No.

IN THE

Supreme Court of the United States

EASTERN PACIFIC SHIPPING PTE, LIMITED, D/B/A EPS,

Petitioner,

v.

KHOLKAR VISHVESHWAR GANPAT,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a federal court may properly issue an injunction requiring the termination of litigation in a foreign court based solely on a conclusion that the foreign litigation will cause hardship to the movant and will frustrate related U.S. litigation.

PARTIES TO THE PROCEEDING

All parties to the proceeding are named in the caption.

Petitioner Eastern Pacific Shipping PTE, Limited, d/b/a EPS, a nongovernmental corporation, was the defendant before the district court and the appellant before the court of appeals. The district court's injunction also encompasses affiliates, subsidiaries, and persons in privity or active concert with petitioner, specifically including non-party Eastern Pacific Shipping (India) Private Limited.

Respondent Kholkar Vishveshwar Ganpat, a citizen of India, was the plaintiff before the district court and the appellee before the court of appeals.

RULE 29.6 STATEMENT

Petitioner Eastern Pacific Shipping PTE, Limited, d/b/a EPS, a Singapore corporation, is not publicly traded and has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

RELATED PROCEEDINGS

United States District Court (E.D. La.):

Ganpat v. *Eastern Pacific Shipping, PTE. Ltd.*, No. 18-cv-13556 (Apr. 5, 2022) (order imposing anti-suit injunction)

United States Court of Appeals (5th Cir.):

In re Eastern Pacific Shipping PTE, Ltd., No. 22-30362 (July 11, 2022) (order denying petition for writ of mandamus)

Ganpat v. *Eastern Pacific Shipping PTE, Ltd.*, Nos. 22-30758, 22-90062, 23-30021 (docketed Dec. 1, 2022) (appeal from district court's choice-of-law order)

Ganpat v. *Eastern Pacific Shipping PTE, Ltd.*, No. 22-30168 (Apr. 28, 2023) (order affirming anti-suit injunction)

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Petitioner Eastern Pacific Shipping PTE, Limited, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-30a) is reported at 66 F.4th 578. The order of the district court (App., *infra*, 31a-68a) is not published in the Federal Supplement but is available at 2022 WL 1015027.

JURISDICTION

The judgment of the court of appeals was entered on April 28, 2023. A petition for rehearing was denied on May 26, 2023 (App., *infra*, 69a). This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

INTRODUCTION

This Court has made clear that every injunction is an "extraordinary remedy never awarded as of right." *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008); see *id.* at 32; *Monsanto Co.* v. *Geertson Seed Farms*, 561 U.S. 139, 165 (2010). And it has emphasized that judicial regulation of conduct abroad can engender "serious foreign policy consequences." *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U.S. 108, 124 (2013). *A fortiori*, a federal-court injunction that is *designed* to thwart litigation in a foreign court—by commanding a party to cease (or refrain from) litigating in that forum—implicates acute concerns of international comity and foreign relations that call for particular caution.

The test for determining whether that drastic remedy is warranted should be demanding—and, at a minimum, the governing standard should be clear. As courts have repeatedly recognized, however, "[t]he circuits are split" on the legal standard for issuing such "foreign antisuit injunction[s]." *Goss International Corp.* v. *Man Roland Druckmaschinen Aktiengesellschaft*, 491 F.3d 355, 359 (8th Cir. 2007); accord, *e.g.*, *Quaak* v. *Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren*, 361 F.3d 11, 17 (1st Cir. 2004); *General Electric Co.* v. *Deutz AG*, 270 F.3d 144, 160-161 (3d Cir. 2001); *Gau Shan Co.* v. *Bankers Trust Co.*, 956 F.2d 1349, 1353-1354 (6th Cir. 1992).

Six courts of appeals—appreciating the potential for such injunctions to create friction with foreign sovereigns and invite reciprocal remedies—have long held that such orders may issue "only in the rarest of cases." *Goss International*, 491 F.3d at 359 (citation omitted). Courts applying this "restrictive approach," *General Electric*, 270 F.3d at 160-161, permit such injunctions only in extraordinary circumstances, where either "a vital United States policy" or federal-court jurisdiction is in jeopardy, and only then if "domestic interests outweigh concerns of international comity," *Goss International*, 491 F.3d at 359 (collecting cases).

In contrast, three circuits (including the Fifth) apply a "permissive approach." App., *infra*, 12a. That minority position downplays comity concerns and deems foreign litigation "vexatious and oppressive"—and subject to an anti-suit injunction—if the foreign proceeding imposes "hardship" on the movant and will "frustrat[e] * * * American litigation" involving the "'same or similar'" issues. *Id.* at 5a, 7a-8a (citation omitted). The conflict is undisputed; both the panel majority and dissent below acknowledged the divide, *id.* at 12a; *id.* at 15a & n.1 (Jones, J., dissenting). And it is deeply entrenched, with nine circuits having taken sides, and no prospect that the split will resolve itself.

This case directly implicates that disagreement—and illustrates why the "permissive approach" to foreign anti-suit injunctions (App., *infra*, 12a) is problematic. Respondent Kholkar Vishveshwar Ganpat, a sailor and Indian citizen, contracted malaria in Gabon while serving on a merchant ship managed by petitioner Eastern Pacific, a Singaporean company. He sued Eastern Pacific in the Eastern District of Louisiana. After Ganpat failed to perfect service for over a year, Eastern Pacific and an Indian subsidiary brought a declaratory-judgment action in Goa, India (where Ganpat resides), to enforce an employment contract limiting liability. The Indian court concluded that Ganpat's claims should be litigated in India and enjoined him from pursuing the U.S. suit. But Ganpat refused to participate in the Indian-court case and flouted that court's orders.

