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[2] Available at https://nymag.com/intelligencer/2021/07/steele-dossier-was-case-study-in-journalistic-manipulation.html (last visited November 15, 2021).

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

STATEMENT OF THE CASE

Relying on the diversity jurisdiction of federal courts conveyed by Article III and 28 U.S.C. § 1332(a), Petitioner Dr. Carter Page, on behalf of himself and the two limited liability companies for which he is the sole member (collectively, "Dr. Page"), filed this suit for defamation against Respondents in the U.S. District Court for the Northern District of Illinois, where one of the Respondents, Perkins Coie LLP, has a principal office. Complaint ¶ 15, Pet.App.32a. In addition to Perkins Coie LLP, Page also named the Democratic National Committee, DNC Services, Inc. (collectively, "DNC"), and two of Perkins Coie's political practice

partners at the time, Marc Elias and Michael Sussmann.

Perkins Coie's Chicago office is the home of the firm's general counsel, Matthew Gehringer, Pet.App.3a, who "is responsible for all legal matters" of the firm,[3] and is one of only two of its twenty offices where lawyers from the political practice group at the heart of the events at issue in this case work. Complaint ¶¶ 15-16, 20-22, 37, Pet.App.32a-34a, 37a.[4] Respondents Marc Elias and Michael Sussmann, though both based in Washington, D.C., worked with (and Elias headed) the firm's political practice group, including the Chicago-based attorneys in the group. Complaint ¶¶ 23-25, Pet.App.341-35a; *see also* Elias Interview at 75. Moreover, as Page alleged in his complaint, several of the significant decisions underlying the issues in this case occurred in Chicago or with the involvement of Chicago-based attorneys of Perkins Coie. Complaint ¶¶ 20-22, Pet.App.34a. And the DNC likewise had significant contacts with Chicago, including Marc Elias's long-standing representation of former Illinois Senator (and subsequently President) Barack Obama. Complaint ¶ 23, Pet.App.34a. As Page alleged in his complaint, "the DNC has a historical pattern of making its principal place of business in Chicago. Complaint ¶ 25, Pet.App.35a. In 2008,

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[3] Perkins Coie, *Matthew J. Gehringer*, PERKINSCOIE.COM, https://www.perkinscoie.com/en/professionals/matthew-j-gehringer.html (last visited Nov. 15, 2021).

[4] *See also* Interview of Marc Elias, Executive Session, Permanent Select Comm. on Intelligence, U.S. House of Representatives (Dec. 13, 2017), p. 75 (Elias Interview), https://www.dni.gov/files/HPSCI_Transcripts/2020-05-04-Marc_Elias-MTR_Redacted.pdf (last visited November 15, 2021).

then-candidate Obama moved the DNC's main operations to Chicago, Illinois. The DNC continued to conduct significant operations from its Chicago offices through President Obama's administration and through the 2016 presidential election," *id.*, when the events giving rise to this defamation suit occurred.

Despite these significant contacts with the forum by each of the named Defendants, the District Court held that it had no personal jurisdiction over them and dismissed the case. Pet.App.2a, 27a.

Page appealed. Without reaching the issue of personal jurisdiction on which the District Court's dismissal was based, Pet.App.16a, the Seventh Circuit determined that it did not have subject matter jurisdiction because a "few" of Perkins Coie's international partners were U.S. citizens domiciled abroad (in Beijing, China). Pet.App.2a. Because these partners, who had nothing to do with any of the issues in the case, could not themselves be sued individually in diversity, the Seventh Circuit held that, as partners in a defendant partnership, they also destroyed the "complete diversity" required under 28 U.S.C. § 1332(a), Pet.App.14a, even though none of them, and none of the other Perkins Coie partners, and none of the other defendants, share the Oklahoma domicile of Page and his two LLCs. *See, e.g.*, Pet.App.10a ("None of Perkins Coie's partners, including the two named defendants, Marc Elias and Michael Sussmann, is a citizen of Oklahoma"). The Court explained that "stateless citizens—because they are not (by definition) a citizen of a state, as § 1332(a) requires—destroy complete diversity just as much as a defendant who shares citizenship with a plaintiff." Pet.App.9a.

