No. 23-237

In The
Supreme Court of the United States

WINFRED WAIRIMU WAMAI, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ADAM TITUS WAMAI, ET AL., PETITIONERS

v.

INDUSTRIAL BANK OF KOREA

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Second Circuit correctly held in an unpublished summary order that the district court did not abuse its discretion in dismissing for *forum non conveniens* a complaint by predominantly foreign plaintiffs when they challenged conduct that occurred in Korea; almost all relevant evidence and witnesses are in Korea; it is unclear whether defendant is amenable to jurisdiction in the United States; and Korea provides an adequate alternative forum for their claims.

CORPORATE DISCLOSURE STATEMENT

Respondent Industrial Bank of Korea ("IBK") certifies: The Korean Ministry of Economy and Finance holds 59.5% of IBK common stock as of June 30, 2023. No publicly owned corporation owns 10% or more of IBK's outstanding stock.

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INTRODUCTION

After examining multiple case-specific factors, the district court concluded that petitioners' suit challenging a Korean bank's actions in Korea should be litigated in Korea. In a summary order applying a deferential abuse of discretion standard, the Second Circuit affirmed. Its non-precedential decision involves only application of settled *forum non conveniens* principles to the circumstances of this case. Review is not warranted.

Petitioners, judgment-creditors of Iran, sued respondent Industrial Bank of Korea (IBK), which is majority-owned by the Republic of Korea, for fraudulently conveying assets out of the Central Bank of Iran's account in Korea. All the transactions were initiated in Korea by persons located in Korea; all the allegedly fraudulent documents were presented to IBK in Korea; and the review process for transfers from the account occurred in Korea. The sole connection to New York is that the funds removed from the Iranian account in Korea passed through New York banks on their way to other destinations. Given New York's role in the global financial system, international money transfers through the state are as common as they are unremarkable. As both lower courts found, that fleeting connection does not make it convenient to try petitioners' Korea-centric case in New York. As the district court also concluded, petitioners can pursue their claims in Korea's efficient and highly regarded court system, and the convenience factors that inform

the *forum non conveniens* doctrine all say that they should.

In seeking review, petitioners principally argue that the Second Circuit erred in finding no abuse of discretion in the district court's extension of some, albeit minimal, deference to their choice to sue in New York. And they contend that this decision implicates a circuit conflict on the degree of deference owed to predominantly foreign plaintiff groups' forum choice. Petitioners are wrong on both counts.

The district court's deference decision fell well within bounds of that court's wide discretion. Contrary to petitioners' suggestion, the court based its deference-level choice on multiple factors—not just the plaintiff group's composition. It noted that all the key events had taken place in Korea, that nearly all the evidence and witnesses are there, and that it is not clear that IBK is even amenable to suit in the United States. The court of appeals found no abuse of discretion in the district court's consideration of all those factors, and it emphasized that residency was just one of them. The Second Circuit committed no error in reaching that conclusion.

Petitioners are also wrong that the decision below implicates a circuit split. Like the Second Circuit, other circuits consider multiple factors when deciding how much deference to extend to plaintiffs' forum choices and when making the ultimate *forum non conveniens* determination. None follows a rigid rule that a plaintiff group with only a handful of American

members gets maximum deference notwithstanding any other factor.

Even if there were such a conflict, this petition would be a deeply flawed vehicle for resolving it. The decision below is unpublished, and the Second Circuit has never addressed the level of deference owed to mixed plaintiff groups in a precedential opinion. And the composition of the plaintiff group made no difference here. Every single *forum non conveniens* factor considered by the district court and the court of appeals overwhelmingly pointed in favor of litigation in Korea. Dismissal thus would have been compelled regardless of where individual petitioners live.

Petitioners' second question contending that the *forum non conveniens* dismissal violated the separation of powers likewise does not merit review. Petitioners identify no other court of appeals that has addressed this contention, much less one that has disagreed with the Second Circuit on it. And given the unpublished nature of the decision below, even the Second Circuit has not weighed in as a matter of precedent. Petitioners' argument is also meritless. Most of their claims are brought under state law and thus implicate no separation of powers issue. And it is settled that Congress's mere choice to confer subject matter jurisdiction does not displace *forum non conveniens* doctrine.

The injuries petitioners have suffered because of Iran's actions are unquestionably horrific. But as both lower courts found, they do not turn this lawsuit

against IBK into a New York controversy, nor do they make it convenient to litigate in New York. The petition should be denied.

STATEMENT

A. Factual And Legal Background

1. Petitioners' litigation against Iran

In 1998, al-Qaeda bombed the U.S. Embassies in Tanzania and Kenya with aid from Iran. C.A. App. 122-123, 127. In 2008, petitioners—the victims, or victims' estate representatives—sued Iran in the U.S. District Court for the District of Columbia for the attacks. Pet. App. 8a. The court entered default judgments totaling $5.5 billion, which Iran has not satisfied. *Ibid.*

2. The Central Bank of Iran's Won Account in Korea

Since 1979, the United States has maintained economic sanctions against Iran and its oil exports. C.A. App. 133; Pet. App. 27a. Korea, however, relies on Iranian oil for its energy needs. So, in 2010, the Korean government, in consultation with the United States, authorized two majority state-owned banks to establish Korean won-denominated accounts belonging to the Central Bank of Iran ("CBI Won Account") to facilitate limited trade between Korean-based entities and Iran. C.A. App. 277.

IBK, which is headquartered in Seoul, was one of those two banks. Pet. App. 28a; C.A. App. 126. The Korean government is IBK's majority owner and can

appoint or dismiss its executive officers. C.A. App. 375. "IBK's operations are overwhelmingly focused on Korea." Pet. App. 28a. In 2020, IBK operated 635 branches in Korea and employed over 13,000 people there. C.A. App. 376-377; Pet. App. 28a. Its sole U.S. operation is a branch in New York (IBKNY), where it had 29 employees in 2020. C.A. App. 376-377; Pet. App. 28a.

Authorization for payments from the CBI Won Account for Korean commodities required a multi-step review process involving the Korea Strategic Trade Institute (KOSTI), the Bank of Korea, and IBK. C.A. App. 137; C.A. App. 376; Pet. App. 28a.

3. Conspiracy to remove funds from the CBI Won Account

In 2011, Korean resident Kenneth Zong and Iranian co-conspirators sought to transfer Iranian funds out of the CBI Won Account and into other accounts in Korea. C.A. App. 138; Pet. App. 29a. Zong engaged in sham transactions and submitted fictitious documentation to the Bank of Korea, KOSTI, and IBK. C.A. App. 376; Pet. App. 29a.

