No. _____

In the
Supreme Court of the United States

LOREDANA RANZA,

Petitioner,

v.

NIKE, INC., AN OREGON CORPORATION,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does claim preclusion bar an expatriate U.S. citizen from bringing discrimination claims under the extraterritorial provisions of Title VII of the Civil Rights Act and the ADEA in a United States district court based on a prior decision of a foreign administrative agency that has no ability to make any award of damages?

2. Where Congress has provided that the United States district courts shall have jurisdiction over a cause of action brought under Title VII of the Civil Rights Act, can a district court decline the exercise of that jurisdiction as a matter of discretion?

3. Does a Rule 60(b)(6) requirement that a motion be filed within a reasonable time commence at the time a case is originally dismissed on *forum non conveniens* or when the alternative forum proves to have been unavailable?

4. Under what circumstances and procedures can a Title VII or ADEA complaint dismissed on *forum non conveniens* return to the district court where the alternative forum ultimately proves unavailable?

PARTIES TO THE PROCEEDING

Petitioner Loredana Ranza was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings. Respondent Nike Inc. was the defendant in the district court proceedings and appellee in the court of appeals proceedings.

RELATED CASES

- Ranza v. Nike, Inc,. *et al.* United States District Court for the District of Oregon, No. 3:10-cv-01285-AC. Judgment entered March 8, 2013.
- Ranza v. Nike, Inc., *et al.* Ninth Circuit Court of Appeals, No. 13-35251. Judgement Entered July 16, 2015. This decision is reported at 793 F.3d 1059.

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PETITION FOR A WRIT OF CERTIORARI

Loredana Ranza respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Judgment and Opinion of the United States Court of Appeals for the Ninth Circuit was entered on December 15, 2023, is unreported and appears in Appendix A.

The Order and Judgment of the United States District Court for Oregon dismissing this action was entered on February 3, 2021, and appears in Appendix A.

The Findings and Recommendation of the United States Magistrate Judge for the District Court for Oregon was entered on December 10, 2020, and appears in Appendix A.

The Order of the United States Court of Appeals for the Ninth Circuit denying Petitioner's Petition for Rehearing *En Banc* was entered on January 16, 2024, and appears in Appendix A.

JURISDICTION

The Judgment and Opinion of the United States Court of Appeals for the Ninth Circuit was entered on December 15, 2023, and its Order denying rehearing was entered on January 16, 2024. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner asserted violations of her rights under 42 U.S.C. § 2000e-1(c) and § 2000e-2(a)(1), and 29 U.S.C. § 623(a)(1) and (h).

42 U.S.C. § 2000e-1(c) provides:

> (c) Control of corporation incorporated in foreign country
>
> (1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 2000e-2 or 2000e-3 of this title engaged in by such corporation shall be presumed to be engaged in by such employer.
>
> (2) Sections 2000e-2 and 2000e-3 of this title shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.
>
> (3) For the purposes of this subsection, the determination of whether an employer controls a corporation shall be based on -
>
> (A) the interrelation of operations;
>
> (B) the common management;
>
> (C) the centralized control of labor relations; and
>
> (D) the common ownership or financial control of the employer and the corporation;

42 U.S.C. § 2000e-2 provides:

> (a) Employer practices. It shall be an unlawful employment practice for an employer -
>
> (1) to fail to refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin;

42 U.S.C. § 2000e-5(f) provides in relevant part

> (3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title.

29 U.S.C. § 623(a)(1) provides:

> (a) Employer practices. It shall be unlawful for an employer
>
> (1) to fail or refuse to hire or to discharge an individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

29 U.S.C. § 623(h) provides:

> (h) Practices of foreign corporations controlled by American employers; foreign employers not controlled by American employers; factors determining control

(1) If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.

(2) The prohibitions of this section shall not apply where the employer is a foreign person not controlled by an American employer.

(3) For the purpose of this subsection the determination of whether an employer controls a corporation shall be based upon the -

(A) interrelation of operations,

(B) common management,

(C) centralized control of labor relations, and

(D) common ownership or financial control of the employer and the corporation.

Article III, sections 1 and 2 of the United States Constitution provide in relevant part that:

Section 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a

Compensation, which shall not be diminished during their Continuance in Office.

Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;

INTRODUCTION AND SUMMARY OF THE ARGUMENTS

In *University of Tennessee v. Elliott*, 478 U.S. 788 (1986) and *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104 (1991), this Court determined that it was the express intent of Congress that discrimination claims brought under the Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq*., and the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 to 29 U.S.C. § 634, receive a *de novo* review in the federal courts regardless of whether a claimant previously had received an adverse decision from the EEOC or a state administrative agency. This Court has determined that it is only where the prior decision of an administrative agency has been reviewed by an American state court that a *de novo* review of claims brought under Title VII or the Age Discrimination in Employment Act in federal court is precluded because of the statutory full faith and credit provisions from 28 U.S.C. § 1738.

In this case, the Ninth Circuit has ruled that Petitioner's claims of age and sex discrimination brought under the extraterritorial provisions of the ADEA and Title VII are precluded from any *de novo*

review in the United States district court for Oregon because it has decided that the prior decision of the Equal Treatment Commission (ETC), a Dutch administrative agency that could not make any award of damages, should be treated as *res judicata* under American law even though it was not considered *res judicata* under Dutch law.

Congress amended the Age Discrimination in Employment Act in 1986 and Title VII of the Civil Rights Act in 1991 to provide for their extraterritorial applicability. Nothing in the statutory texts or legislative histories of these Acts suggests that Congress intended to exclude claims brought by overseas American citizens under those laws from a subsequent *de novo* review in federal court because an adverse decision from a foreign administrative agency should be an overseas American's exclusive remedy. However, the Ninth Circuit's most recent decision in this case results in precisely this outcome.