The Seventh Circuit acknowledged that this Court "has not explicitly answered" whether a stateless partner who does not share a domicile with any plaintiff destroys complete diversity. Pet.App.11a. It further acknowledged that whether reading the rule from *Newman-Green*, 490 U.S. at 828-29 (a stateless citizen cannot be sued in diversity), together with the rule from *Carden*, 494 U.S. at 195-96 (the citizenship of a partnership is based on the citizenship of each individual partner), "requires finding that a partnership composed of at least one stateless citizen is itself stateless—a concept we refer to as attribution of statelessness—*remains unresolved* by the Court." Pet.App.11a (emphasis added). And it further acknowledged that its holding "may strike some as impractical," and that "[p]erhaps instead of attributing a partner's statelessness to the partnership, the better approach would be to simply consider stateless partners as a nullity" and instead "look only to the citizenship of individual partners who have state citizenship for purposes of the diversity statute." Pet.App.14a-15a. But it found that, "in its view," 28 U.S.C. § 1332 "*by its terms*, requires that each individual partner be subject to diversity jurisdiction." Pet.App.15a (emphasis added). This, despite the fact that the statute's terms make no mention of partners being subject to diversity jurisdiction but instead focus on the necessity of "different" citizenship and not being "domiciled in the *same* state." 28 U.S.C. § 1332(a)(1-4) (emphasis added).

The Seventh Circuit then affirmed the dismissal of the case by the District Court for lack of subject mat-

ter jurisdiction rather than lack of personal jurisdiction, but modified the District Court's judgment to reflect a dismissal without prejudice. Pet.App.16a.

REASONS FOR GRANTING THE WRIT

I. Whether a "Stateless" Citizen Partner of a Partnership Defendant Who Does Not Share a Domicile With Any Plaintiff Destroys Complete Diversity Is An Important Issue that "Remains Unresolved" by this Court.

The Court of Appeals below correctly recognized that, today, we live in a global business environment where multinational entities exist in every facet of commerce. Pet.App.15a. Where those multinational entities are formal corporations, the diversity jurisdiction of the federal courts afforded by Article III and by 28 U.S.C. § 1332 is available to any U.S. Citizen domiciled in a state other than the corporation's State of incorporation and State of principal place of business. *See* 28 U.S.C. § 1332(c)(1) ("a corporation shall be deemed to be a citizen of every State … by which it has been incorporated and of the State … where it has its principal place of business"). But for partnerships and other limited liability entities, the rules are different. This Court has held that, for purposes of diversity jurisdiction, a partnership is deemed to be a "citizen" of every State in which one of its partners is domiciled, *Carden*, 494 U.S. at 195, closing the door on the diversity jurisdiction of the federal courts in many cases where it would be available were the partnership a corporation.

The decision below slammed the door shut completely, however. Extrapolating from another holding of this Court that "stateless" citizens—*i.e.*, those U.S. citizens who, because domiciled abroad, are not considered citizens of any State—*cannot be sued* in diversity, *Newman-Green*, 490 U.S. at 828-29, it held that such a "stateless" partner of an international partnership *destroys the complete diversity* that is required under 28 U.S.C. § 1332, even though, admittedly, no partner shares a domicile with any plaintiff.

Whether the Seventh Circuit's extrapolation is correct is an extremely important question of federal law that has not been, but should be, settled by this Court. The Seventh Circuit acknowledged as much, noting that this Court "has not explicitly answered" the question, and that the issue "*remains unresolved* by the Court." Pet.App.11a (emphasis added).

II. The Only Opinion in the Circuit Courts Actually Analyzing the Issue Persuasively Argued that "Stateless" Partners Should Not Destroy Complete Diversity.

The Court below asserted that "[e]very other circuit to have confronted the question" presented here "has reached the same conclusion" it did. Pet.App.12a. But it ignored a significant opinion in which Third Circuit Judge Theodore McKee persuasively argued, after thorough analysis, that the existence of a stateless partner should not destroy the complete diversity required by Section 1332. Moreover, two of the four cases cited by the court below did not actually *hold* what the court below claimed.