Zong's conspiracy succeeded. He initiated 88 transactions via IBK accounts, transferring slightly more than one billion dollars out of the CBI Won Account. C.A. App. 124, 141-143; Pet. App. 29a. The funds were converted from won into dollars and transferred around the world. C.A. App. 202-203. Of these transactions, approximately $10 million (1%) passed through IBKNY. C.A. App. 155-156, 377. The

remaining transactions, totaling approximately $990 million, were routed through other U.S. correspondent banks. C.A. App. 155-156, 377.

4. IBKNY's anti-money laundering program

IBKNY, IBK's sole U.S. presence, provides no retail banking services, instead serving only as a correspondent bank for transactions processed on behalf of IBK's customers in Korea. C.A. App. 268.

Like other banks in the United States, IBKNY was required to maintain an adequate anti-money laundering (AML) compliance program under the Currency and Foreign Transactions Reporting Act of 1970. C.A. App. 269. From 2006 to 2013, IBKNY employed one full-time compliance officer responsible for manually reviewing transactions for AML compliance. C.A. App. 269-270. The officer fell months behind in reviewing transactions. C.A. App. 270, 273. As a result, IBKNY did not detect the $10 million of Zong's transactions processed through IBKNY until months later, at which point Zong had already conducted over $1 billion in transactions through various banks. C.A. App. 274-275.

In 2020, IBK entered into a Deferred Prosecution Agreement (DPA) with the U.S. Attorney's Office for the Southern District of New York, in which IBK consented to the filing of a one-count criminal information charging it with willfully failing to maintain an adequate AML program at IBKNY. C.A. App. 153, 251; Pet. App. 30a. The DPA did not assert

that IBK conspired with Zong. C.A. App. 251-282. IBK complied with all DPA terms, and it expired in 2022. C.A. App. 254 (two-year term).

B. Procedural History

1. Petitioners file suit against IBK in New York

In 2021, petitioners filed this lawsuit against IBK in the Southern District of New York. Of the 323 petitioners, 269 live in foreign countries. C.A. App. 170-171. And of the 54 petitioners in the United States, three live in New York. C.A. App. 170-171.

Petitioners' complaint alleges four counts. The first two assert New York-law fraudulent conveyance claims against IBK. C.A. App. 158-164. Petitioners also invoked New York law to compel IBK to turn over Iranian assets in IBK's possession. C.A. App. 164. Finally, petitioners claimed they could recover under the federal Terrorism Risk Insurance Act, which under certain circumstances allows judgment creditors to attach assets of a "terrorist party" that were "seized or frozen by the United States." C.A. App. 165-166; 28 U.S.C. § 1610, note (TRIA § 201).

2. The district court conditionally dismisses for **forum non conveniens**

The district court conditionally granted IBK's motion to dismiss for *forum non conveniens*. Pet. App.

25a-44a.[1] Under the Second Circuit's *forum non conveniens* framework, the court explained, "a court determines the degree of deference properly accorded the plaintiff's choice." Pet. App. 32a. Next, the court "considers whether the alternative forum proposed by the defendants is adequate to adjudicate the parties' dispute." *Ibid.* And finally, "'a court balances the private and public interests implicated in the choice of forum.'" *Ibid.*

At the first step, the court noted that "any review of a *forum non conveniens* motion starts with a strong presumption in favor of the plaintiff's choice of forum." *Ibid.* (quoting *Norex Petroleum Ltd. v. Access Indus., Inc.*, 416 F.3d 146, 154 (2d Cir. 2005)). But deference is not "absolute;" instead, "the degree of deference given to a plaintiff's forum choice varies with the circumstances." Pet. App. 32a-33a (quoting *Iragorri v. United Techs. Corp.*, 274 F.3d 65, 71 (2d Cir. 2001) (en banc)). The court noted that a variety of factors influence the degree of deference, including "the convenience of the plaintiff's residence in relation to the chosen forum," "the availability of witnesses or evidence to the forum district," "the defendant's amenability to suit in the forum district," and "other reasons relating to convenience or expense." *Ibid.* The court found that all these factors pointed toward

[1] The court had earlier granted IBK's request to limit its motion to that topic while reserving other grounds for dismissal. C.A. App. 168-169.

affording petitioners' choice of forum "some, albeit minimal, deference." Pet. App. 37a.

First, "[t]he vast majority of the plaintiffs here are not resident in the United States." Pet. App. 34a. That indicated that most "plaintiffs' residence" is "not convenient to the chosen forum." *Ibid.*

Second, "this case primarily involves allegations that Korea-based employees of a Korean bank conspired to violate U.S. law and fraudulently convey Iranian funds." *Ibid.* Thus, "[m]uch of the potential proof . . . is in Korea." *Ibid.* "[I]f this case proceeds in New York," the court found, "discovery and trial would likely involve an arduous process of securing the appearance of witnesses without the benefit of this Court's subpoena power and transporting witnesses and evidence to the United States." Pet. App. 35a.[2]

Third, it is "unclear whether IBK is amenable to jurisdiction in New York in this case," so the court would "be required to address complex threshold issues of state and federal law before proceeding to the merits of this litigation." Pet. App. 35a-36a. The court

[2] IBK submitted a declaration stating that "to IBK's knowledge, all IBK employees who interacted with Zong, participated in any way with the initiation of the transfers in question, or assisted with the Korean government review process currently reside in Korea." C.A. App. 378; *see* C.A. App. 380-381. Likewise, "[t]he last known location of the IBK officials and the Korean government officials who were involved in establishing the CBI Won Account and monitoring the operation of the CBI Won Account system is Korea." *Ibid.* Zong, "the perpetrator of the fraud," was also in Korea. *Ibid.* IBK further showed that Korea was home to the documentary evidence. *Ibid.*

emphasized that "[t]his jurisdictional dispute in and of itself weighs against deferring to the [petitioners'] choice of forum." Pet. App. 36a.

At the second step of the analysis, the court found that "Korea is an adequate alternative forum for litigation of this matter." Pet. App. 38a. "IBK is amenable to service of process there," and, in any event, the court would "condition dismissal of this action on a stipulation to accept service in Korea." *Ibid.* The court also found that Korea "permits litigation of the subject matter of this dispute." *Ibid.*; *see* C.A. App. 383-528; C.A. App. 943-1011 (expert declarations).