Instead, after eventually perfecting service in the U.S. action, Ganpat obtained an injunction from the Louisiana court compelling Eastern Pacific and its subsidiary to terminate the Indian case. Applying its "permissive approach," App., *infra*, 12a, the Fifth Circuit upheld that injunction, *id.* at 5a-14a. The court found the Indian litigation "vexatious" because it caused Ganpat "hardship" and would "frustrat[e]" his U.S. suit. *Id.* at 6a-7a. And it deemed comity concerns "at a minimum," despite Ganpat's defiance of a foreign-court order. *Id.* at 8a.

No circuit that applies the restrictive approach would permit that remarkable result. For good reason: As Judge Jones observed in dissent, the Fifth Circuit's "permissive approach" makes foreign antisuit injunctions "routine," not the rare exception, contrary to first principles of equity jurisprudence. App., *infra*, 15a, 19a. And the injunction it affirmed made the potential for international friction a reality. That remedy rewarded Ganpat for refusing to heed the Indian court's earlier order. The district court and Fifth Circuit thus "greenlit Ganpat's contempt" by imposing a reciprocal injunction designed to tie the Indian court's hands. *Id.* at 27a n.21 (Jones, J., dissenting). The Fifth Circuit shrugged at the resulting affront to international comity, opining that federal courts need not "genuflect before a vague and omnipotent notion of comity" when asked "to enjoin a foreign action." *Id.* at 8a (citation omitted). It even justified interfering with the Indian litigation and abetting Ganpat's violation of the Indian court's order by criticizing the "procedural and substantive protections" afforded by "tribunals in" such "foreign lands," contrasting them with those offered in "American courts." *Id.* at 1a.

The decision below demonstrates the dangers of a permissive approach to foreign anti-suit injunctions and the need for this Court's guidance. This case provides an ideal opportunity to resolve the conflict on this important and recurring question. The injunction's validity is the sole question on appeal and turns on the legal standard. The petition should be granted.

STATEMENT

A. Factual Background

Eastern Pacific is a ship-management company incorporated and based in Singapore that provides various services to operate shipping vessels. App., *infra*, 32a. As relevant here, Eastern Pacific managed the M/V *Stargate*—a Liberian-flagged, Liberian-owned vessel—and engaged a Liberian company (Ventnor Navigation) to supply a crew for voyages reaching Africa and North and South America. *Id.* at 32a-33a; D. Ct. Doc. 204-2, at 2-3 (Aug. 24, 2021).

Ganpat, an Indian citizen, was among the crew Ventnor recruited. In December 2016, he signed a contract with Ventnor in Mumbai to serve on the *Stargate* for seven months. D. Ct. Doc. 204-2, at 2-3. (Pursuant to Indian law, the contract was executed on Ventnor's behalf by an Indian company—EPS India, an Indian subsidiary of Eastern Pacific. *Ibid.*) That month, Ganpat boarded the *Stargate* in Morocco. From there, the *Stargate* sailed to Cote d'Ivoire; on to Savannah, Georgia, where it stopped briefly; then on to Colombia, Gabon, and Brazil. See App., *infra*, 32a-33a.

On that last leg of the voyage, Ganpat began showing symptoms of illness. App., *infra*, 2a. Upon the *Stargate*'s arrival in Brazil, EPS India ensured that he was admitted to a hospital, where Ganpat was diagnosed with malaria. *Id.* at 2a-3a; D. Ct. Doc. 204-2, at 2-3. As a result of that illness, he subsequently had several toes amputated. App., *infra*, 2a-3a.

B. Procedural History

1. In December 2018, more than a year after contracting malaria in Gabon, Ganpat sued Eastern Pacific in the Eastern District of Louisiana. App., *infra*, 32a. Ganpat asserted maritime tort and contract claims under the Jones Act, 46 U.S.C. § 30104, along with claims under general maritime law and a collective-bargaining agreement. App., *infra*, 32a. Ganpat claimed that Eastern Pacific, as the *Stargate*'s manager, had failed to stock the ship with enough anti-malaria medication during the stopover in Savannah, before the ship set sail for Colombia and, in turn, Gabon, where malaria was prevalent. *Id.* at 2a.

For more than two years after filing suit, however, Ganpat failed to perfect service on Eastern Pacific. In January 2019, Ganpat claimed to have effected service by serving the captain of a different ship docked near New Orleans, who he asserted was an agent or employee of Eastern Pacific. D. Ct. Doc. 122, at 2 (Jan. 17, 2020). The district court found that purported service insufficient but nevertheless granted Ganpat additional time to perfect service. *Id.* at 25-26.

2. Meanwhile, in March 2020, while Ganpat's U.S. suit "lay dormant" for his failure to perfect service, App., *infra*, 28a (Jones, J., dissenting), Eastern Pacific and EPS India commenced an action against him in an Indian court in Goa, India, where Ganpat resides, *id.* at 3a, 34a-35a, 38a. They sought a declaration enforcing his employment contract, which capped the maximum compensation for injuries allegedly sustained on the *Stargate*. *Id.* at 8a; see D. Ct. Doc. 204-4, at 47-48 (Aug. 24, 2021). The suit also sought to enjoin Ganpat from continuing to prosecute his case in Louisiana (for which at that time he still had not perfected service). The Indian court issued an order restraining Ganpat from prosecuting the U.S. suit on the ground that India, rather than Louisiana, would be the more convenient forum for his claims. App., *infra*, 36a.

Ganpat refused to participate in the Indian suit or to comply with the Indian court's order. App., *infra*, 4a, 38a. The Indian court issued a warrant for his arrest, and police secured his attendance before the court. *Ibid.* The Indian court directed Ganpat either to retain counsel (offering a court-appointed lawyer), sign a bond, or pay bail. *Id.* at 39a; 3/28/22 Tr. 40-41. After Ganpat refused to comply or to discontinue his U.S. suit in Louisiana, the Indian court held him in contempt, and he was briefly detained. *Id.* at 39a; see also *id.* at 17a-18a (Jones, J., dissenting).