Article III of the United States Constitution grants Congress plenary authority to establish the lower courts in the federal system and determine their jurisdiction. In enacting Title VII of the Civil Rights Act, Congress provided that the U.S. district courts "shall have jurisdiction of actions brought under this title." This Court has determined that when a statute uses the word "shall," Congress has imposed a mandatory duty upon the subject of the command. This Court also has repeatedly emphasized that a federal court's obligation to hear and decide cases within its jurisdiction is "virtually unflagging."

The Ninth Circuit has twice denied Petitioner any access to the district court to hear her statutory sex and age discrimination claims arising under laws enacted by Congress. The first time was its 2015 decision in *Ranza v. Nike*, 793 F.3d 1059 (9th Cir. 2015) when it dismissed Petitioner's age and sex discrimination claims against Nike Inc. on the grounds of *forum non conveniens*. The second time was its December 2023 unpublished decision in *Ranza v. Nike*, No. 21-35992 (9th Cir. 2023) when it refused to allow Petitioner to reinstate her case in the United States district court after she was unable to maintain any cause of action in the Netherlands. The Ninth Circuit has ruled that the outcome at the ETC was Petitioner's exclusive remedy for her age and sex discrimination claims and the decision there was a *res judicata* bar to any *de novo* review of Petitioner's discrimination claims in the U.S. district court regardless of the fact that an ETC decision never had preclusive effect under Dutch law. These decisions directly conflict with this Court's clear rulings in *Tennessee* and *Solimino* and the express intent of Congress that the outcome of agency proceedings cannot be a complainant's exclusive remedy for claims of age or sex discrimination. These decisions also effectively subordinate Congress's plenary power under Article III of the Constitution to determine the jurisdiction of the lower federal courts to a court's exercise of its discretionary powers.

STATEMENT OF THE CASE

A. Statutory Background

1. The Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 to 29 U.S.C. § 634 (ADEA), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq*. (Title VII), create causes of action under the laws of the United States to protect against discrimination in employment based on age, sex, and race, among others. Both these acts provide for a *de novo* review in the federal courts of claims of discrimination brought under the provisions of those Acts.

2. Congress amended the ADEA in 1986 and Title VII in 1991 to provide for their extraterritorial applicability. Neither amendment provided that an adverse decision by a foreign administrative agency should be afforded preclusive effect in a subsequent federal court case.

B. Constitutional Background

Article III of the United States Constitution grants Congress the power to ordain and establish the lower federal courts and provide for or limit their jurisdiction.

C. Proceedings Below

1. The Dutch Equal Treatment Commission

Prior to filing her complaints alleging age and sex discrimination in the U.S. Court for the United States District Court for Oregon - Portland Division, Petitioner filed a discrimination complaint with the

Dutch Equal Treatment Commission (ETC)[1] against her former employer, Nike European Operations Netherlands (NEON), a wholly-owned, indirect subsidiary of Nike Inc., alleging a pattern and practice of discrimination against women with respect to pay and promotion opportunities. NEON refused the ETC's two requests that it disclose salary data based on gender. NEON eventually turned over the salary details of Petitioner and two male comparators of its own selection. Rather than enforce its legal rights to the salary data,[2] the ETC instead accepted the salary information for Petitioner and the comparators NEON chose to submit and determined that there was no discrimination among them, ruling on an issue Petitioner never raised.

The ETC was not a court. It could not make an award of damages of any kind, and compliance with its decisions was voluntary. Its decisions were not reviewable by or appealable to a Dutch court of law nor was it a prerequisite to prevail at the ETC to bring a subsequent discrimination case in a Dutch court of law. Its decisions were not entitled to preclusive effect in a subsequent court case, and Dutch courts had

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[1] The ETC was created in 1994 to administer Dutch Equal Treatment legislation. It was replaced in 2012 with a new entity called the Netherlands Institute for Human Rights (NIHR) when the Netherlands implemented UN resolution 48/1342. All the powers of the former ETC were transferred to the NIHR.

[2] The ETC went to court only once in its entire history. It did so after a defendant refused to comply with the ETC's request for the salary data of its personnel in a pay discrimination case. The Dutch District Court ordered the defendant to give the relevant information under penalty of paying significant fines in case of noncompliance. FER-34.

reached opposite determinations about discrimination in a particular case than had the ETC in its decisions. Although the ETC was empowered to take a case on behalf of a claimant to a Dutch court, it never once exercised this power in its eighteen year history owing to an internal policy that it would not bring any court case on behalf of an individual claimant. It would only bring a court case on behalf of a group of individuals subject to the same discrimination, but it never once exercised this power either. The ETC's successor, the Netherlands Institute for Human Rights (NIHR) indicated that there was a zero percent chance that the ETC ever would have taken Petitioner's case to a Dutch court on her behalf. As of 2017, the NIHR also had never taken a case to a Dutch court on behalf of an individual for the same policy reasons and it had not done so on behalf of any group of persons either.

2. United States district court: 2010-2013

Petitioner brought discrimination claims under the extraterritorial provisions of the ADEA and Title VII against her former employer, Nike European Operations Netherlands (NEON), and its 100% indirect shareholder, Nike Inc., in the United States district court for Oregon - Portland division in 2010. She did not request that the district court apply Dutch law. The district court dismissed Petitioner's case on the grounds that she could not state a claim upon which relief could be granted.