At the last step, the court found the relevant private and public interest factors all supported dismissal. Pet. App. 40a-43a. As for the "private interest factors," the court concluded that because "the majority of both the documentary evidence and percipient witnesses in this case is thousands of miles away in Korea" "[l]itigating in New York" "would be far from 'easy, expeditious and inexpensive.'" Pet. App. 41a. The "public interest factors" too weighed "against permitting this case to proceed in New York" because the "case has almost no connection to New York." Pet. App. 42a. But it would be of significant interest to Korea "because it involves alleged misconduct by a government-sponsored Korean bank that in large part occurred in Korea." Pet. App. 42a-43a.

The court acknowledged petitioners' allegation that "IBK passed Iranian funds through correspondent

bank accounts in New York," but concluded that "the coincidental involvement of bank accounts in New York, a global financial hub, is not enough to make this a New York controversy." Pet. App. 42a (citing *Mashreqbank PSC v. Ahmed Hamad Al Gosaibi & Bros. Co.*, 12 N.E.3d 456 (N.Y. 2014)). "Given the minimal connection between New York and the issues in this case, New York has almost no interest in seeing it decided here, and it makes little sense to burden a New York court and jury with it." *Ibid.*

Finally, the court noted the "possibility that even if this action were to proceed in New York, [the court] would be required to apply Korean law to the plaintiffs' claims," a risk that also "weigh[ed] in favor of dismissal." Pet. App. 43a (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 251 (1981)).

The court later ordered entry of judgment and memorialized "a commitment by IBK to accept service in Korea and waive any jurisdictional or statute of limitations defense." Pet. App. 22a-24a; *see* Pet. App. 44a.

3. The court of appeals affirms

The court of appeals affirmed in an unpublished summary order. Pet. App. 1a-21a.

The court noted that "substantial deference" is owed to a district court's *forum non conveniens* decision and that "[s]uch a decision may be overturned only when we believe that the trial court has clearly

abused its discretion." Pet. App. 10a (citation omitted). The court found no abuse of discretion here. *Ibid.*

First, the court found no abuse of discretion in the district court's affording "some, albeit minimal deference" to petitioners' forum choice. Pet. App. 11a (quoting Pet. App. 37a). The court noted that the district court had relied on a variety of factors in so doing. Pet. App. 12a-14a. For example, the district court "observed that the U.S. resident plaintiffs are significantly outnumbered by overseas plaintiffs (namely, 83% of the plaintiffs reside outside the United States) and then concluded that because the vast majority of the plaintiffs are not resident in the United States, 'plaintiffs' residence is therefore not convenient to the chosen forum.'" Pet. App. 12a (quoting Pet. App. 34a). But the "district court also weighed other convenience factors in determining that Korea was a more convenient forum, such as the locus of events underlying the lawsuit, the location of evidence, as well as jurisdictional considerations." Pet. App. 13a. In particular, "the [district court] noted that virtually all of the relevant documentary evidence and witnesses are in Korea." *Ibid.* Finally, the Second Circuit found that "the district court properly considered that it was 'unclear whether IBK is amenable to jurisdiction in New York in this case,'" and that inevitable litigation over personal and subject matter jurisdiction "in and of itself weighs against deferring to the [petitioners'] choice of forum." Pet. App. 14a (quoting Pet. App. 36a).

In a footnote, the court rejected petitioners' contention "that the presence of *any* U.S. residents

among the plaintiffs precludes a district court from giving less deference to the choice of forum even when the overwhelming majority of the plaintiffs reside abroad." Pet. App. 12a n.1 (emphasis in original). The court noted that in previous summary orders it had affirmed district court decisions affording less deference to predominantly foreign plaintiff groups. *Ibid.* But the court also emphasized that "the residency factor was only one of many discretionary factors in this case that the district court relied upon in attaching minimal deference to plaintiffs' choice of forum." Pet. App. 13a n.1.

On the second factor, the court of appeals rejected petitioners' contention that the district court had erred in deeming Korea an adequate alternative forum. Pet. App. 14a-17a.

The Second Circuit also found no abuse of discretion in the district court's weighing of the private and public interest factors. Pet. App. 17a. The district court "reasonably concluded that 'the majority of both the documentary evidence and percipient witnesses in this case is thousands of miles away in Korea.'" Pet. App. 18a (quoting Pet. App. 41a). And the district court reasonably concluded that "New York has no local interest in deciding this case because this case has almost no connection to New York." *Ibid.* (quoting Pet. App. 42a). The court of appeals also noted that "the district court was entitled to consider the possibility that it would be required to apply Korean substantive law to plaintiffs' claims as an additional factor that

weighed in favor of dismissal." Pet. App. 19a (citing *Piper*, 454 U.S. at 251).

Finally, the Second Circuit rejected petitioners' contention that the "strong U.S. policy interest" against state sponsors of terrorism "requires a departure from our legal framework for a *forum non conveniens* analysis." Pet. App. 20a. The court "emphasize[d] that this lawsuit does not involve claims against a state sponsor of terrorism nor are plaintiffs enforcing U.S. sanctions laws." *Ibid*. The court observed that petitioners "have a legitimate and compelling interest in pursuing [their] claims," but noted that they could do so in Korea. Pet. App. 20a-21a.

REASONS FOR DENYING THE PETITION

Neither question presented implicates a circuit conflict or legal error meriting this Court's consideration. Even if they did, this petition would make a poor vehicle for review.

I. THE FIRST QUESTION PRESENTED DOES NOT MERIT REVIEW

Petitioners fail to establish any basis for review of their first question presented, involving the degree of deference owed to the forum choice of a predominantly foreign plaintiff group. All circuits consider a variety of case-specific factors when reviewing *forum non conveniens* dismissals for abuse of discretion, and any slight variations in their articulation of one such factor is immaterial. The Second Circuit's non-precedential

summary order correctly found no abuse of discretion in the district court's consideration of multiple factors in setting a deference level and making an ultimate *forum non conveniens* decision. And this petition provides a flawed vehicle for review because the Second Circuit would have reached the same result under any deference level.

A. The Petition Does Not Implicate Any Circuit Conflict Meriting This Court's Consideration

1. Petitioners do not even claim a circuit conflict on their question presented

Petitioners' first question presented asks the Court to decide whether a predominantly foreign plaintiff group's forum choice is entitled to less deference in a specific setting: when plaintiffs are "judgment creditors seek[ing] to enforce their U.S. judgments obtained pursuant to the Foreign Sovereign Immunities Act." Pet. i. They contend that the Second Circuit's answer to that question "conflicts" with that of other circuits. Pet. 2, 13-20.