3. In April 2021, more than a year after the Indian proceeding began, Ganpat finally effected service in his U.S. suit. The district court denied a motion to dismiss on grounds of *forum non conveniens*, D. Ct. Doc. 221, at 2, 23, 26-28 (Jan. 25, 2022), and the court of appeals declined to review that ruling via a writ of mandamus, 22-30362 C.A. Doc. 41 (July 11, 2022).

Ganpat moved for a preliminary and permanent anti-suit injunction to restrain Eastern Pacific and non-party EPS India from proceeding with the suit in India and compelling them to dismiss that case. App., *infra*, 37a. The district court granted Ganpat's requested injunction. *Id.* at 31a-68a.

Invoking the Fifth Circuit's "permissive" standard, the district court framed the inquiry as whether the injunction would prevent "vexatious litigation" abroad. App., *infra*, 41a-42a (citation omitted). It noted that Fifth Circuit precedent "rejects the approach employed by some other circuits which emphasizes principles of comity." *Ibid.* The court found that Ganpat satisfied the Fifth Circuit test, concluding that he faced "inequitable hardship" from the Indian proceeding. *Id.* at 53a. The district court recognized that the choice of legal standard was dispositive. See 3/28/22 Tr. 92 (court apprising Ganpat that he "better hope" a more rigorous test would not apply).

Eastern Pacific and EPS India promptly complied with the district court's order, dismissing their Indian suit. App., *infra*, 18a n.4 (Jones, J., dissenting). They noticed their appeal to the Fifth Circuit the next day.

4. The court of appeals affirmed the injunction in a divided decision. App., *infra*, 1a-30a.

a. The majority acknowledged that "federal courts are currently split" on the legal standard governing anti-suit injunctions directed at litigation in foreign courts. App., *infra*, 12a. It observed, however, that the Fifth Circuit follows the "more permissive approach" that focuses on the "vexatiousness" of the foreign litigation. *Id.* at 12a-13a.

Bound by that approach, the majority conducted a multifactor inquiry to determine whether the Indian litigation is "vexatious"—assessing "hardship" the foreign litigation may pose for the movant, the foreign proceeding's ability to frustrate or delay the U.S. litigation, and whether the foreign and U.S. proceedings are "'duplicitous [sic]'" of one another. App., *infra*, 6a-7a (citation omitted). The majority concluded that the first two factors—"hardship" and "frustration or delay"—were together "suffic[ient]" to sustain the district court's injunction. *Ibid.* The majority posited that "[t]he Indian litigation imposes a hardship on Ganpat," despite Ganpat's residence in that forum, based on "unwarranted inconvenience and expense" from that proceeding. *Id.* at 7a. It also criticized the procedures the Indian court employed when holding Ganpat in contempt and detaining him for defying its orders, labeling those procedures "bizarre" and biased against Ganpat. *Id.* at 3a-4a & nn.1-3. The majority then concluded that the Indian proceeding would "frustrat[e] the American" one, pointing to the injunction the Indian court had entered. *Id.* at 7a. The majority held that, under its "permissive" approach, those concerns about "hardship" and "frustration" were "ample justification" to deem the Indian suit "vexatious." *Ibid.* The court stated in the alternative that the overlapping issues between the cases would also support its conclusion. *Id.* at 8a.

The majority downplayed concerns of international comity, stating that "comity considerations are not overly strict," and a U.S. court need not "genuflect before a vague and omnipotent notion of comity every time that it must decide whether to enjoin a foreign action." App., *infra*, 8a (internal quotation marks omitted). The majority asserted that comity concerns are "at a minimum" when a case involves no "public international issues" and has "becom[e] ensconced" in the U.S. judicial system, which the majority stated occurs "when a party consents to American jurisdiction and appears in the case." *Id.* at 8a-10a.

b. Judge Jones dissented. App., *infra*, 15a-30a. She echoed the majority's acknowledgment of the circuit split on the standard for "foreign antisuit injunctions," observing that the Fifth Circuit's "permissive approach" diverges from "many" other circuits and "is probably wrong and should be reconsidered." *Id.* at 15a & n.1. In her view, that approach "reduces this 'extraordinary remedy' essentially to a routine order under a routine multifactor test," making "hardship" and "frustration" of U.S. litigation the "sole prerequisites" to deeming a foreign suit "vexatious." *Id.* at 19a-20a.

Judge Jones also criticized the anti-suit injunction in this case as "an attempt to compel domestic jurisdiction over a suit with highly tenuous domestic connections." App., *infra*, 18a. She observed that "[t]he only connection this case has to the United States, besides Ganpat's lawyer, is Ganpat's allegation that [Eastern Pacific], a Singaporean ship manager, failed to supply the *M/V Stargate*, a Liberian-flagged vessel, with enough anti-malaria medication while briefly in port at Savannah, Georgia." *Id.* at 22a. Judge Jones further noted that the U.S. and Indian actions do not involve identical issues and parties and that "preventing these parties from proceeding on different claims in the U.S. and India makes no sense." *Id.* at 24a.