3. First Appeal at the Ninth Circuit Court of Appeals: 2013-2015

On appeal, the Ninth Circuit affirmed the district court's dismissal but on other grounds. It ruled that

the district court could not exercise jurisdiction over NEON in light of this Court's decision in *Daimler AG v. Bauman*, 571 U.S. 117 (2014) that was handed down while this case was still pending at the Ninth Circuit. It dismissed against Nike Inc. on a novel application of *forum non conveniens* in which it ruled that a foreign forum's availability can be evaluated and applied retrospectively. Notwithstanding the ETC's inability to make any award of damages of any form, the Ninth Circuit found that it nevertheless had already provided Petitioner an adequate remedy because it had the power to take her case to a Dutch court on her behalf even though it never once exercised this power in its 18 year history for policy reasons.[3]

4. Petitioner's attempt to bring her discrimination case in the Netherlands: 2016-2019

Under Dutch law, Petitioner was entitled to a *de novo* adjudication of her discrimination claims in a court of law regardless of the ETC's prior decisions regarding her claims. Under Dutch law, ETC decisions were entitled to persuasive, not preclusive, effect in a subsequent court case. Petitioner attempted to bring her discrimination claims in the Netherlands in 2016 but was unable to do so when NEON, the only defendant over which the foreign

[3] This decision conflicts with the United States Court of Appeals, District of Columbia Circuit's decision *Nemariam v. Federal Dem. Republic, Ethiopia*, 315 F.3d 390 (D.C. Cir. 2003) holding that a foreign tribunal that cannot make any direct award of damages was a remedy so clearly inadequate or unsatisfactory that it was no remedy at all as per *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254, 102 S. Ct. 252, 265, 70 L. Ed. 419 (1981).

court could exercise jurisdiction, raised several affirmative defenses to the case being heard there.[4] NEON eventually prevailed on one of the two statute of limitations defense it raised.[5] NEON did not argue to the Dutch district court that the prior decision of the ETC should be given preclusive effect, only that it was entitled to persuasive effect.

The Dutch statute of limitations had been tolled during the pendency of Petitioner's case in the United States for six months from the final conclusion of proceedings there. Although her petition for a writ of *certiorari* was denied by this Court on January 19, 2016, this was not entered into the civil docket until January 21, 2016. *Ranza v. Nike, Inc.*, 136 S. Ct. 915 (2016). Petitioner started counting from this date as the conclusion of her U.S. court case and filed her case against NEON in the Netherlands on July 21, 2016, believing she was one day early.

The Dutch district court determined that the deadline for filing Petitioner's case in the Netherlands depended on when this case was considered finally concluded as a matter of American law such that filing deadlines would start to run. Fed. R. App.

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[4] While the Dutch court could exercise jurisdiction over NEON and apply Dutch anti-discrimination laws, there was no basis for it to exercise jurisdiction over Nike Inc. or maintain any cause of action against it under Dutch law. There was also no ability for the Dutch court to apply American anti-discrimination laws to Nike Inc. Petitioner proceeded as against NEON only for these reasons.

[5] A Dutch court cannot not raise the issue of statute of limitations *sua sponte*. A statute of limitations defense can only be raised by a party to a proceeding.

P. 4(a)(1)(A) provides that the filing deadline for a notice of appeal starts on the date a judgment is entered while Fed. R. App. P. 36(a) provides that "[a] judgment is entered when noted on the docket." The Dutch court accepted NEON's argument that the January 21, 2016, entry on the civil docket of the denial of the writ of *certiorari* was irrelevant for determining the date of the final and binding decision for Petitioner's U.S. case as a matter of American law that would trigger filing deadlines (2-ER-292, ¶4.4). It ruled that Petitioner's U.S. case was considered finally concluded under American law as of January 19, 2016, making the Dutch filing deadline July 20, 2016. After accepting NEON's statute of limitations defense, the Dutch district court dismissed Petitioner's case on March 21, 2018, as having been filed one day late. (2-ER-292, ¶4.5). Petitioner unsuccessfully appealed this decision to the Dutch court of appeals, which released its decision on September 3, 2019. Petitioner had 90 days to file a notice of appeal with the Dutch Supreme Court. She approached two lawyers at considerable expense to evaluate her appellate options to the Dutch Supreme Court but they were unable to take her case, and her remedies in the Netherlands exhausted on December 3, 2019.

5. Petitioner's attempt to return to the United States District Court: 2020-2021

Petitioner filed motions under Federal Rules of Civil Procedure 60(b)(6) and 60(d)(3) requesting relief from the Ninth Circuit's 2015 *forum non conveniens* decision dismissing her case to the Netherlands on the grounds that the Dutch courts ultimately had proven unavailable because NEON refused to cooperate with

any adjudication of Petitioner's discrimination claims there. Ninth Circuit precedent from *Gutierrez v. Advanced Medical Optics Inc.*, 640 F.3d 1025 (9th Cir. 2011) provides that where a foreign forum proves unavailable after a *forum non conveniens* dismissal, it would be appropriate for the district court to hold a hearing to determine the primary reason for this outcome. If the primary reason was due to a plaintiff's actions or inactions, the district court has discretion to dismiss the case again. However, if the foreign forum could not exercise jurisdiction over a defendant, then it would be an abuse of discretion for the district court not to allow the case to proceed.

The district court declined to hold a hearing to determine the primary reason Petitioner could not maintain her discrimination claims in the Netherlands. It ruled that Petitioner had not brought her Rule 60(b) motion within a reasonable time. It also faulted her for filing her Dutch case "a few days late" and considered her attempts to appeal the dismissal of her case to the Dutch Court of Appeals and the Dutch Supreme Court to have been dilatory.

6. Second Appeal at the Ninth Circuit Court of Appeals: 2021-2023

Petitioner timely appealed the district court's dismissal of her case to the Ninth Circuit. She alleged that the district court abused its discretion when it declined to hold a hearing to determine the primary reason her case could not be maintained in the Netherlands. The Ninth Circuit's December 15, 2023, memorandum opinion clarified that the 2015 decision that originally dismissed Petitioner's case against Nike Inc. based on *forum non conveniens* never

considered the actual, subsequent availability of the Dutch courts to be relevant. The court of appeals held that it was the prior determination of the Dutch ETC that was Petitioner's exclusive remedy for her age and sex discrimination claims under the ADEA and Title VII.

The Ninth Circuit also found that Petitioner had not filed her Rule 60(b) motion within a "reasonable time," and it denied her appeal.

REASONS FOR GRANTING THE WRIT

The Ninth Circuit's most recent decision in this case directly conflicts with this Court's clear rulings in *Tennessee* and *Solimino* that the adverse decision of an administrative agency cannot be the basis for denying a plaintiff a *de novo* review in federal court for discrimination claims brought under the ADEA and Title VII. Petitioner's writ should be granted to ensure conformity with this Court's decisions, otherwise the extraterritorial applicability of the ADEA and Title VII risks being relegated to dead letter status in the Ninth Circuit with the lower courts seeing that they are free to ignore the express will of Congress and the clear precedents of this Court.