But the petition's own description of those purportedly conflicting cases (Pet. 14-17) refutes petitioners' contention: none involved judgment enforcement actions. *See Otto Candies, LLC v. Citigroup, Inc.*, 963 F.3d 1331, 1337 (11th Cir. 2020) (RICO); *Simon v. Repub. of Hungary*, 911 F.3d 1172, 1176 (D.C. Cir. 2018) ("genocidal expropriation"), *vacated*, 592 U.S. 207 (2021); *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1222 (9th Cir. 2011) ("environmental contamination

and release of hazardous waste"). The decision here appears to be the first to address petitioners' question presented (and did so in a non-precedential order). That is reason enough to deny the petition.

2. Even a broadened question presented would not implicate any meaningful division of authority

To the extent petitioners seek review of the deference issue beyond the limited context identified in their own question presented they fail to establish any basis for review.

a. Courts of appeals consider multiple factors in choosing deference levels

This Court has "emphasized the need to retain flexibility" in considering *forum non conveniens* motions. *Piper Aircraft*, 454 U.S. at 249. "If central emphasis were placed on any one factor, the *forum non conveniens* doctrine would lose much of the very flexibility that makes it so valuable." *Id.* at 249-250. Consistent with that approach, no court of appeals chooses a forum-choice deference level—much less makes the ultimate *forum non conveniens* determination—based solely on plaintiff residence. Instead, the courts make case-specific determinations based on a variety of factors, including location of evidence and witnesses. And courts of appeals review district court *forum non conveniens* determinations only for "a clear abuse of discretion." *Id.* at 257.

Differences in appellate outcome thus turn on differences in circumstances and the standard of

review's wide latitude. As this Court has observed about *forum non conveniens*, "[t]he discretionary nature of the doctrine, combined with the multifariousness of the factors relevant to its application, make uniformity and predictability of outcome almost impossible." *Am. Dredging Co. v. Miller*, 510 U.S. 443, 455 (1994) (citation omitted). There is thus no circuit disagreement on any legal question meriting review.

i. Second Circuit

1. Like other circuits, the Second Circuit considers multiple factors in reviewing *forum non conveniens* dismissals, with residence of plaintiffs only a non-dispositive one. In deciding whether to dismiss a case for *forum non conveniens*, a district court in the Second Circuit first determines the degree of deference owed to plaintiffs' forum choice. "[T]he degree of deference assigned to plaintiff's choice depends on the specific facts of the case and may be viewed as operating along a 'sliding scale.'" *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 71 (2d Cir. 2003) (citation omitted). "[T]he greater the plaintiff's or the lawsuit's bona fide connection to the United States and to the forum of choice . . . the more difficult it will be for the defendant to gain dismissal for *forum non conveniens*." *Iragorri*, 274 F.3d at 72.

The Second Circuit permits district courts to consider several factors in assigning a deference level. One is "the convenience of the plaintiff's residence in relation to the chosen forum." *Id.* at 72. In general, "a plaintiff's choice of its home forum" is given "great

deference" "because it is presumed to be convenient." *Norex Petrol. Ltd. v. Access Indus., Inc.*, 416 F.3d 146, 154 (2d Cir. 2005) (quotation marks omitted). "On the other hand," "when a foreign plaintiff chooses a U.S. forum," less deference is usually afforded because "it is much less reasonable to presume that the choice was made for convenience." *Ibid.* (quotation marks omitted). The court has emphasized that "[t]hese presumptions, however, may not apply, either at all or with full force, to forum choices in particular cases." *Ibid.* Thus, in addition to the plaintiffs' residence, courts should set a deference level based on "the availability of witnesses or evidence to the forum district, the defendant's amenability to suit in the forum district, the availability of appropriate legal assistance, and other reasons relating to convenience or expense." *Iragorri*, 274 F.3d at 72.

At the next step, the district court determines whether an "adequate alternative forum" exists. "An alternative forum is adequate if the defendants are amenable to service of process there, and if it permits litigation of the subject matter of the dispute." *Pollux*, 329 F.3d at 75.

Finally, "[i]f a court concludes that an adequate alternative forum exists, it then must weigh the public and private interests" to assess "which forum 'will be the most convenient and will best serve the ends of justice.'" *Capital Currency Exchange, N.V. v. Nat'l Westminster Bank PLC*, 155 F.3d 603, 609 (2d Cir. 1998) (citation omitted).

2. Petitioners suggest that the Second Circuit sets the deference level based exclusively on the residence of plaintiffs (Pet. 18) and that this choice significantly "skews" the ultimate outcome (Pet. 25). Both parts of this assertion are wrong.

The Second Circuit has emphasized that "while plaintiff's citizenship and residence can serve as a proxy for, or indication of, convenience, neither the plaintiff's citizenship nor residence, nor the degree of deference given to her choice of forum, necessarily controls the outcome." *Iragorri*, 274 F.3d at 74; *see id.* at 71 ("[T]his deference is not dispositive."). It has likewise emphasized that "a lesser degree of deference to the plaintiff's choice bolsters the defendant's case but does not guarantee dismissal." *Id.* at 74-75.[3]

This flexible approach has led to myriad outcomes in the Second Circuit that belie petitioners' simplistic account. For example, the court held that a district court abused its discretion by "referenc[ing] a single

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[3] *See Wave Studio, LLC v. Gen. Hotel Mgmt. Ltd.*, 712 F. App'x 88, 90 (2d Cir. 2018) ("*Piper* and *Iragorri* make clear that a plaintiff's status as a 'foreign' or 'domestic' entity or individual is not dispositive of a proper *forum non conveniens* analysis."); *Pollux*, 329 F.3d at 73 ("A court considering a motion for dismissal on the grounds of *forum non conveniens* does not assign talismanic significance to the citizenship or residence of the parties.") (citation & quotation marks omitted); *FUNB v. Arab Afr. Int'l Bank*, 48 F. App'x 801, 803 (2d Cir. 2002) ("The deference given plaintiff's choice of forum is not dispositive on a *forum non conveniens* motion. Deference is only the first level of inquiry, to be followed by traditional *forum non conveniens* analysis.") (citation & quotation marks omitted).

factor, geographic convenience, to the exclusion of others more supportive of plaintiff's forum choice." *Norex*, 416 F.3d at 155 (reversing *forum non conveniens* dismissal in case brought by single foreign plaintiff). Reflecting the same multi-factor approach, the Second Circuit has found no abuse of discretion when district courts afforded less deference to forum choice based on circumstances other than the residence of the plaintiffs.[4]

Actual case outcomes likewise show petitioners err when they suggest that the chosen deference level dictates the *forum non conveniens* result in the Second Circuit. For example, that court has found denial of a *forum non conveniens* motion proper despite finding that diminished deference was owed to plaintiffs' choice of forum.[5] Conversely, the court has affirmed

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[4] *See Kingstown Cap. Mgmt., L.P. v. Vitek*, No. 20-3406, 2022 WL 3970920, at *3 (2d Cir. Sept. 1, 2022) (diminished deference warranted based on foreign location of "evidence and witnesses" and disputes over personal jurisdiction—even though plaintiff was "in some sense, at home" in New York); *Wenzel v. Marriott Int'l, Inc.*, 629 F. App'x 122, 124 (2d Cir. 2015) (reduced deference to American plaintiffs where "lawsuit lacked a substantial connection to New York, as the alleged negligence and injury occurred in Aruba") (quotation marks and alteration omitted); *BFI Grp. Divino Corp. v. JSC Russian Aluminum*, 298 F. App'x 87, 91 (2d Cir. 2008) (no abuse of discretion in assigning minimal deference to American plaintiff because it "had chosen to invest in Nigeria").