Judge McKee addressed at length the nuanced issue presented here in his separate opinion in *Swiger*

v. Allegheny Energy, Inc., 540 F.3d 179 (3d Cir. 2008) . Because he acknowledged that the authority relied upon by the panel (*Carden* and *Newman-Green*, *inter alia*) "strongly suggests the analysis the lead opinion has adopted and the result my colleagues have reached," he concurred in the judgment. But he expressly noted that he did not think the result "is necessarily compelled by precedent of this court or the Supreme Court," and expressed concern that the decision "unnecessarily extends two conventions of diversity jurisprudence and thereby inappropriately circumscribes that jurisdiction." *Swiger*, 540 F.3d at 186 (McKee, conc. in judgment). "*Carden* does not definitively answer the specific question here," he added, and neither does another of this Court's decisions, *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567 (2004). Both involved partnerships where one of the partners *shared* a common citizenship. *Swiger*, 540 F.3d at 187. Neither involved a stateless partner. Accordingly, he thought that the "undisputed" fact "that no Morgan Lewis partner is a citizen of West Virginia"—the state of citizenship and domicile of the Plaintiffs—should, "[i]deally, … be the beginning and end of our jurisdictional inquiry." *Id.* at 188.

Judge McKee also provided several reasons why the extrapolation from *Carden* and *Newman-Green* undertaken by the panel in the case "results in a ruling that is inconsistent with both reality and common sense." *Swiger*, 540 F.3d at 186. The "stateless person" doctrine from *Newman-Green* "is a doctrine likely born of chance rather than design," he noted. *Id.* It evolved from the use of the capitalized word "State" in the statutory phrases, "citizens of different

States" and "citizens of a State and citizens of a foreign state," he wrote. *Id.* (quoting 28 U.S.C. 1332(a)(1)-(2)). The text thus, unintentionally, placed a U.S. citizen with no "State" citizenship "outside the literal terms of the statute" at a time when the "(now incorrect) assumption [was] that all U.S. citizens would also be domiciled in a U.S. State." *Id.*

Judge McKee also persuasively argued that "the presence of a 'stateless' partner in a partnership whose partners' citizenship is otherwise completely diverse from all plaintiffs should not summarily defeat the exercise of our jurisdiction. After all, it is the partnership, not the individual partners, who are party to the action." *Id.* A stateless partner's residence abroad "makes him a jurisdictional nullity," Judge McKee added, "and his citizenship should be treated that way for purposes of determining subject matter jurisdiction." *Id.* at 189. He reiterated that "*Carden* and *Grupo Dataflux* are not necessarily to the contrary. They merely hold that it is the *citizenship* of all the members of a partnership that must be examined, they say nothing about the *lack* of a partner's citizenship." *Id.*

Moreover, Judge McKee noted that treating a stateless partner as a jurisdictional nullity would not undermine by "one iota" the purpose of diversity jurisdiction, which is "'the fear that state courts would be prejudiced against out-of-state litigants.'" *Id.* (quoting 13B Charles Alan Wright and Arthur R. Miller, Federal Practice and Procedure § 3601 (2008)). "So long as none of [the defendant] partners is a citizen of [plaintiff's] home state …, the purpose of diversity jurisdiction is fully served, and [plaintiff] should be permitted to test the merits of his claim in a federal

forum," Judge McKee explained. The stateless partner's "lack of citizenship in any state should not be the jurisdictional equivalent of citizenship in the same state" as the plaintiff. Accordingly, we should be able to conclude that this suit presents 'two adverse parties [who] are not co-citizens.'" *Id.* (quoting *Grupo Dataflux*, 541 U.S. at 579)).

For all these reasons, Judge McKee seemingly expressed regret that "neither the [*Newmann-Green*] rule nor the cases that have applied it are open to judicial revision *unless the Supreme Court revisits the issue*." *Id.* at 188 (emphasis added).

The court below did correctly note that the panel majority in *Swiger* and the Second Circuit in *Herrick Co. v. SCS Commc'ns, Inc.*, 251 F.3d 315 (2d Cir. 2001), both held that a stateless partner destroys complete diversity. But neither case contained anywhere near the level of analysis provided by Judge McKee. After reciting the two rules from *Carden* and *Newman-Green*, the panel majority in *Swiger* noted that, "[p]utting these two principles together, … our sister circuits and other federal courts have concluded that if a partnership has among its partners any American citizen who is domiciled abroad, the partnership cannot sue (or be sued) in federal court based upon diversity jurisdiction." *Swiger*, 540 F.3d. at 184. It cited *Herrick* and *Cresswell*, the two Second Circuit cases discussed below, as well as the Seventh Circuit's decision in *ISI Int'l, Inc. v. Borden Ladner Gervais LLP*, which merely noted in a parenthetical at the end of the opinion, without analysis, that "[o]ne of [defendant law firm's] partners is a U.S. citizen domiciled in Canada; she has no state citizenship, so the diversity jurisdiction is unavailable." 316 F.3d 731, 733 (7th

Cir. 2003) (citing only *Newman-Green*, 490 U.S. at 829).