By refusing to allow Petitioner's statutory claims of discrimination arising under the laws of the United States to be heard in the district court after the alternative forum in the Netherlands ultimately proved unavailable, the Ninth Circuit has made Congress's plenary powers under Article III of the Constitution to determine the jurisdiction of the lower federal courts subordinate to a judicially created discretionary doctrine of convenience.

The Ninth Circuit's denial of Petitioner's Rule 60(b)(6) motion on the grounds that she did not file it within a reasonable time treats a *forum non conveniens* dismissal as a final decision on the merits that makes it impossible to return to a domestic court when an alternative forum ultimately proves unavailable. This Court should determine whether the starting point for a Rule 60(b)(6) reasonable time inquiry in a *forum non conveniens* dismissal commences when a claimant ultimately learns that the alternative forum is unavailable after unsuccessfully attempting to bring a case there or when the U.S. court originally dismisses a case to the alternative forum. This Court can also resolve the split in the Circuits by articulating the standards, circumstances, and procedures for a case to return to the district court should the alternative forum prove unavailable.

Finally, this case is a good vehicle for this Court to determine whether the Ninth Circuit's practice of finding a forum retroactively available is permissible, whether an alternative forum's actual availability after a *forum non conveniens* dismissal is irrelevant, and whether a tribunal that cannot make any award of damages of any kind is capable of providing an adequate remedy.

I. THE DECISIONS BELOW DEFY THIS COURT'S CLEAR PRECEDENTS.

A. The 2015 decision below was really a *res judicata* dismissal.

Although the Ninth Circuit characterized its 2015 dismissal of Petitioner's case as based on *forum non*

conveniens, its December 2023 memorandum opinion reveals that it was really a *res judicata* dismissal; "[t]he 2015 decision which affirmed the dismissal of Ranza's claims against Nike on *forum non conveniens* grounds, expressly held that the relevant alternative forum **was** the Dutch Equal Treatment Commission." (Emphasis added). This has all the indicia of a *res judicata* decision. Characterizing it as a *forum non conveniens* dismissal in 2015 cannot change the true nature of the dismissal from one thing into another.

The "duck test" has been embraced by the Fourth, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuit Courts of Appeals as well as the Court of Appeals for the District of Columbia Circuit, and the Court of Appeals for the Federal Circuit. See *Wudi Industrial (Shanghai) Co, LTD. v. Wong*, 70 F.4th 183, 191 (4th Cir. 2023). "Where something walks like a duck, quacks like a duck, and looks like a duck, then it's a duck." The Ninth Circuit has pushed the square peg of a *res judicata* dismissal into the round hole of a *forum non conveniens* dismissal by characterizing it as something it was not. When a court dismisses a case that should be heard in a tribunal in another country because that would be more convenient and fair to the parties, then this has all the hallmarks of a *forum non conveniens* dismissal. But when a federal court dismisses a case on the grounds that another tribunal has already ruled on the matter and the case is barred from proceeding further, then the case really has been dismissed because of claim preclusion. The Ninth Circuit's 2023 memorandum opinion removes any doubt that, despite the 2015 decision characterizing the dismissal of Petitioner's case as based on *forum non conveniens*, it was really a dismissal on the

grounds that the ETC decision was *res judicata* under American law even though under Dutch law it was not.

Petitioner took the 2015 dismissal on *forum non conveniens* at face value and returned to the Netherlands to pursue her discrimination claims there. Now, the Ninth Circuit indicates that Petitioner's inability to maintain a case in the Netherlands after the 2015 dismissal was irrelevant. This Court has never said that *forum non conveniens* can be applied retrospectively. That is typically the province of *res judicata* owing to international comity.

B. The decisions below cannot be squared with this Court's clear precedents in *Tennessee* and *Solimino*.

The writ should be granted to ensure conformity with this Court's clear precedents and the express intent of Congress that an adverse administrative agency decision, unreviewed by a U.S. state court, cannot be a claimant's exclusive remedy for discrimination.

In *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461 (1982), this Court noted that "Title VII's legislative history makes clear that Congress never intended the outcome of state agency proceedings to be the discrimination complainant's exclusive remedy" and that Congress repeatedly rejected proposals to give state commissions exclusive jurisdiction over discrimination charges. *Id.* at 494-495.

This Court later determined in *University of Tennessee v. Elliott*, 478 U.S. 788 (1986) that Congress did not intend for adverse decisions by state administrative agency proceedings that are unreviewed by a state court to have preclusive effect on subsequent Title VII claims in federal court. *Id.* at 796. This Court extended this to ADEA claims in *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104 (1991), ruling that state administrative decisions that are unreviewed by a state court lack preclusive effect in a ADEA claim brought subsequently in federal court because the ADEA, like Title VII, requires *de novo* review in federal court.

An adverse state agency decision that has been reviewed by a U.S. state court has preclusive effect in a subsequent federal court case only because of the provisions of the Full Faith and Credit Act (28 U.S.C. § 1738). However, the law has been settled since at least 1912 that no similar right "is conferred by the Constitution or by any statute of the United States in respect to the judgments of foreign states or nations." *Aetna Life Ins. Co. v. Tremblay*, 223 U.S. 185, 190 (1912). Petitioner suggests that even if she were to have received an adverse decision from a Dutch court, which she did not, she still would be entitled to bring her ADEA and Title VII age and sex discrimination claims for a *de novo* review in the district court because the Full Faith and Credit Act does not apply to foreign court decisions.