[5] *See Esso Expl. & Prod. Nigeria Ltd. v. Nigerian Nat'l Petroleum Corp.*, 40 F.4th 56, 71 (2d Cir. 2022) (affirming denial of *forum non conveniens* dismissal even though reduced deference owed to all-foreign plaintiff group); *Simmtech Co. v. Citibank, N.A.*, 634 F. App'x 63, 64 (2d Cir. 2016) (reversing *foreign non*

forum non conveniens dismissals despite finding maximum deference to plaintiffs' forum choice warranted.[6] In still other cases, the court has found it unnecessary to choose a deference level at all because the other *forum non conveniens* factors dictated the outcome.[7]

3. In contending that the Second Circuit has an "entrenched" position that gives "only 'minimal deference'" to forum choice of mixed-residence plaintiff groups (Pet. 18), petitioners cite only one precedential

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conveniens dismissal with foreign plaintiff because evidence was in New York); *Bigio v. Coca-Cola Co.*, 448 F.3d 176, 179-180 (2d Cir. 2006) (reversing *forum non conveniens* dismissal in case brought by foreign plaintiff because, among other reasons, "key witnesses" were in United States or Canada).

[6] *See Aguinda v. Texaco, Inc.*, 303 F.3d 470, 476, 480 (2d Cir. 2002) (noting that "[a]fter assuming a strong presumption of validity for plaintiffs' choice of forum, the district court found that the presumption was overcome by the balance of public and private interest factors" and affirming dismissal).

[7] *See Gilstrap v. Radianz Ltd.*, 233 F. App'x 83, 85 (2d Cir. 2007) ("[W]e need not reach this question because, even were we to agree with plaintiffs that the district court should not, as a matter of law, have accorded less deference to their choice of forum, the other factors outlined by the district court in its decision weigh so heavily in favor of dismissal on forum non conveniens grounds that we would not find the court below had abused its discretion."); *USHA (India), Ltd. v. Honeywell Int'l, Inc.*, 421 F.3d 129, 134 (2d Cir. 2005) ("We have no need to inquire as to the proper level of deference that is due the plaintiffs in their choice of forum because we conclude that irrespective of the level of such deference, the balance of private and public interests weighs decisively in favor of adjudicating the case in the courts of India rather than in the Southern District of New York.") (citation omitted).

opinion: *Iragorri*. But that decision did not involve a mixed plaintiff group: all plaintiffs lived in the United States. 274 F.3d at 70, 75. Not surprisingly, the decision thus said nothing about the deference level owed to predominantly foreign plaintiff groups. And far from mandating an analysis skewed in favor of *forum non conveniens* motions, *Iragorri vacated* a decision granting such a motion because it had afforded insufficient deference to plaintiffs' forum choice. *Id.* at 75-76.

The other decisions petitioners cite (Pet. 19-20) are all non-precedential summary orders. And they do not articulate the one-dimensional rule petitioners ascribe to the Second Circuit: each endorsed reduced deference based on factors beyond just plaintiff groups' residence make-up. *See Owens v. Turkiye Halk Bankasi A.S.*, No. 21-610, 2023 WL 3184617, at *2 (2d Cir. May 2, 2023) (alleged scheme "orchestrated primarily in Turkey," and "almost all of the relevant evidence" and "many of the potentially relevant witnesses" located there), *petition for cert. pending*, No. 23-197 (filed Aug. 30, 2023); Pet. App. 13a n.1 ("[T]he residency factor was only one of many discretionary factors in this case that the district court relied upon in attaching minimal deference to plaintiffs' choice of forum"); *Bahgat v. Arab Repub. of Egypt*, 631 F. App'x 69, 70 (2d Cir. 2016) ("[T]he district court determined that the plaintiffs' selection of forum was motivated, at least in part, by forum shopping."); *Wilson v. Eckhaus*, 349 F. App'x 649, 651 (2d Cir. 2009) ("[T]he most pertinent documentary and testimonial evidence exists in Israel.")

(citation omitted); *Overseas Media, Inc. v. Skvortsov*, 277 F. App'x 92, 96-97 (2d Cir. 2008) ("[T]he disputes regarding the ownership of the rights in question turn on Russian contracts based on Russian law, the witnesses and evidence are in Russia, and the relevant documents will have to be translated from Russian.").

ii. Other circuits

Like the Second Circuit, the other circuits in petitioners' purported split consider a variety of factors—both in choosing a deference level and reviewing ultimate *forum non conveniens* decisions—rather than placing "central emphasis" on "any one factor." *Piper Aircraft*, 454 U.S. at 249-250.[8] Any slight variations in how the courts discuss particular factors as part of a multi-factor, abuse-of-discretion analysis does not warrant review.

a. Ninth Circuit

Contrary to petitioners' suggestion (Pet. 15), the Ninth Circuit's decision in *Carijano* does not stand for an inflexible rule that all mixed-residence plaintiff groups receive maximum deference to their forum choice. Instead, the court there relied on several factors in finding deference warranted, including that

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[8] In considering *forum non conveniens*, the other circuits consider the same factors as the Second Circuit: deference owed to the plaintiffs' forum choice, adequacy of the alternative forum, and private and public factors. *See Carijano*, 643 F.3d at 1224; *Simon*, 911 F.3d at 1182; *Otto Candies*, 963 F.3d at 1338-1339. Petitioners do not suggest that other circuits' consideration of these same elements in a different order has any substantive impact or merits this Court's review.

the domestic plaintiff was "an organizational plaintiff representing numerous individual members." *Carijano*, 643 F.3d at 1228. And the court recognized that even an American plaintiff can be entitled to reduced deference when its suit "ha[s] no significant connection to the United States." *Ibid.*[9] *Carijano* involved the opposite situation: the "chosen forum [was] both the defendant's home jurisdiction, and a forum with a strong connection to the subject matter of the case." *Id.* at 1229; *see id.* at 1230 ("most of Plaintiffs' claims turn * * * on the mental state of the [defendant's] managers" at their headquarters in Los Angeles). By contrast, this case involved a foreign defendant and a New York forum with virtually no connection to the subject matter of the case. Pet. App. 34a-35a.