Similarly, the Second Circuit held in *Herrick* that a stateless partner in a partnership defendant makes the parties "non-diverse." *Herrick*, 251 F.3d at 322. But neither in *Herrick* nor in the other Second Circuit case on which it relied, *Cresswell v. Sullivan & Cromwell*, 922 F.2d 60 (2d Cir.1990), did the court offer any analysis of the issue presented here, namely, whether the two distinct rules from *Carden* and *Newman-Green* must necessarily be combined so that a partnership with a stateless partner destroys complete diversity even though no partner shares the same state citizenship with any plaintiff. Rather, the Second Circuit simply offered this *ipse dixit*: "Putting these two principles together and applying them to Skadden generates the conclusion that if Skadden has among its partners any U.S. citizens who are domiciled abroad, then Skadden and Herrick (which is a citizen of Florida) are non-diverse." *Herrick*, 251 F.3d at 322; *see also Cresswell*, 922 F.2d at 69 ("If in fact any of S & C's foreign-residing United States citizen partners are domiciled abroad, a diversity suit could not be brought against them individually; in that circumstance, since for diversity purposes a partnership is deemed to take on the citizenship of each of its partners, … a suit against S & C could not be premised on diversity.").

The other two circuit court decisions cited by the court below, Pet.App.12a-13a, did not *hold* that a stateless partner of a defendant partnership destroys complete diversity. In *Firefighters' Ret. Sys. v. Citco Grp. Ltd.*, 796 F.3d 520 (5th Cir. 2015), the Fifth Circuit merely noted in passing, in a footnote, that "the

addition of Skadden defeated diversity jurisdiction because Skadden, a partnership whose members include U.S. citizens domiciled abroad, is stateless for the purposes of diversity jurisdiction." *Id.* at 523 n.1. The Fifth Circuit expressly noted that it "did not reach Defendants' arguments regarding possible diversity jurisdiction." *Id.* at 528. Moreover, even with respect to the statement of *obiter dictum* in footnote 1, the Fifth Circuit relied on two Fifth Circuit cases that merely follow the rules set out by this Court in *Newman-Green* and *Carden*, namely, that a U.S. citizen domiciled abroad cannot sue or be sued in diversity, *Coury v. Prot*, 85 F.3d 244, 249-50 (5th Cir. 1996), and that the citizenship of a partnership is determined by the citizenship of its members, *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir.2008). Those cases do not settle the issue here any more than this Court's decisions in *Newman-Green* and *Carden* do.

Similarly, in *D.B. Zwirn Special Opportunities Fund, L.P. v. Mehrotra*, 661 F.3d 124, 127 (1st Cir. 2011), the First Circuit merely stated that if an unincorporated "association has one member or partner that is either a stateless person or an entity treated like a stateless person, we would not have diversity jurisdiction over this matter." But that was also not a holding, as the parties had not provided the court with information about the citizenship status of the association's member for it to have needed to confront the issue of stateless partners. *Id.* Moreover, the cases on which the First Circuit relied for that statement dealt with normal lack-of-complete-diversity issues, not stateless partners. *Zambelli Fireworks Mfg. Co. v.*

Wood, 592 F.3d 412, 420 (3d Cir. 2010), pitted a Pennsylvania corporation as plaintiff against a Nevada limited liability company, whose sole member was a Louisiana limited liability company, whose managing member was a U.S. citizen domiciled in Pennsylvania. One of the members of the defendant LLCs therefore had the same state citizenship as that of the plaintiff, thereby destroying compete diversity. *Delay v. Rosenthal Collins Grp., LLC*, 585 F.3d 1003, 1005 (6th Cir. 2009), is to the same effect: "if even one of RCG's members—or one member of a member—were a citizen of Ohio [the state of Plaintiff's citizenship], then complete diversity, and with it federal jurisdiction, would be destroyed." So, too, with *Meyerson v. Harrah's E. Chicago Casino*, 299 F.3d 616, 617 (7th Cir. 2002): "[I]f any of the … defendants are [Michigan citizens, like Plaintiff], that would defeat the complete diversity that is required for diversity jurisdiction." None of these cases even addressed, much less resolved, the problem presented by "stateless" partners.