There is nothing in the statutory texts or legislative histories for the amendments to the ADEA and Title VII of the Civil Rights Act providing for their extraterritorial applicability to suggest Congress

intended that the outcome of a foreign administrative agency decision should be a discrimination claimant's exclusive remedy. The ETC's decision in this case should stand on the same footing as an adverse decision by the EEOC or a U.S. state agency that has been unreviewed by a U.S. state court. If a decision by the ETC, adverse or otherwise, never had preclusive effect in a subsequent court case as a matter of Dutch law, then the adverse ETC decision in this case should not have been accorded *res judicata* effect in the United States either.

The Ninth Circuit has defied this Court's clear rulings in those cases as well as the express intent of Congress. As this Court noted in *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195 (1962) [the courts] "have no power to change deliberate choices of legislative policy that Congress has made within its constitutional powers. Where Congressional intent is discernible…we must give effect to that intent." *id.* at 215. Congressional intent and this Court's decisions are clear; Plaintiff has the right to have her allegations of age and sex discrimination in violation of her American civil rights be heard in federal court regardless of the outcome at the Dutch ETC.

II. CONGRESSIONAL POWER UNDER ARTICLE III OF THE CONSTITUTION TO DETERMINE THE JURISDICTION OF THE LOWER FEDERAL COURTS IS NOT SUBORDINATE TO THE EXERCISE OF A COURT'S DISCRETIONARY POWERS.

A. Congress's power to confer jurisdiction on the lower courts is plenary and they have a virtually unflagging obligation to exercise that jurisdiction.

Article III of the Constitution grants Congress the power to ordain and establish the lower federal courts and determine their jurisdiction. This Court has determined that so long as Congress does not violate other constitutional provisions, its control over the jurisdiction of the federal courts is plenary. *Patchak v. Zinke*, 138 S. Ct. 897, 906 (2018), citing to *Trainmen v. Toledo, P. & W. R. Co.*, 321 U.S. 50, 63–64 (1944); see also *Bowles v. Russell*, 551 U.S. 205, 212 (2007) ("Within constitutional bounds, Congress decides what cases the federal courts have jurisdiction to consider.").

Where Congress has conferred jurisdiction on the federal courts, this Court has repeatedly affirmed the principle that a court with jurisdiction has a "virtually unflagging obligation" to hear and resolve questions properly before it. *Federal Bureau of Investigation v. Fikre*, No. 22-1178 (U.S. Mar. 19, 2024); *Lexmark Intern. v. Static Control*, 134 S. Ct. 1377, 1386 (2014); *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).

This Court noted in *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 358 (1989) that "[its] cases have long supported the proposition that federal courts lack the authority to abstain from the exercise of jurisdiction that has been conferred," and it reached back two hundred years to the oft-quoted statement by Chief Justice Marshall that the courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution." *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821).

B. When used in a statute, "shall" implies a mandatory obligation and Congress has provided that the United States district courts "shall have jurisdiction" to hear claims brought under Title VII.

42 U.S.C. § 2000e-5(f)(3) (Section 706(f) of Title VII of the Civil Rights Act) provides that "[e]ach United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title." (Emphasis added). After reviewing this Court's examination of Congress's use of the word "shall" in statutes, the Tenth Circuit came to the pithy conclusion that "'shall' means shall"; "The Supreme Court and this circuit have made clear that when a statute uses the word 'shall,' Congress has imposed a mandatory duty upon the subject of the command." *Forest Guardians v. Babbitt*, 174 F.3d 1178 (10th Cir. 1999), citing to *United States v. Monsanto*, 491 U.S. 600, 607, 109 S. Ct. 2657, 105 L. Ed. 2d 512 (1989) (by using "shall" in civil forfeiture statute, "Congress

could not have chosen stronger words to express its intent that forfeiture be mandatory in cases where the statute applied"). *Forest Guardians, supra*, at 1187.

C. Congress chose not to grant the courts the discretion to decline their jurisdiction to hear a case when it amended Title VII in 1991.

The courts had long treated the concept of pendent jurisdiction as a matter of judicial discretion, not a plaintiff's right. *United Mine Workers v. Gibbs*, 383 U.S. 715, 726, 86 S. Ct. 1130, 1139, 16 L. Ed. 2d 218 (1966). In enacting the Judicial Improvements Act of 1990, 28 U.S.C.A. § 1367, Congress converted a claim of pendent jurisdiction into a claim of right with section 1367(a) when it provided that district courts "shall have supplemental jurisdiction" over claims which are "part of the same case or controversy" as a claim over which the court exercises original jurisdiction. After just obliging the courts to exercise supplemental jurisdiction, Congress then granted them the ability to decline to hear supplemental claims as a matter of judicial discretion with the inclusion of section 1367(c). In making the determination whether to decline supplemental jurisdiction as an exercise of its discretion, the district court should take into account generally accepted principles of "judicial economy, convenience, and fairness to the litigants." *Growth Horizons, Inc. v. Delaware County, Pa.*, 983 F.2d 1277, 1284 (3rd Cir. 1993), citing to *United Mine Workers*, 383 U.S. at 726, 86 S. Ct. at 1139. A *forum non conveniens* dismissal also takes these same considerations of convenience, fairness, and judicial economy into account. *Sinochem*

Intern. v. Malaysia Intern. Shipping, 549 U.S. 422 (2007)

If Congress intended to provide a district court with the discretion to decline to hear a Title VII case based on considerations of convenience, fairness, or judicial economy by dismissing pursuant to a judicially created discretionary doctrine such as *forum non conveniens*, then it would have included a similar provision in the 1991 amendment to Title VII of the Civil Rights Act that it had just done with its inclusion of section 1367(c) of the Judicial Improvements Act the year before. But Congress did not include a similar provision. Instead, it left intact its determination that the district courts "shall have jurisdiction" over Title VII cases. Whether it was when Petitioner first filed her case in the district court or when she attempted to return her case when the courts of the Netherlands proved unavailable to her, the lower courts were obliged at some point to exercise the jurisdiction Congress conferred upon them to hear a Title VII case.

III. A RULE 60(b)(6) "REASONABLE TIME" REQUIREMENT COMMENCES WHEN THERE IS A FINAL DECISION THAT THE ALTERNATIVE FORUM IS UNAVAILABLE AND NOT WHEN A CASE IS ORIGINALLY DISMISSED ON *FORUM NON CONVENIENS*.