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[9] *See Cook v. Champion Shipping AS*, 463 F. App'x 626, 627 (9th Cir. 2011) (affirming *forum non conveniens* dismissal in suit brought by American plaintiff where "material witnesses and documentary evidence for this dispute are primarily located in Southeast Asia"); *Tennecal Funding Corp. v. Sakura Bank*, 87 F.3d 1322, at *4 (9th Cir. 1996) (unpublished) (noting that a "resident plaintiff deserves somewhat more deference than foreign plaintiffs" but emphasizing that "this factor must be considered along with the others" and affirming dismissal of suit brought by American company where evidence and witnesses were in Japan) (quotation marks omitted); *Lockman Found. v. Evangelical Alliance Mission*, 930 F.2d 764, 767 (9th Cir. 1991) ("The deference due to [domestic] plaintiffs * * * is far from absolute," and "[i]n practice, the cases demonstrate that defendants frequently rise to the challenge of showing an alternative forum is the more convenient one.") (quotation marks omitted).

b. D.C. Circuit

While the D.C. Circuit in *Simon* stated that a mixed plaintiff group is not necessarily entitled to less deference than an all-domestic one, *see* 911 F.3d at 1183, it emphasized several other unique factors militating for deference and against dismissal. The court noted, for example, that it was not "in any way convenient for every one of the [Holocaust] Survivors to return to the country that committed the mass murder of their families and the genocidal theft of their every belonging." *Ibid.* Also, Hungary made zero showing that "the United States is a less convenient forum than Hungary" for any of the plaintiffs. *Ibid.* "[G]iven its burden of proof, Hungary had to do something to show that its home turf was the more convenient location for *the litigation*, and not just more convenient for *the defendant*." *Ibid.* (emphases in original). Indeed, "[a]t best, the location-of-relevant-evidence factor [was] in equipoise." *Id.* at 1186; *see ibid.* (Hungary "failed to identify a single witness in Hungary that would need to testify at trial."). Here, by contrast, virtually all the evidence is in Korea, and IBK filed a declaration listing relevant witnesses in Korea. Pet. App. 34a-35a; C.A. App. 380-381.

After *Simon*, the D.C. Circuit has emphasized that attributing great significance to deference level "rest[s] on a fundamental misconception of what the *forum non conveniens* analysis requires." *In re Air Crash over the S. Indian Ocean on Mar. 8, 2014*, 946 F.3d 607, 614 (D.C. Cir. 2020). "[A]pplying the correct burden of proof is not a box-checking exercise." *Ibid.* (quoting *Simon*,

911 F.3d at 1185). "What matters is not the particular words a district court uses but whether the court's analysis fits the proper standard." *Ibid.* And that post-*Simon* decision held that the foreign plaintiffs in a mixed plaintiff group "were concededly entitled to less deference" than the American plaintiff. *Ibid.* That further shows the error of petitioners' contention (Pet. 15-16) that the D.C. Circuit follows a bright-line rule affording maximum deference to the forum choice of mixed plaintiff groups.[10]

c. Eleventh Circuit

Petitioners' contention (Pet. 16-17) that the Eleventh Circuit inflexibly affords maximum deference to the forum choices of mixed plaintiff groups likewise relies on opinion snippets shorn of context. While the Eleventh Circuit in *Otto Candies* referred to the presence of Americans in the plaintiff group when assessing deference, it also relied on other case-specific factors. 963 F.3d at 1341-1345. It emphasized, for example, that "this is a dispute focused on Citigroup's conduct in the United States, and so one would presume—at least initially—that a trial here would be more convenient (or would at least not be inconvenient)." *Id.* at 1341. Indeed, the only defendant in the case was U.S.-based. *Id.* at 1343. The court found no basis to reduce deference for "domestic plaintiffs who sue alongside foreign plaintiffs,

[10] Petitioners have never asked for a bifurcated deference level based on residence of individual petitioners, instead asking to be treated as an undifferentiated group. They have thus forfeited that issue. IBK C.A. Br. 21 n.3.

particularly when they all sue a single American defendant for conduct that they allege occurred in the United States." *Id.* at 1344 (emphasis added); *see ibid.* ("[T]he presence of foreign plaintiffs does not change the otherwise domestic nature of a complaint—here, that Citigroup committed wrongs in or from the United States, where it is based."). Here, by contrast, the predominantly foreign plaintiff group has sued a single foreign defendant for wrongs it allegedly committed in Korea. Pet. App. 34a-35a.

Further undermining petitioners' simplistic account, the Eleventh Circuit has affirmed *forum non conveniens* dismissals even in suits by solely domestic plaintiffs where the litigation has strong ties to a foreign jurisdiction. *See*, *e.g.*, *Aldana v. Del Monte Fresh Produce N.A., Inc.*, 578 F.3d 1283, 1294 (11th Cir. 2009). In doing so, it has emphasized that "while the plaintiffs' choice of forum has traditionally been regarded as particularly important, it is ultimately only a proxy for determining the convenience of litigating in one forum instead of another." *Ibid.*

b. The Court has repeatedly declined to grant certiorari on this issue

The Court has repeatedly declined to grant certiorari on this issue, including in two cases petitioners identify as part of a circuit split. Those denials likely reflect the view (articulated by the Solicitor General in an invitation brief) that such decisions reflect merely "case-specific application[s] of the settled law of *forum non conveniens*," Brief for

Amicus Curiae the United States, *Republic of Hungary v. Simon*, No. 18-1447, 2020 WL 2857361, at *14 (U.S. May 2020) ("*Simon* SG Br.") (quotation marks omitted), rather than any meaningful disagreement on a legal question. Petitioners offer no reason for a different result here.

i. In *Levien v. Hibu PLC*, the district court had dismissed for *forum non conveniens* after affording a mixed plaintiff group only "some deference." 475 F. Supp. 3d 429, 444 (E.D. Pa. 2020). The Third Circuit found no abuse of discretion. *Levien v. Hibu PLC*, No. 20-2731, 2021 WL 5742664, at *2 (3d Cir. Dec. 2, 2021). It emphasized that neither "citizenship nor residence, nor the degree of deference given to [the] choice of forum, necessarily controls the outcome." *Id.* (citing *Iragorri*, 274 F.3d at 74).