In short, the authority on which the court below relied is rather thin, and the only analysis of the important but nuanced issue presented here that is contained in any of the other circuit court cases it relied upon—that of Judge McKee in *Swiger*—strongly questions, rather than supports, the holding of the court below. This Court should therefore accept Judge McKee's invitation to "revisi[t] the issue," 540 F.3d at 188, and address directly and resolve the extremely important jurisdictional issue whether a stateless partner of a partnership defendant, who does not share domicile with any plaintiff, destroys complete diversity.

III. The Text of 28 U.S.C. § 1332 Does Not Compel the Conclusion that Stateless Partners Destroy Complete Diversity, But Strongly Supports the Opposite View.

The court below also asserted that, in its view, 28 U.S.C. § 1332 "*by its terms*, requires that each individual partner be subject to diversity jurisdiction." Pet.App.15a. But the terms of section 1332 hardly compel that conclusion; indeed, the "terms" of the statute more strongly support the opposite.

Section 1332(a) provides for diversity jurisdiction in four discrete cases, but in all four, the focus is on whether the opposing parties *share* a domicile, not on whether a particular individual cannot be sued in diversity for other reasons, such as being stateless. Subsection (a)(1) provides for diversity jurisdiction in cases between "citizens of *different* States," 28 U.S.C. § 1332(a)(1) (emphasis added); subsection (a)(2) includes "citizens of a State and citizens or subjects of a foreign state, except" when the foreign citizens are "lawfully admitted for permanent residence in the United States and are *domiciled in the same State*," § 1332(a)(2) (emphasis added); subsection (a)(3) includes "citizens of *different* States and in which citizens or subjects of a foreign state are additional parties," § 1332(a)(3) (emphasis added); and subsection (a)(4) adds "a foreign state … as plaintiff and citizens of a State or of *different* States," § 1332(a)(4) (emphasis added). Again, the focus in each subsection is on the necessity of the parties being from "different" states or not domiciled in the "same" state.

The court below also referenced dicta from this Court's decision in *Lincoln Prop. Co. v. Roche*, namely, that "for diversity purposes, a partnership

entity, unlike a corporation, does not rank as a citizen; to meet the complete diversity requirement, all partners, limited as well as general *must be diverse from* all parties on the opposing side." Pet.App.11a (quoting *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 84 n.1 (2005) (emphasis added)). The court below claimed that "[i]t is possible to read this language as requiring all partners to be suable in diversity—in other words, that no partner be a stateless citizen." Pet.App.11a. Because, as noted above, the statute actually focusses on whether the opposing parties have "different" domiciles, the much more likely reading of this language from *Lincoln Prop.* is the one that comports with the text of the statute, namely, that Section 1332(a) simply requires that no partner *share* the same state domicile as any plaintiff.

In short, the better reading of the text of Section 1332 fully supports Petitioners' position here. That text shows no intent on the part of Congress to allow partnerships to escape diversity jurisdiction by merely parking one or more of its partners across an international border. And adopting Petitioners' textually-based interpretation of Section 1332 would avoid the admittedly "impractical" result that flows from the lower court's extrapolation from two of this Court's related but not dispositive prior decisions. Pet.App.14a. Such an interpretation would also avoid a conclusion that, as Judge McKee correctly noted in his opinion concurring in the judgment in *Swiger*, is "inconsistent with both reality and common sense" and that "unnecessarily extends two conventions of diversity jurisprudence and therefore inappropriately circumscribes that jurisprudence," without undermining "one iota" the purpose of the limitations on

federal court diversity jurisdiction. *Swiger*, 540 F.3d at 186, 189 (McKee, conc. in judgment).

CONCLUSION

The court below expressly acknowledged that this Court "has not explicitly answered" the precise jurisdictional question at issue here, and that whether reading the two rules from *Newman-Green* and *Carden* "together requires finding that a partnership composed of at least one stateless citizen is itself stateless—a concept we refer to as attribution of statelessness—remains unresolved by the Court." Pet.App.11a. It also acknowledged that its decision holding that a partnership with a single "stateless" partner closes the door for federal court diversity jurisdiction "seems to defy modern commercial realities." *Id.* at 15a. In other words, this is a classic case where the lower court "has decided an important question of federal law that has not been, but should be, settled by this Court." Rule 10(c). The petition should be granted.

Respectfully submitted,

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