Judge Jones additionally explained that the injunction here "clashe[s]" with "international comity concerns." App., *infra*, 25a, 27a. She observed that "the district court issued its foreign antisuit injunction in the face of Ganpat's ongoing disregard of the Indian court's order," and it had thus "greenlit Ganpat's contempt by allowing him to continue prosecuting the U.S. action in apparent defiance of" that judicial directive. *Id.* at 27a & n.21. In Judge Jones's view, the injunction thus not only contravenes "'the general principle that a sovereign country has the competence to determine its own jurisdiction and grant the kinds of relief it deems appropriate,' but also 'effectively attempt[s] to arrest the judicial proceedings of another foreign sovereign.'" *Id.* at 27a (citation omitted). "[T]hat the Eastern District of Louisiana maintains absolutely zero factual connection to the dispute," she noted, "only exacerbates the violation of comity." *Ibid.*

Finally, Judge Jones observed that the injunction the majority upheld contradicts general principles of equitable remedies. App., *infra*, 29a. She noted that the injunction improperly binds non-party EPS India, whom Ganpat did not name as a defendant and "may have different obligations" and "claims" than Eastern Pacific. *Ibid.* Judge Jones also explained that the injunction "brazenly required [Eastern Pacific] and EPS India to dismiss the Indian action" in its entirety—"as opposed to requiring them, for example, to ask the Indian court to abandon its injunction." *Ibid.*

5. The Fifth Circuit denied rehearing en banc. App., *infra*, 69a.

REASONS FOR GRANTING THE PETITION

This Court's review is warranted to resolve an entrenched circuit conflict concerning the legal standard governing an extraordinary equitable remedy: foreign anti-suit injunctions—orders by U.S. courts compelling the termination of litigation in a foreign court. Such injunctions hold unique potential to undermine international comity and create friction with foreign sovereigns. The foreign-relations implications of such injunctions call out for a demanding test governing their issuance—and for a clear, uniform federal rule.

Yet, for years, the courts of appeals have openly applied conflicting standards for determining when foreign anti-suit injunctions may issue. Most circuits, applying a "restrictive approach," *General Electric Co.* v. *Deutz AG*, 270 F.3d 144, 160-161 (3d Cir. 2001), have long held that such a drastic remedy should be considered only as a last resort. Those courts allow such injunctions "only in the rarest of cases," where foreign litigation either would "threaten a vital United States policy" or would "prevent United States jurisdiction"—and even then only if "domestic interests outweigh concerns of international comity." *Goss International Corp.* v. *Man Roland Druckmaschinen Aktiengesellschaft*, 491 F.3d 355, 359 (8th Cir. 2007) (citation omitted). But a minority of circuits applies a "permissive approach" that authorizes such injunctions much more readily—minimizing concerns of international comity and requiring only that foreign litigation will impose "hardship" and frustrate U.S. litigation on the same or similar issues. App., *infra*, 12a. Courts and commentators have repeatedly flagged this conflict—as did the majority and dissenting opinions below. *Ibid.*; *id.* at 15a & n.1 (Jones, J., dissenting).

This case directly implicates that stark divide. Applying the "permissive approach," App., *infra*, 12a, a divided Fifth Circuit panel here upheld an injunction commanding the cessation of a suit commenced in India by a Singaporean company (and its Indian subsidiary) against an Indian citizen—on the ground that the case brought in his home city would cause him hardship and frustrate his effort to pursue in a U.S. court claims for injuries he allegedly suffered in Africa and Brazil. The more searching test applied by the majority of circuits forecloses that result and the Fifth Circuit's rationale.

The majority of circuits and Judge Jones have it right. Any injunction is an "extraordinary remedy never awarded as of right." *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008) (*NRDC*). The majority rule reflects the corollary that an injunction aimed at interrupting litigation in a foreign court is *extraordinarily* extraordinary, and demands an exceptionally strong justification. That rule accords with the presumption in American law that "concurrent jurisdiction must ordinarily be respected" and "parallel proceedings * * * be allowed to proceed simultaneously." *Laker Airways Ltd.* v. *Sabena, Belgian World Airlines*, 731 F.2d 909, 926-927 (D.C. Cir. 1984). Displacing that presumption is difficult even in the domestic context. *Colorado River Water Conservation District* v. *United States*, 424 U.S. 800, 813 (1976). U.S. courts should be even more circumspect when asked to short-circuit litigation *abroad*. The majority view also harmonizes the standard for foreign anti-suit injunctions with the traditional test for injunctive relief. *Stonington Partners, Inc.* v. *Lernout & Hauspie Speech Products N.V.*, 310 F.3d 118, 129 (3d Cir. 2002).

The permissive approach followed by the Fifth Circuit and others has things backwards. As Judge Jones observed, that rule "reduces [an] 'extraordinary remedy' essentially to a routine order under a routine multifactor test," exacerbating the risk of international friction. App., *infra*, 19a. It makes foreign anti-suit injunctions available based on mere "'unwarranted inconvenience and expense'" on the movant—a standard the Fifth Circuit found satisfied even where the foreign proceeding is pending in the movant's home forum—and the prospect that foreign litigation could "frustrat[e]" a U.S. suit because the cases involve the same or similar issues. *Id.* at 6a-7a (brackets and citation omitted). The minority rule also minimizes concerns of international comity unless the litigants happen to be foreign governments. *Id.* at 9a. And it exacerbates inconsistency between the test for foreign anti-suit injunctions and ordinary equitable principles, blithely eschewing the "traditional" standards for "injunctive relief" as inapposite. *Id.* at 12a. Compounding all of these errors, the Fifth Circuit applied the mistaken minority approach to uphold an injunction in a suit with virtually no domestic ties.

The Fifth Circuit's approach also has worrisome implications. It creates perverse incentives for persons concerned about being sued abroad to file a beachhead complaint in the United States as a prophylactic against foreign proceedings. Even where (as here) the controversy has no connection to the plaintiff's chosen U.S. forum, the minority rule invites federal courts to enjoin proceedings abroad based on inconvenience alone. The petition should be granted.

I. THE DECISION BELOW IMPLICATES A DEEP, ACKNOWLEDGED CONFLICT ON THE STANDARD GOVERNING FOREIGN ANTI-SUIT INJUNCTIONS

The legal standard for issuing foreign anti-suit injunctions has split the circuits for years. Most courts of appeals require an extraordinary showing that such relief is essential to avoid imperiling a vital U.S. policy or federal-court jurisdiction. But the few outliers, including the Fifth Circuit, permit injunctions to shut down suits overseas if needed to avoid hardship to a domestic-suit plaintiff and frustration of U.S. litigation. That divide amply warrants this Court's review.