Plaintiffs sought certiorari, seeking review of this question (among others): "In an action involving both American and foreign plaintiffs, is a court analyzing the issue required to give great deference to the plaintiffs' choice of an American federal forum?" Pet. for Writ of Certiorari, *Levien v. HIBU PLC*, No. 21-1459, 2022 WL 1591257, at *i (U.S. May 11, 2022). Relying on the same three decisions petitioners invoke here, the *Levien* petitioners contended that in affording reduced deference to a mixed plaintiff group "[t]he rulings below created a Circuit conflict with decisions by the Ninth, D.C., and Eleventh Circuit Courts." *Id.* at *27-*28 (citing *Carijano*, *Simon*, & *Otto Candies*).

This Court denied certiorari. *Levien v. Hibu PLC*, 142 S. Ct. 2817 (2022).

ii. In *Simon*, this Court likewise declined to review the court of appeals' *forum non conveniens* holding. Petitioners there sought review of two parts of the D.C. Circuit's decision: (1) its conclusion that the district court erred by abstaining from exercising Foreign Sovereign Immunities Act jurisdiction and (2) its holding that the district court had abused its discretion in granting defendant's *forum non conveniens* motion. Pet. for Writ of Certiorari, *Repub. of Hungary v. Simon*, No. 18-1447, 2019 WL 2189103, at *i (U.S. May 16, 2019). On *forum non conveniens*, petitioner contended that the D.C. Circuit had erroneously afforded maximum deference to a mixed plaintiff group's forum choice and that its decision supposedly conflicted with the Second Circuit's "sliding scale" approach. *Id.* at *24-*27 (citing *Iragorri*).

In an invitation brief, the Solicitor General said that the first question presented merited review but that the second one (on *forum non conveniens*) did not. *Simon* SG Br. at *1, *13. As the SG explained, the D.C. Circuit "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." *Id.* at *15. Instead, the court had relied on multiple factors in finding full deference warranted, including that "Hungary 'made no effort to show how * * * the United States is a less convenient forum than Hungary' " and that "it was 'inconvenient to further delay the

elderly [plaintiffs'] almost decades long pursuit of justice.'" *Ibid.* (quoting *Simon*, 911 F.3d at 1183-1184). The Solicitor General said that the D.C. Circuit's decision was merely "a case-specific application of the settled law of *forum non conveniens*." *Id.* at *14 (quotation marks omitted).

Accepting that recommendation, the Court granted certiorari on only the first question presented (abstention), declining to review *Simon*'s *forum non conveniens* holding. 141 S.Ct. 187 (2020).

iii. Finally, the Court denied certiorari in *Carijano*, another decision in petitioners' proffered split. The petition there claimed that the Ninth Circuit's supposedly "rigid, binary approach to deference" conflicted with the Second Circuit's "sliding scale." Pet. for Writ of Certiorari, *Occidental Petroleum Corp. v. Carijano*, No. 12-385, 2012 WL 4467660, at *25 (U.S. Sept. 27, 2012) (citing *Iragorri*). The brief in opposition responded that *Carijano* "[was] a run-of-the-mill *forum non conveniens* ruling that creates no new law and applies existing precedent." Brief in Opposition, *Occidental Petroleum Corp. v. Carijano*, No. 12-385, 2013 WL 1209158, at *3 (U.S. Mar. 31, 2013).

This Court denied certiorari. *Occidental Petroleum Corp. v. Carijano*, 569 U.S. 946 (2013).

B. The Court Of Appeals' Decision Is Correct

The Second Circuit's summary order correctly applied well-settled legal principles to the circumstances and found no abuse of discretion in the district

court's *forum non conveniens* dismissal. By contrast, petitioners' rigid rule that all mixed plaintiff groups' forum choices automatically get "strong deference" no matter the circumstances (Pet. 13) is inconsistent with this Court's precedent.

As this Court has stressed, "the central focus of the *forum non conveniens* inquiry is convenience." *Piper*, 454 U.S. at 249. And its decisions "have repeatedly emphasized the need to retain flexibility." *Ibid.* The Court has thus eschewed any "rigid rule[s] to govern discretion" and emphasized that " '[e]ach case turns on its facts.' " *Ibid.* (citation omitted). Indeed, "[i]f [the] central emphasis were placed on any one factor, the *forum non conveniens doctrine* would lose much of the very flexibility that makes it so valuable." *Id.* at 249-250. The Second Circuit's case-specific, multi-consideration approach here was true to these principles; petitioners' position that the domestic residence of any portion of a plaintiff group mechanically triggers strong deference is not. *See American Dredging*, 510 U.S. at 455 ("We have emphasized that each case turns on its facts and have repeatedly rejected the use of per se rules in applying the doctrine.") (quotation marks omitted).

In finding no abuse of discretion, the Second Circuit here emphasized that the district court had examined a variety of circumstances in deciding that petitioners' forum choice was entitled to "minimal deference." Pet. App. 12a-14a.

First, the "locus of events underlying the lawsuit" was in Korea. Pet. App. 13a (noting that "plaintiffs' primary allegations that IBK employees conspired to violate U.S. laws and fraudulently convey Iranian funds arose out of conduct that allegedly occurred in Korea"). And "the coincidental involvement of bank accounts in New York, a global financial hub, is not enough to make this a New York controversy." Pet. App. 42a (citing *Mashreqbank*, 12 N.E.3d at 460).

Second, "virtually all" the relevant evidence and witnesses are in Korea. Pet. App. 13a. As the district court found, "discovery and trial" in New York thus "would likely involve an arduous process of securing the appearance of witnesses without the benefit of this Court's subpoena power and transporting witnesses and evidence to the United States." Pet. App. 14a (quoting Pet. App. 35a).

Third, "jurisdictional considerations" weighed against litigation in New York. Pet. App. 13a (noting that "potential litigation concerning personal and subject matter jurisdiction 'in and of itself weighs against deferring to the plaintiffs' choice of forum'") (quoting Pet. App. 36a); *accord Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 432 (2007) (A district court "may dispose of an action by a *forum non conveniens* dismissal, bypassing questions of subject-matter and personal jurisdiction, when considerations of convenience, fairness, and judicial economy so warrant."); *In re Air Crash*, 946 F.3d at 615 ("[I]t was entirely proper for the district court to

recognize that serious jurisdictional questions exist and weigh that as a factor in favor of dismissal.").