The Ninth Circuit's decision in this case has created a "catch 22" paradoxical situation making it impossible for Petitioner to satisfy the requirement that a Rule 60(b)(6) motion be brought within a reasonable time from when she learned of the

circumstances giving rise to the request for relief. Petitioner contends that the "reasonable time" requirement for her to bring her Rule 60(b)(6) motion started to run when she learned that the Dutch forum finally proved unavailable to her when all her appellate options expired in the Netherlands on December 3, 2019. She attempted to file her Rule 60 motions starting in January 2020.

The Ninth Circuit, however, identifies its 2015 decision dismissing this case as triggering the clock for bringing Petitioner's Rule 60(b)(6) motion within a "reasonable time." It went further and suggested that Petitioner's obligation to return to the district court with her Rule 60(b) motion within a reasonable time was at the latest when she learned in 2016 that the Dutch courts were unavailable with respect to Nike Inc. However, because the Ninth Circuit does not require that an alternative forum possess jurisdiction as to all parties in order to dismiss a case on *forum non conveniens*, and the Ninth Circuit has already explained that there was no ability for the district court to hear Petitioner's ADEA and Title VII complaints because the decision of the ETC has been accorded preclusive effect, this reasoning has created an endless loop making it impossible for Petitioner to comply with a "reasonable time" requirement.

There is a split in the circuits with respect to *forum non conveniens* dismissals as to whether the foreign forum must be able to exercise jurisdiction over all parties to a case. The Second, Fifth, Sixth, Seventh, and Tenth Circuits require that the alternative forum be able to exercise jurisdiction over all parties to a case for it to be available. See, *e.g., Dirtt Environmental*

Solutions v. Falkbuilt Ltd., 65 F.4th 547 (10th Cir. 2023); '[t]here is support among the various circuits for the idea that all parties (and by extension the entire case) must be subject to the jurisdiction of an alternative forum in order for it to be considered available under *forum non conveniens*." *id.* at 554.

The Ninth Circuit, however, only "ordinarily" requires that the alternative forum be able to exercise jurisdiction over the entire case and all the parties to be considered available. *Gutierrez*, 640 F.3d at 1029 (citing *Dole Food Co. v. Watts*, 303 F.3d 1104, 1118 (9th Cir. 2002). In practice, where the alternative forum can exercise jurisdiction over only some of the parties to a case, the Ninth Circuit will consider that forum nonetheless to be available as long as it can exercise jurisdiction over the "necessary parties," as applied in *In re Orland Ltd.*, No. AP 20-04001-MJH, 2022 Bankr. LEXIS 764, 2022 WL 885167, at *13 and 15 (B.A.P. 9th Cir. Mar. 25, 2022).

Before starting her case in the Netherlands, Petitioner evaluated whether to name Nike Inc. as a party there. She was aware of an unpublished decision of the Ninth Circuit in *Moreno v. Omnilife USA*, 483 Fed. App'x 340 (9th Cir. 2012). In *Moreno*, the plaintiff claimed at oral arguments that the Mexican forum was unavailable because some of the defendants in the then-pending Mexican action were challenging service of process. The Ninth Circuit found that the Mexican forum was still available so long as the plaintiff could still pursue his claims against the other defendants.

Even though Petitioner knew in 2016 that the Dutch court could not exercise jurisdiction over Nike Inc., she also knew that adding Nike Inc. as a defendant was not needed for her to obtain some form of relief under Dutch law against NEON. If she could prove that NEON had discriminated against her under Dutch law, she would have had a right of recovery against it that readily could have been satisfied in the Netherlands. Even if Nike Inc. could have consented to the jurisdiction of the Dutch court, which it could not, and the Dutch court could have applied the ADEA or Title VII to the case, which it could not, having Nike Inc. as a defendant in the Netherlands would not have resulted in any additional recovery for Petitioner. As such, it was not a "necessary party" under Ninth Circuit practice and it should be seen that even if Petitioner had returned to the district court in 2016 to alert it that she could not maintain any claim against Nike Inc. in the Netherlands, any motion to reinstate her case would have been denied.

If, on the other hand, Ninth Circuit precedent were in line with the Second, Fifth, Sixth, Seventh, and Tenth Circuits conditioning the alternative forum's availability on its ability to exercise jurisdiction over all parties to the case, then the "reasonable time" requirement for bringing Petitioner's Rule 60(b)(6) motion would have commenced when she learned that there was no ability to entertain any cause of action against Nike Inc. in her Dutch case. But since Nike Inc. was not a necessary party in the Netherlands under Ninth Circuit practice, Petitioner's obligation to file within a reasonable time should be considered to have commenced when she learned in December 2019

that the Netherlands was unavailable to her and not when the Ninth Circuit originally dismissed on *forum non conveniens* in 2015. Petitioner's writ should be granted to clarify this important issue and resolve the split in the circuits.

IV. THIS CASE IS A GOOD VEHICLE FOR THIS COURT TO CLARIFY IMPORTANT QUESTIONS OF LAW AND ENSURE CONFORMITY WITH ITS CLEAR PRECEDENTS.

Granting Petitioner's writ will allow this Court to examine several novel questions of law for the first time. These include how the courts are to administer a law for which Congress has expressed its clear, affirmative intent is to have extraterritorial effect. To what extent do the lower courts have the discretion to decline to exercise the jurisdiction Congress has conferred upon them? Under what circumstances, if any, can a case return to a United States district court after a *forum non conveniens* dismissal where a foreign court has declined to allow the case to be heard there?

Petitioner also submits that the Ninth Circuit has stretched the application of *forum non conveniens* to the breaking point by applying it in this case to arrive at a result that has no foundation in the law. This Court might consider whether the Ninth Circuit's practice of dismissing a case on *forum non conveniens* based on the retroactive availability of a forum is consistent with its precedents. It might also consider the Ninth Circuit's pronouncement in this case that the actual availability of a forum to hear claims after a *forum non conveniens* dismissal is irrelevant.