A. At least six circuits reserve the extraordinary remedy of foreign anti-suit injunctions for truly extraordinary circumstances. *Goss International*, 491 F.3d at 359 (collecting cases). In *Goss International*, the Eighth Circuit joined five other circuits in adopting the restrictive approach. *Id.* at 361. As it explained, by 2007, "[t]he First, Second, Third, Sixth, and District of Columbia Circuits" had "adopted" what it labeled a "'conservative'" test for foreign anti-suit injunctions. *Id.* at 359 (citing *Quaak* v. *Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren*, 361 F.3d 11, 17 (1st Cir. 2004); *China Trade & Development Corp.* v. *M.V. Choong Yong*, 837 F.2d 33, 35-37 (2d Cir. 1987); *General Electric*, 270 F.3d at 161 (3d Cir.); *Gau Shan Co.* v. *Bankers Trust Co.*, 956 F.2d 1349, 1355 (6th Cir. 1992); and *Laker Airways Ltd.* v. *Sabena, Belgian World Airlines*, 731 F.2d 909, 926-934 (D.C. Cir. 1984)). Under that test, a foreign anti-suit injunction may issue only if "(1) an action in a foreign jurisdiction would prevent United States jurisdiction or threaten a vital United States policy, and (2) the domestic interests outweigh concerns of international comity." *Ibid.*

A common thread in those courts' decisions adopting the restrictive approach is respect for international comity. In an early and influential decision, the D.C. Circuit rejected the notion that an injunction should issue merely to restrain "'vexatious' litigation" and "hardship," explaining that those concerns "do not outweigh the important principles of comity that compel deference and mutual respect for concurrent foreign proceedings." *Laker Airways*, 731 F.2d at 928. To the contrary, the court explained that "parallel proceedings" on even the "*same* in personam claim should ordinarily be allowed to proceed simultaneously," "at least until a judgment is reached in one which can be pled as res judicata in the other." *Id.* at 926-927 (emphasis added). The D.C. Circuit also recognized that anti-suit injunctions risk insult to foreign courts, "effectively restrict[ing] the foreign court's ability to exercise its jurisdiction." *Id.* at 927. The court accordingly cautioned that district courts should "rarely issu[e]" such injunctions—namely, "only in the most compelling circumstances," and only when "required to prevent an irreparable miscarriage of justice." *Ibid.*

Other courts applying the restrictive approach have echoed those comity concerns. The First Circuit in *Quaak*, for example, rejected a permissive test because it would "undermin[e] the age-old presumption in favor of concurrent parallel proceedings" and would undervalue "the recognition that international comity is a fundamental principle deserving of substantial deference." 361 F.3d at 17-18. The Third Circuit in *General Electric* likewise endorsed a "restrictive approach" based on a "serious concern for comity," and applied it to vacate an anti-suit injunction. 270 F.3d at 161. The Sixth Circuit in *Gau Shan Co.* also adopted that approach and vacated an anti-suit injunction on comity grounds—explaining that "foreign antisuit injunctions" are "a drastic step," and that "[c]omity dictates that [they] be issued sparingly and only in the rarest of cases" given the "cooperation and comity [required] between nations" in the "interdependen[t]" "modern era." 956 F.2d at 1354. The Second Circuit has framed its test for foreign anti-suit injunctions in similarly demanding terms, aligning with *Laker Airways* and vacating an injunction where "equitable factors * * * [we]re not sufficient to overcome the restraint and caution required by international comity." *China Trade & Development Corp.*, 837 F.2d at 37; see, *e.g.*, *LAIF X SPRL* v. *Axtel, S.A. de C.V.*, 390 F.3d 194, 200 (2d Cir. 2004) (affirming denial of anti-suit injunction based on comity concerns).

After surveying those decisions, the Eighth Circuit in *Goss International* "join[ed]" that "majority" view. 491 F.3d at 361. It "agree[d]" with those other courts that "the conservative approach * * * 'is more respectful of principles of international comity,'" which "'is a fundamental principle deserving of substantial deference.'" *Id.* at 360 (quoting *Quaak*, 361 F.3d at 18). And it echoed other circuits' "observation" that a more permissive standard would "'conve[y] the message, intended or not, that the issuing court has so little confidence in the foreign court's ability to adjudicate a given dispute fairly and efficiently that it is unwilling even to allow the possibility.'" *Ibid.* (quoting *Gau Shan Co.*, 956 F.2d at 1355). Applying that standard, the Eighth Circuit invalidated the foreign anti-suit injunction before it. *Id.* at 361-369. The court recognized that a ruling in the foreign case might "effectively nullify the remedy" that the U.S.-court plaintiff had obtained. *Id.* at 367. But the Eighth Circuit explained that, "[a]lthough such a result understandably [wa]s objectionable to" the U.S.-court plaintiff, it did not rise to the level of "threaten[ing] United States jurisdiction or any current United States policy." *Ibid.*

Although the majority rule sets a high bar, it is not insurmountable. For example, the D.C. Circuit in *Laker Airways* upheld the injunction at issue because of the case's unique circumstances: the dispute concerned a price-fixing scheme within the United States with "obvious" and "substantial" effects on the U.S. economy; the plaintiff had "validly invoked" the U.S. court's jurisdiction; and the foreign suit in English court did not involve application of English law to conduct by English corporations in England, but instead was effectively a forum-shopping exercise by "Dutch and Belgian" entities to have more favorable English law govern their U.S. conduct. 731 F.2d at 925, 930, 954 n.175; see also *Quaak*, 361 F.3d at 19-22 (upholding injunction against foreign suit that was a "blatant attempt to evade the rightful authority of the forum court"). But those exceptional circumstances illustrate that such relief is reserved for "the rarest of cases." *Goss International*, 491 F.3d at 359 (quoting *Gau Shan Co.*, 956 F.2d at 1354).