Finally, the Second Circuit correctly concluded that the district court did not abuse its discretion by also considering the plaintiff group's predominantly foreign composition. Pet. App. 13a n.1 (emphasizing that "the residency factor was only one of many discretionary factors in this case that the district court relied upon in attaching minimal deference to plaintiffs' choice of forum"). This Court has noted that the reason "a plaintiff's choice of forum is entitled to greater deference when the plaintiff has chosen the home forum" is because "it is reasonable to assume that this choice is convenient." *Piper*, 454 U.S. at 255-256. At the same time, it has said that "a foreign plaintiff's choice deserves less deference" because "[w]hen the plaintiff is foreign" "this assumption is much less reasonable." *Id.* at 256. Because "the central purpose of any *forum non conveniens* inquiry is to ensure that the trial is convenient" (*ibid.*), it makes sense that the forum choice of a plaintiff group whose "overwhelming majority * * * reside[s] abroad" (Pet. App. 12a n.1) would be entitled to "some, albeit minimal, deference" (Pet. App. 37a). Given plaintiffs' predominantly foreign residence, "it 'would be less reasonable to assume the choice of forum is based on convenience.'" Pet. App. 13a n.1 (quoting *Iragorri*, 274 F.3d at 73 n.5).

C. This Case Is A Poor Vehicle For Review

Even were petitioners' first question presented worthy of review, this case would present a poor vehicle.

To start, the decision below is unpublished, and the Second Circuit has never addressed the significance of a mixed plaintiff group in a published opinion. If this Court wishes to resolve a purported split between the Second Circuit and other circuits, it should wait until the Second Circuit makes its position clear in a precedential decision.

Also, petitioners' mixed residence made no difference to the deference their choice was owed here. The court of appeals here made clear that the district court's consideration of petitioners' overwhelmingly foreign composition "was only one of many discretionary factors in this case that [the district court] relied upon in attaching minimal deference to plaintiffs' choice of forum." Pet. App. 13a n.1 And every single other factor the district court considered pointed in the same direction: minimal deference. Pet. App. 13a-14a; 34a-36a. If the Court wants to decide how much deference is owed to a mixed plaintiff group, it should await a decision where the answer to that question mattered.

Similarly, it is apparent that the level of deference made no difference to the ultimate outcome here. In portions of its decision petitioners do not challenge here, the Second Circuit concluded that the district court did not abuse its discretion in concluding that

Korea is an adequate alternative forum and that the public and private factors all weighed in favor of dismissal. Pet. App. 14a-19a. Indeed, the court of appeals agreed with the district court that "[g]iven the minimal connection between New York and the issues in this case, New York has almost no interest in seeing it decided here, and it makes little sense to burden a New York court and jury with it." Pet. App. 19a (quoting Pet. App. 42a). Neither court below viewed this as a close case. There is thus no reason to think a higher level of deference to petitioners' choice of such an inconvenient forum would have led to a different result. Again, if the Court wishes to consider the question presented, it should await a case where the relevant considerations were near equipoise (or at least not uniformly in favor of dismissal) such that the deference level might matter.

II. THE SECOND QUESTION PRESENTED DOES NOT MERIT REVIEW

Petitioners' second question presented does not merit review. It asks the Court to decide whether "separation of powers principle[s]" require a "strong presumption" in favor of the forum choice of plaintiffs seeking to enforce judgments under a "statutory remedy expressly provided them by Congress in furtherance of its foreign affairs determinations and authorities." Pet. i.[11]

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[11] Petitioners also make this argument when addressing their first question presented. Pet. 25-28.

Petitioners' position on this question is internally contradictory, which is reason enough to decline review. At one point, they disclaim the argument "that the FSIA invalidates the traditional common law doctrine of *forum non conveniens*," recognizing that argument is foreclosed by precedent. Pet. 32 (citing *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 491 n.15 (1983)). Yet later they say that where Congress has amended the FSIA to provide for jurisdiction over judgment-enforcement actions, "the separation of powers principle demands the judiciary to exercise its jurisdiction" and not dismiss for *forum non conveniens*. Pet. 34.

Regardless of what petitioners are arguing, they cite no other circuit that has even addressed this question, much less reached a conflicting holding. And to the extent the Second Circuit can be understood to have addressed this question here, it did so only in a non-precedential order. In the absence of any precedential court of appeals consideration of this question, this Court's review would be premature.

Regardless, petitioners' separation of powers contention is wrong. As this Court has recognized, the "duty" of federal courts "to exercise the jurisdiction that is conferred upon them by Congress" is not "absolute." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996). It is limited by "the common-law background against which the [federal] statutes conferring jurisdiction were enacted." *Id.* at 717 (citation omitted). Part of that background is "the common-law doctrine of *forum non conveniens*." *Id.*

at 721. Thus, to abrogate the doctrine of *forum non conveniens*, a clear Congressional statement is required. *Hosaka v. United Airlines, Inc.*, 305 F.3d 989, 994 n.4 (9th Cir. 2002).

Petitioners identify no such statement here. Nor could they. Petitioners bring primarily *state-law* claims, Pet. App. 30a-31a, yet nowhere explain how their dismissal could somehow defy "*Congress'* statutory direction," Pet. 28 (emphasis added). And even on their single federal claim, TRIA Section 201(a) merely "provides *jurisdiction* for execution and attachment proceedings to satisfy a judgment for which there was original jurisdiction under the FSIA." *Kirschenbaum v. 650 Fifth Avenue & Related Props.*, 830 F.3d 107, 131 (2d Cir. 2016) (emphasis added), *abrogated on other grounds by Rubin v. Islamic Repub. of Iran*, 138 S. Ct. 816 (2018). Yet the "federal doctrine of *forum non conveniens*" is available "even if jurisdiction and proper venue are established." *American Dredging*, 510 U.S. at 447-448. That Congress recognized federal jurisdiction for certain actions says nothing about whether it intended to abrogate or alter the ancient doctrine of *forum non conveniens*.

Finally, even if there were an argument that TRIA Section 201(a) somehow abrogated normal *forum non conveniens* principles (despite the lack of any textual evidence), this would be a poor vehicle to address it. As noted, most of petitioners' claims are brought under state law, so no such abrogation would apply to the bulk of this case (and petitioners offer no explanation

for how their claims could be bifurcated). And petitioners' TRIA claim is manifestly meritless; there is no basis for creating new *forum non conveniens* law to allow them to pursue it in the United States. Under certain circumstances, TRIA Section 201(a) allows execution of judgments against "the blocked assets" of a "terrorist party." 28 U.S.C. § 1610 note. While Iran has been designated a terrorist party, its only "blocked assets" subject to attachment are those "*in the United States*." C.A. App. 165 (quoting relevant executive order) (emphasis added). But petitioners acknowledge that the assets they seek to attach are not here. Pet. C.A. Br. 29.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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