Finally, this Court might also consider whether a tribunal that cannot make any award of damages can provide an adequate remedy.

A. This Court should clarify how the laws of the United States that Congress has specifically indicated have extraterritorial reach are to be applied.

This Court has issued several decisions dating back to 1991 determining that there is a presumption against the extraterritorial applicability of a statute. Congress must have clearly expressed its affirmative intent that a statute is to have extraterritorial applicability in order to overcome this presumption. *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 249-259 (1991). This Court recently reaffirmed the presumption against extraterritoriality when it ruled that the Lanham Act's infringement and unfair competition provisions are not extraterritorial and that they extend only to claims where the claimed infringing use in commerce is domestic. *Abitron Austria GmbH v. Hetronic International*, 143 S. Ct. 2522, 2527-2534 (2023). This Court also previously determined in 2016 that RICO does not have extraterritorial applicability either in *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2101 (2016); the Alien Tort Statue lacks extraterritorial reach in *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013); and that Section 10(b) of the Securities Exchange Act (and Rule 10b-5 promulgated thereunder) do not have extraterritorial effect either. *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247 (2010).

In response to this Court's decision in *EEOC v. ARAMCO*, *supra*, Congress amended Title VII of the Civil Rights Act in 1991 to specifically provide for its extraterritorial applicability and that aspect of Title VII is presented to this Court again. Granting Petitioner's writ would allow this Court to examine for the first time how the United States courts are to administer a law where Congress has expressed its clear affirmative intent that it is to have extraterritorial effect and that the lower courts "shall have jurisdiction" to hear claims brought thereunder.

B. This Court should clarify the extent to which a lower court's exercise of its discretionary powers supersedes Congressional authority under Article III of the Constitution to determine the jurisdiction of the lower courts.

This Court noted that it "is the undisputed constitutional principle that Congress, and not the Judiciary, defines the scope of federal jurisdiction within the constitutionally permissible bounds," *New Orleans, supra*, at 359, citing to *Kline v. Burke Construction Co.*, 260 U.S. 226, 234 (1922). If the lower courts are still to retain the discretion to dismiss a Title VII case on *forum non conveniens* in the first instance, does the obligation to exercise jurisdiction become non-discretionary when a claimant attempts to return to the district court after an alternative forum has proven unavailable? Granting Petitioner's writ is necessary to clarify the extent to which Congress's plenary powers under Article III of the Constitution to establish the lower federal courts and

determine their jurisdiction are subordinate to a court's exercise of its implied, discretionary powers.

C. The Ninth Circuit violated its obligation to apply the law as enacted by Congress and settled by this Court's clear precedents.

The Ninth Circuit declined to acknowledge Petitioner's arguments in her motion for an *en banc* rehearing that this Court's decisions in *Tennessee* and *Solimino* give her the right to have her claims of age and sex discrimination arising under the ADEA and Title VII heard in the district court regardless of the decision of the ETC. As such, it has simply ignored precedents it was bound to apply. At the very least, the Ninth Circuit should have granted Petitioner's motion for an *en banc* rehearing and explained why this Court's decisions in *Tennessee* and *Solimino* were inapplicable to her case. Petitioner's writ for *certiorari* should be granted to ensure that the lower courts apply the laws as enacted by Congress, signed by the President, and interpreted by this Court, instead of ignoring them.

D. This Court should articulate the circumstances and procedures for a case previously dismissed on *forum non conveniens* to return to the district court where the foreign forum ultimately proves unavailable.

There is a split in the circuits as to how a case may return to the district court after having been dismissed on *forum non conveniens* and sent for adjudication to a foreign forum that ultimately proves

to be unavailable. While courts in the Fifth Circuit retain the flexibility to make the initial decision whether to dismiss a case on *forum non conveniens*, it is considered a *per se* abuse of discretion if they fail to include a return clause in the event maintaining a case in the foreign forum proves impossible. The Fifth Circuit explains that because there is no guarantee that a foreign forum will remain available subsequent to a *forum non conveniens* dismissal, "[a] return jurisdiction clause remedies this concern by permitting parties to return to the dismissing court should the lawsuit become impossible in the foreign forum." *Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665, 675 (5th Cir. 2003). An example of a return clause that a district court in the Fifth Circuit might attach to a *forum non conveniens* dismissal provides as follows:

> This Magistrate Judge further RECOMMENDS that (1) the District Court permit the parties to return to this Court should the lawsuit become impossible in Israel, and (2) if the courts of Israel refuse to accept jurisdiction of this case for reasons other than Plaintiffs' refusal to pursue an action or to comply with the procedural requirements of Israeli courts, on timely notification, the Court may reassert jurisdiction.

OSR Enters. AG v. Ree Auto., 1:22-CV-01327-ADA, 2024 WL 51014 (W.D. Tex. Jan 04, 2024).

Another reason given by the Fifth Circuit, relevant here, is "to ensure that defendants will not attempt to evade the jurisdiction of the foreign courts." *Noble*

House, LLC v. Certain Underwriters, 67 F.4th 243, 253 (2023). [6]

Where a case cannot be maintained in the foreign forum, the Fifth Circuit's practice of requiring a return clause provides for the efficient resolution of the issue that conserves judicial resources and minimizes time and expense for the parties and the courts. The Ninth Circuit, on the other hand, refuses to require return clauses, believing that doing so would contradict this Court's observation that *forum non conveniens* determinations "need to retain flexibility." *Gutierrez, supra*, at 1032. (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. at 249, 102 S. Ct. 252).

