No. 23A-_____

IN THE

Supreme Court of the United States

JAMES OWENS, ET AL.,

Applicants,

v.

TURKIYE HALK BANKASI A.S.,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SECOND CIRCUIT:

Pursuant to this Court's Rule 13.5, James Owens and all other plaintiffs in the district court in this case (appellants in the court of appeals)—hundreds of victims of terrorist attacks or surviving family members (collectively, Applicants)—respectfully request a 30-day extension of time, to and including August 30, 2023, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case. The court of appeals entered its judgment on May 2, 2023. App. 1a-23a. Unless extended, the time within which to file a petition for a writ of certiorari will expire on July 31, 2023. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This case presents an important and recurring question concerning the legal standard for dismissing suits filed in U.S. federal court under the doctrine of *forum non conveniens*. This Court made clear in *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235 (1981), that a defendant invoking that doctrine to dismiss a U.S. suit in favor of a foreign venue must "overcome" a "strong presumption in favor of the plaintiff's choice of forum," and the plaintiff's choice deserves even "greater deference when the plaintiff has chosen [his or her] home forum." *Id.* at 255. But the courts of appeals disagree over whether that strong presumption dissipates when both U.S.-resident and non-U.S.-resident plaintiffs join together in one suit. At least three circuits hold that *Piper*'s well-established general principle continues to apply. But the Second Circuit has long and repeatedly applied an exception to

that presumption and affords "minimal deference to plaintiffs' choice of forum" if most of the plaintiffs reside in foreign countries. App., *infra*, 16a. The Second Circuit again applied that exception here to affirm the dismissal of a suit by hundreds of terrorism victims seeking to enforce U.S. judgments in U.S. court.

a. Applicants are hundreds of U.S.-government employees (or surviving family members) who were injured or killed by six terrorist attacks. App., *infra*, 12a. They brought 13 suits against Iran in the U.S. District Court for the District of Columbia for its role in materially supporting these attacks and secured default judgments totaling more than $10 billion, which Iran refuses to pay. *Id.* at 13a.

Applicants brought this action in the Southern District of New York against respondent Turkiye Halk Bankasi A.S. (Halkbank) for fraudulently conveying proceeds of Iranian oil sales through U.S. banks, in violation of U.S. sanctions, blocking Applicants' efforts to recover those funds. App., *infra*, 13a. (Halkbank and various officials have been or are being criminally prosecuted for their role in that scheme. *E.g.*, *Turkiye Halk Bankasi A.S.* v. *United States*, 143 S. Ct. 940, 944 (2023).) Applicants' claims seek rescission and turnover of those proceeds under the Terrorism Risk Insurance Act of 2002, 28 U.S.C. § 1610 note—which creates a federal-law remedy designed to help terrorism victims vindicate judgments against state sponsors of terrorism—and under New York law. App., *infra*, 13a.

b. The district court granted Halkbank's motion to dismiss the action on *forum non conveniens* grounds, App., *infra*, 13a, and the court of appeals affirmed, *id.* at 14a-23a. The Second Circuit recognized that, under this Court's precedent,

"there is generally a 'strong presumption in favor of the plaintiff's choice of forum.'" *Id.* at 15a (quoting *Piper*, 454 U.S. at 255). But it stated that the "degree of deference" owed to a plaintiff's preferred forum "moves on a sliding scale" and may be diminished by various "considerations." *Ibid.* (citation omitted).

Applying that "sliding scale" approach here, App., *infra*, 15a, the court of appeals affirmed the district court's holding that Applicants' choice of a U.S. forum merits only "minimal deference," *id.* at 16a. It observed that, although at least 202 Applicants reside in the United States, another 468 reside abroad. *Id.* at 15a. On that basis, it upheld the district court's conclusion that, "because the vast majority of [Applicants] reside overseas rather than in the United States, [their] choice of forum was entitled to less deference." *Ibid.* The court of appeals rejected Applicants' contention that "the presence of U.S. citizen plaintiffs" precludes discounting the plaintiffs' collective preference for a U.S. forum, citing a recent Second Circuit decision collecting prior cases in which it had expressed the same view. *Id.* at 15a-16a n.1 (citing *Wamai* v. *Industrial Bank of Korea*, 2023 WL 2395675, at *2 n.1 (2d Cir. Mar. 8, 2023), in turn citing decisions spanning 15 years). Considering the "minimal deference" it accorded to Applicants' choice of forum together with other *forum non conveniens* factors, the court upheld the suit's dismissal. *Id.* at 16a-23a.

2. The court of appeals' approach conflicts directly with decisions of at least three other circuits that have rejected the exception to *Piper*'s presumption that the Second Circuit has applied where U.S.-resident and foreign plaintiffs bring suit together. As those other courts have shown, the Second Circuit's rule is wrong.