B. "In contrast" to those six courts of appeals, the Fifth, Seventh, and Ninth Circuits have rejected the restrictive standard. *Goss International*, 491 F.3d at 360. They instead "follow [a] 'liberal approach,' which places only modest emphasis on international comity and approves the issuance of an antisuit injunction when necessary to prevent duplicative and vexatious foreign litigation and to avoid inconsistent judgments."

Ibid. (citing *Kaepa, Inc.* v. *Achilles Corp.*, 76 F.3d 624, 627-628 (5th Cir. 1996); *Allendale Mutual Insurance Co.* v. *Bull Data Systems, Inc.,* 10 F.3d 425, 430-431 (7th Cir. 1993); and *E. & J. Gallo Winery* v. *Andina Licores S.A.,* 446 F.3d 984, 989-991 (9th Cir. 2006)).

1. The Fifth Circuit first embraced a relaxed test for foreign anti-suit injunctions in *In re Unterweser Reederei, Gmbh*, 428 F.2d 888 (1970), in which it affirmed an injunction barring admiralty litigation in the United Kingdom, declining to enforce a forum-selection clause on grounds of "public policy." *Id.* at 894. The Fifth Circuit in *Unterweser* posited an array of factors that in its view might warrant such injunctive relief: where foreign litigation would "frustrate a policy of the forum issuing the injunction," would "be vexatious or oppressive," or would "threaten the issuing court's in rem or quasi in rem jurisdiction," or "where the proceedings prejudice other equitable considerations." *Id.* at 890. This Court reversed *Unterweser*'s forum-selection holding, *The Bremen* v. *Zapata Off-Shore Co.*, 407 U.S. 1 (1972), and in so doing "gravely undermined the basis for the injunction" the Fifth Circuit had upheld, App., *infra*, 15a n.1 (Jones, J., dissenting).

The Fifth Circuit has nevertheless persisted in applying a "permissive" test for such injunctions. App., *infra*, 12a. Indeed, it has doubled down on that approach and has made foreign anti-suit injunctions even easier to obtain. As articulated by the Fifth Circuit here, its current test focuses principally on whether foreign litigation is "vexatious," viewed from the standpoint of a litigant in U.S. court. *Id.* at 5a, 12a. The Fifth Circuit deems a foreign suit "vexatious" if it imposes "hardship" on the movant—which may consist merely of "'unwarranted inconvenience and expense'"—and will "frustrat[e]" U.S. litigation. *Id.* at 5a-6a (brackets and citations omitted). As the court of appeals acknowledged, it has also previously considered whether "the foreign suit is duplicitous [sic] of the litigation in the United States," meaning that it involves "the same or similar legal bases." *Id.* at 7a-8a (quoting *Karaha Bodas Co.* v. *Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 366, 370 (5th Cir. 2003)). But the court stated in the decision below that findings of "hardship" and "frustrat[ion]" of U.S. litigation are sufficient to deem a foreign suit vexatious and, if they are present, courts "need not consider" whether the U.S. and foreign cases raise the same issues. *Ibid.*

Although the permissive approach does not completely "exclud[e] the consideration of principles of comity," App., *infra*, 8a (citation omitted), it emphasizes that such concerns "are not overly strict," *ibid.* And it "decline[s] . . . to require a district court to genuflect before a vague and omnipotent notion of comity every time that it must decide whether to enjoin a foreign action." *Ibid.* (quoting *Kaepa*, 76 F.3d at 627). The Fifth Circuit has held that "comity concerns are at a minimum" if a case presents "no public international issues" and is "ensconced" in a U.S. court, *id.* at 8a-10a—meaning simply that a party has appeared without disputing personal jurisdiction, *id.* at 10a.

The Fifth Circuit's decision in *Kaepa* is illustrative. The court of appeals there sustained an anti-suit injunction against a litigant who had filed a parallel suit in Japan. 76 F.3d at 629. Applying its "vexatiousness" test, the Fifth Circuit held that the Japanese suit was "vexatious" because it involved the "same claims" and would result in "unwarranted inconvenience [and] expense." *Id.* at 627-628. The court found that comity presented no concerns because no "public international issue[s]" were present. *Id.* at 627.

The decision below followed the same path to reach the same result. App., *infra*, 5a-10a. The court of appeals found the declaratory-judgment action that Eastern Pacific and EPS India commenced in India "vexatious" because it imposed "hardship" on Ganpat, citing the sanctions the Indian court initially imposed after holding him in contempt for defying its orders, and because the Indian court's injunction would "frustrat[e]" Ganpat's U.S. suit. *Id.* at 6a-7a. The Fifth Circuit deemed it unnecessary to address whether the cases involve the same issues (but, in dictum, stated that they do). *Id.* at 7a-8a. And it concluded that international comity posed no obstacle because the dispute involves private parties and issues, and Ganpat's case had become "ensconced in the American judicial system" when Eastern Pacific appeared without contesting personal jurisdiction. *Id.* at 10a. On that basis, the Fifth Circuit upheld the injunction. *Ibid.*

2. The Seventh and Ninth Circuits have likewise rejected a "stricter standard" in favor of the Fifth Circuit's "laxer" approach. *Allendale Mutual Insurance*, 10 F.3d at 431 (citing, *inter alia*, *Seattle Totems Hockey Club, Inc.* v. *National Hockey League*, 652 F.2d 852 (9th Cir. 1981)). Like the Fifth Circuit, the Seventh Circuit inverts the default rule followed by most circuits. *Ibid.* Instead of presuming that the extraordinary remedy of a foreign anti-suit injunction is unavailable absent an extraordinary showing, the Seventh Circuit presumes the opposite—that such relief *should* be granted whenever a court finds foreign litigation "gratuitously duplicative" or "vexatious and

oppressive"—and it will permit an injunction unless the *non*-movant establishes with "empirical * * * evidence" that the injunction would harm "the foreign relations of the United States." *Ibid.*