Petitioner believes that the Ninth Circuit errs in stating that it is prohibited from requiring return jurisdiction clauses by Supreme Court precedent, which mandates that *forum non conveniens* decisions must remain flexible. This Court has held only that the decision itself, not the conditions placed on that decision, must retain flexibility. Because a claimant's

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[6] Petitioner calls attention to the fact that NEON spent five years convincing the district court and Ninth Circuit to dismiss this case to the Netherlands as the more convenient forum. Once there, NEON raised every affirmative defense it could muster to prevent Petitioner's case from being heard, including telling the Dutch district court it had no jurisdiction to hear the case and that it would be too inconvenient and expensive to send the U.S. based witnesses to testify at any trial there. These included the manager who ordered Petitioner be fired and the manager who carried out that order. They had been transferred to Oregon years before Petitioner filed her case there and yet the Ninth Circuit found that the relevant witnesses to the case were mostly overseas when it dismissed this case on *forum non conveniens* in 2015.

ability to return a case to the district court would only be examined after a case has been dismissed on *forum non conveniens*, the requirement of either a return clause or that a court hold a hearing would not interfere with the flexibility of the initial decision. Petitioner submits that no precedent of this Court prohibits either requiring a return jurisdiction clause or that the district court hold a brief hearing should the alternative forum ultimately prove unavailable.

To try and return her case to the district court, Petitioner had to file a Rule 60 motion and demonstrate "extraordinary circumstances" justifying relief. She also had to file her motion within a "reasonable time," the starting point for which the Ninth Circuit identified as being triggered when it dismissed this case the first time in 2015 and not when the Netherlands ultimately proved unavailable in December 2019. The four years it took this case to make its way through the district court and the Ninth Circuit before her Rule 60 motions were finally disposed of is in stark contrast to the efficient and perfunctory mechanism for reinstating a case in the Fifth Circuit after a *forum non conveniens* dismissal.

The Ninth Circuit's lack of any mechanism that would require the district court to consider reinstating this case resulted in a prolonged, four-year slog through the lower courts. It was expensive, time-consuming, and used up significant judicial resources. It also has resulted in the manifestly unjust outcome that Petitioner has been left with no forum that can provide her with a remedy. Petitioner submits that the Ninth Circuit's handling of her Rule 60(b)(6) motion and its ultimate refusal to reconsider its 2015

forum non conveniens dismissal of her case once the courts of the Netherlands proved unavailable is inconsistent with the instruction from Rule 1 of the Federal Rules of Civil Procedure that the rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."

This Court should grant Petitioner's writ to determine under what circumstances claims brought under Title VII or the ADEA may return to the district court after a *forum non conveniens* dismissal should the alternative forum ultimately prove unavailable. For one, this Court could decide whether a claimant needs to seek relief through the rigors of a Rule 60(b) motion and spend years in the lower courts before a decision is reached or whether a simple Rule 201 Motion for Judicial Notice of Adjudicative Facts, by way of example, would suffice.

If a Rule 60(b)(6) motion is to be required, this Court might articulate the interests to be weighed for returning a discrimination case to the district court previously dismissed on *forum non conveniens*. Here, the Ninth Circuit has indicated that Nike Inc. would be prejudiced if Petitioner's case were to return for trial. However, it gave no consideration to any competing prejudice Petitioner faces. Nike Inc.'s prejudice is measured as having to finally defend this case on the merits. The prejudice to Petitioner, in contrast, is being denied any remedy for the decade of abuse and discrimination she alleges she was subject to at NEON. In comparing the competing interests in an inquiry in equity, one outweighs the other.

Petitioner suggests that this Court need not require a conditional dismissal as part of a *forum non conveniens* dismissal either. In the event a case cannot be maintained in an alternative forum, this Court could require the district court to hold a hearing to determine the primary reason the case could not be heard there. Where a plaintiff has sabotaged her own case from being heard in the alternative forum, then the court should dismiss again. Where a defendant has prevented a case from being heard in the foreign forum by refusing to cooperate with proceedings there, then the case should be reinstated. This is what Ninth Circuit precedent provides for in *Gutierrez* but its application is discretionary. Petitioner's multiple requests to hold a single hearing to determine why her case could not be heard in the Netherlands were denied at every turn.

Taking the discretionary approach that the Ninth Circuit enunciated in its *Gutierrez* decision and elevating it to a requirement imposed by this Court would obviate most of the problems Petitioner encountered in this case and could be limited to cases where the ADEA or Title VII are at issue and where the lower court is not asked to apply foreign law. The beneficiaries of a *forum non conveniens* dismissal would be incentivized to cooperate in the foreign forum, instead of strenuously resisting any resolution there and the U.S. courts would be able to deal quickly and efficiently with a returning case instead of spending years resolving the issue. This approach would preserve the lower courts' discretion to dismiss a claim brought under the ADEA and/or Title VII on *forum non conveniens* while ensuring that the eventual obligation to exercise the jurisdiction

Congress has conferred upon them is respected should a case need to return due to unavailability of an alternative forum. Such a hearing might take an hour and be a far more efficient use of the courts' time and limited resources than the four years it took the district court and Ninth Circuit to dispose of this issue in this case. This would also help bring some harmonization to the doctrine of *forum non conveniens*, which is marked by significant disparities in its application and outcomes among the Circuits.

Petitioner's case never would have been dismissed on *forum non conveniens* in the Second, Fifth, Sixth, Seventh, and Tenth Circuits because these circuits condition the alternative forum's availability on its ability to exercise jurisdiction over all parties to a case. The Ninth Circuit dismissed Petitioner's case against Nike Inc. to the Netherlands on *forum non conveniens* without anything on the record to suggest that it could come under the jurisdiction of the Dutch courts. Another stark difference is that Petitioner's case would have returned to the district court in the Fifth Circuit almost automatically on a simple motion after the courts of the Netherlands proved unavailable instead of the four years it took the district court and Ninth Circuit court of appeals to resolve the issue. This Court could use this case to introduce some efficiencies into the doctrine of *forum non conveniens* by requiring either a return jurisdiction clause or a brief hearing where an alternative forum proves unavailable. The Ninth Circuit's practice, as seen in this case, has proven expensive, time-consuming, inefficient, unjust, and incompatible with Rule 1.

CONCLUSION

For the foregoing reasons, the Court should grant a writ of certiorari.

Respectfully submitted,

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