The D.C., Ninth, and Eleventh Circuits all have considered and rejected the claim that the deference due to a domestic plaintiff's choice of forum disappears or diminishes merely because the domestic plaintiff sues alongside foreign residents. In *Simon* v. *Republic of Hungary*, 911 F.3d 1172 (D.C. Cir. 2018), vacated and remanded on other grounds, 141 S. Ct. 691 (2021), the D.C. Circuit held that it was "legal error" for the district court to accord only "'minimal deference'" to the plaintiffs' choice of forum on the ground that only four out of 14 plaintiffs were U.S. citizens while the remainder resided abroad. *Id.* at 1183. The D.C. Circuit explained that "[t]he district court set the scales wrong from the outset" and that "the addition of foreign plaintiffs does not render for naught the weighty interest of Americans seeking justice in their own courts." *Ibid.* Absent any "claim or evidence" that the U.S. plaintiffs were included "only as jurisdictional makeweights," the court held, those "plaintiffs' preference for their home forum continues to carry important weight." *Ibid.*[1]

The Ninth Circuit similarly rejected a nose-counting approach in *Carijano* v. *Occidental Petroleum Corp.*, 643 F.3d 1216 (2011). The district court had given "only some deference" to the forum choice of "one domestic plaintiff" who sued "alongside 25 foreign plaintiffs." *Id.* at 1228. The Ninth Circuit reversed, finding that approach "directly contrary" to *Piper*, which "does not in any way stand for the proposition that when both domestic and foreign plaintiffs are present, the strong presumption in favor of the domestic plaintiff's choice of forum is somehow lessened." *Ibid.*

[1] Although the D.C. Circuit's judgment in *Simon* was vacated on other grounds, the court's undisturbed holding on *forum non conveniens* principles "remain[s] the law of the Circuit" under "the D.C. Circuit's rule regarding the continuing precedential effect of vacated opinions," as the district court in *Simon* recognized on remand, *Simon* v. *Republic of Hungary*, 579 F. Supp. 3d 91, 138 (D.D.C. 2021), appeal dismissed, 2022 WL 7205036 (D.C. Cir. Oct. 12, 2022) (per curiam).

The Eleventh Circuit agreed with *Simon* and *Carijano* in *Otto Candies, LLC* v. *Citigroup, Inc.*, 963 F.3d 1331 (2020). It saw no "practical or doctrinal basis to reduce deference to domestic plaintiffs who sue alongside foreign plaintiffs." *Id.* at 1344.

The Second Circuit, however, takes a contrary view. Since at least 2008, it has "repeatedly affirmed district courts' application of less deference to the plaintiffs' choice of forum" where U.S. plaintiffs "are outnumbered by non-resident plaintiffs." *Wamai*, 2023 WL 2395675, at *2 n.1 (collecting cases). It followed the same misguided path here by according "minimal deference," App., *infra*, 16a, to the preference of more than 200 U.S.-resident plaintiffs to enforce their U.S. judgments pursuant to U.S. law in a U.S. court, *id.* at 15a-16a n.1 (citing *Wamai*, *supra*).

3. Additional time is necessary to permit counsel for Applicants to prepare and file a petition that would be helpful to the Court. Counsel for Applicants have had and continue to have significant professional responsibilities in other matters in the period shortly before and after the current July 31 deadline.[2] Applicants are not aware of any party that would be prejudiced by a 30-day extension.

Accordingly, Applicants respectfully request that their time to file a petition for a writ of certiorari be extended by 30 days, to and including August 30, 2023.

Respectfully submitted.

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[2] Those other matters include preparation of a petition for permission to appeal in *Shoshone-Bannock Tribes of the Fort Hall Reservation* v. *Department of Interior*, No. 23-80059 (9th Cir. filed July 10, 2023); a petition for a writ of certiorari to the Colorado Supreme Court in *Hovet* v. *People*, No. 2023SC428 (Colo. filed July 13, 2023); the filing of respondents' brief in *IBT Media Inc.* v. *Dev Pragad*, No. 2023-00650 (N.Y. 1st Dep't due Aug. 9, 2023); the filing of petitioner's summary-judgment brief in *Monsoon Blockchain Storage, Inc.* v. *Magic Micro Co., Ltd.*, No. 22-cv-3114 (S.D.N.Y. due Aug. 10, 2023); and the filing of defendant's summary-judgment brief in *Wilmington Trust, N.A.* v. *JJS Group, Inc.*, No. 850019/2023 (N.Y. Sup. Ct. due Aug. 16, 2023).

/s/ Matthew D. McGill

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