The Ninth Circuit has likewise aligned itself with the Fifth, endorsing the Fifth Circuit's framework in *Unterweser*. See *E. & J. Gallo Winery*, 446 F.3d at 991. Courts in the Ninth Circuit may issue a foreign anti-suit injunction so long as "any of the *Unterweser* factors" noted above is satisfied and "the impact on comity is tolerable." *Ibid.* The Ninth Circuit has even reversed a district court for "abus[ing] its discretion" by *denying* a foreign anti-suit injunction. *Applied Medical Distribution Corp.* v. *Surgical Co. BV*, 587 F.3d 909, 914, 921 (9th Cir. 2009). The Ninth Circuit in *Applied Medical Distribution* concluded that an anti-suit injunction was compelled "as a matter of law" to halt foreign litigation that could "frustrate a policy of the [U.S.] forum" and involved "functionally the same" "issues." *Id.* at 916, 918, 921 (citation omitted).

C. This deep divide on the legal standard for foreign anti-suit injunctions is widely acknowledged. Courts of appeals have repeatedly recognized the conflict. The Sixth Circuit observed in 1992 that "[t]he circuits are split concerning the proper standards to be applied, in the context of considerations of international comity, in determining whether a foreign antisuit injunction should be issued." *Gau Shan Co.*, 956 F.2d at 1352-1353; see *id.* at 1353-1354. Other circuits—in both camps—have echoed that observation. See *Goss International*, 491 F.3d at 359 (explaining that "[t]he circuits are split" about when "a foreign antisuit injunction should issue"); *E. & J. Gallo Winery*, 446 F.3d at 995 (noting "different views among circuits" on the standard); *Quaak*, 361 F.3d at 17 ("The courts of appeals have differed as to the legal standards to be employed in determining whether the power to enjoin an international proceeding should be exercised."); *General Electric*, 270 F.3d at 157, 160-161 (noting the "intercircuit split * * * over the degree of deference owed foreign courts" and describing the conflicting decisions); *Allendale Mutual Insurance*, 10 F.3d at 431 (contrasting the "stricter" and "laxer standard[s]" of other circuits). And both the majority and dissenting opinions in the court of appeals here candidly acknowledged the conflict. App., *infra*, 12a ("[F]ederal courts are currently split on anti-suit injunctions."); *id.* at 15a & n.1 (Jones, J., dissenting) (observing that the Fifth Circuit "takes a more permissive approach to foreign antisuit injunctions than many of our sister circuits").

A chorus of commentators, too, has documented how "[t]he federal circuits have split dramatically on what standard to apply with respect to the issuance of antisuit injunctions in the international setting." Eric Roberson, Comment, *Comity Be Damned: The Use of Antisuit Injunctions Against the Courts of a Foreign Nation*, 147 Penn. L. Rev. 409, 422 (1998); see, *e.g.*, Connor Cohen, Note, *Foreign Antisuit Injunctions and the Settlement Effect*, 116 N.W. U. L. Rev. 1577, 1577 (2022) (noting the "longstanding circuit split on the legal standard applicable to foreign antisuit injunctions"); Taryn M. Fry, Comment, *Injunction Junction, What's Your Function? Resolving the Split over Antisuit Injunction Deference in Favor of International Comity*, 58 Cath. U. L. Rev. 1071, 1075, 1085 n.104 (2009) (documenting the split and noting its "readily apparent" nature); Laura Eddleman Heim, Note, *Protecting Their*

Own?: Pro-American Bias and the Issuance of Anti-Suit Injunctions, 69 Ohio St. L.J. 701, 703 (2008) (noting the "long-standing circuit split over which test to use when determining whether to issue an international anti-suit injunction"); Kathryn E. Vertigan, Note, *Foreign Antisuit Injunctions: Taking a Lesson from the Act of State Doctrine*, 76 Geo. Wash. L. Rev. 155, 155-156 (2007) ("The circuits are split * * * as to when the issuance of such an injunction is proper and what criteria to use in making that decision.").

Given the depth of the divide, there is no realistic prospect that the split will self-correct. And, as courts have noted, the root cause of the confusion is "the absence of guidance from [this] Court," which "ha[s] not spoken to the criteria for granting an international antisuit injunction." *Quaak*, 361 F.3d at 16; see *Goss International*, 491 F.3d at 361 (noting "absence of guidance from * * * [this] Court regarding the standard for issuing an antisuit injunction"). The Court should grant review to provide that needed guidance and resolve this entrenched, intractable conflict.

II. THE FIFTH CIRCUIT'S "PERMISSIVE" TEST FOR FOREIGN ANTI-SUIT INJUNCTIONS IS UNSOUND

The "permissive approach" (App., *infra*, 12a) the Fifth Circuit and others in the minority follow is wrong and should be rejected. That approach breaks with basic tenets of equity jurisprudence, pays only lip service to concerns of international comity, and sets foreign anti-suit injunctions adrift from the principles that govern equitable remedies generally. The Fifth Circuit's decision here—approving an injunction to terminate foreign-court litigation, in a controversy with virtually no ties to the United States—shows the flaws of that approach in sharp relief.

A. The minority rule flouts fundamental principles of equity by making this extraordinary remedy "routine." App., *infra*, 19a (Jones, J., dissenting). "An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co.* v. *Geertson Seed Farms*, 561 U.S. 139, 165 (2010). And, "[a]s extraordinary remedies, they are reserved for really extraordinary causes." *Ex parte Fahey*, 332 U.S. 258, 260 (1947). An injunction to terminate or prevent litigation in another court is even more exceptional, given the general presumption that "parallel proceedings" should "be allowed to proceed simultaneously." *Laker Airways*, 731 F.2d at 926-927. And injunctions aimed at ending litigation in a *foreign* court are more extraordinary still. The legal standard governing their issuance should be correspondingly stringent to ensure that they are reserved for the rare cases where they are warranted.

Although the Fifth Circuit acknowledged in passing that foreign anti-suit injunctions are "extraordinary," App., *infra*, 11a, its permissive test puts them within easy reach. As articulated and applied by the decision below, the Fifth Circuit's approach allows such injunctions so long as a movant makes a "not-insubstantial" showing that litigation abroad results in "unwarranted inconvenience [and] expense" and could "frustrate and delay" a case in U.S. court. *Id.* at 6a-7a, 10a (internal quotation marks omitted). That low bar is barely a limitation at all. It is difficult to imagine an instance where parties are litigating in U.S. and foreign courts simultaneously in which the party who prefers the U.S. forum could *not* point to "inconvenience" and "expense" from the foreign case and to some potential for the foreign case to interfere with or "delay" the U.S. suit. *Ibid.* Indeed, "[b]y that standard, *any* foreign suit could be enjoined." *Id.* at 24a n.16 (Jones, J., dissenting).

The Fifth Circuit's application of those criteria here illustrates how little work they do. For example, it found that Eastern Pacific's suit in Goa, India, would cause Ganpat "hardship." App., *infra*, 6a. But Ganpat *lives* in Goa. *Id.* at 16a (Jones, J., dissenting). Litigating in a court "located one hour from his home," *ibid.*, should be vastly more convenient and cost-efficient for him than in an American court thousands of miles away in Louisiana. The Fifth Circuit seized on sanctions the Indian court did or might impose after holding Ganpat in contempt for repeatedly defying its directives. *Id.* at 6a. If even self-inflicted burdens imposed for one's own contumacious conduct can constitute cognizable hardship, anything can.

The Fifth Circuit's conclusion that the Indian proceeding will "frustrat[e]" the U.S. litigation similarly shows how little that criterion does to confine antisuit injunctions. App., *infra*, 7a. The court of appeals posited that the Indian suit would interfere with the U.S. case because "[t]he Indian court has sought to prevent Ganpat from litigating in the United States, even though the American suit was filed first." *Ibid.* That Ganpat filed his suit first cannot be the touchstone; otherwise, courts would always find foreign litigation frustrating and vexatious whenever a complaint was filed earlier in a U.S. court. That approach would perversely incentivize a race to the courthouse and reward parties who seek to avoid anticipated foreign litigation for filing preemptive suits in federal court. The filing date of Ganpat's U.S. suit is immaterial in any event because he did not perfect service on Eastern Pacific for more than two years—long after Eastern Pacific and its affiliate had sought declaratory relief in India. Without proper service, Ganpat's U.S. case was a nullity. See *Murphy Bros., Inc.* v. *Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999) ("In the absence of service of process * * * a court ordinarily may not exercise power over a party the complaint names as defendant."). Ganpat thus had not "validly invoked" U.S. jurisdiction when the Indian court acted. *Laker Airways*, 731 F.2d at 930; see *Mississippi Publishing Corp.* v. *Murphree*, 326 U.S. 438, 444-445 (1946).

Even the Fifth Circuit did not suggest that the mere pendency of the case in Indian court frustrated the U.S. litigation; otherwise, any parallel foreign suit would be vexatious. Instead, it found the "frustrat[ion]" element met based on the Indian court's order enjoining Ganpat from continuing his U.S. case. App., *infra*, 7a. But, as Judge Jones explained, any concerns about that particular order could not plausibly justify "brazenly requir[ing] [Eastern Pacific] and EPS India to dismiss the Indian action" *altogether*, "as opposed to requiring them, for example, to ask the Indian court to abandon its injunction." *Id.* at 29a. The Fifth Circuit's test thus invites courts to deem an entire foreign suit vexatious if a single ruling from the foreign tribunal creates obstacles in U.S. litigation.

Moreover, the Fifth Circuit could hardly find the Indian court's order vexatious: that order is the mirror image of the injunction the Fifth Circuit *upheld*. The only salient differences are that (1) as discussed, when the Indian court issued its order, Ganpat had not validly invoked U.S. jurisdiction, whereas the Indian court undisputedly had acquired jurisdiction by the time the district court issued its injunction; and (2) Ganpat sought the injunction the Fifth Circuit affirmed in flagrant violation of the Indian court's order. If anything, it is *that* U.S. injunction, not the Indian court's order, that improperly frustrates other litigation. The Fifth Circuit's view that an injunctive order issued by a foreign court should be met reflexively with a reciprocal injunction would invite an untenable tit-for-tat cycle, in which courts in different countries routinely try to seize control of one another's dockets. As the Sixth Circuit predicted decades ago, "[i]f both the foreign court and the United States court issue injunctions preventing their respective nationals from prosecuting a suit in the foreign forum, both actions will be paralyzed and neither party will be able to obtain any relief." *Gau Shan Co.*, 956 F.2d at 1354-1355. And "[t]he more readily courts resort to this extraordinary device, the more frequently this sort of undesirable stalemate will occur." *Id.* at 1355. That is the antithesis of reserving this extraordinary equitable remedy for truly extraordinary circumstances.

B. The Fifth Circuit's approach also gives far too little regard for international comity. "[C]ourts of equity should pay particular regard for the public consequences" of the decree. *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305, 312 (1982). "The history of equity jurisdiction," after all, "is the history of regard for public consequences in employing the extraordinary remedy of the injunction." *Railroad Commission of Texas* v. *Pullman Co.*, 312 U.S. 496, 500 (1941). The obvious potential of foreign anti-suit injunctions to cause affront to foreign states and create international friction should be top of mind for a court asked to grant one.

The Fifth Circuit's permissive approach, however, gives comity concerns the back of the hand. The court stressed that "comity considerations are not overly strict" and that U.S. courts need not "genuflect before a vague and omnipotent notion of comity." App., *infra*, 8a (citation omitted). And the Fifth Circuit made clear that, in its view, comity makes no difference if a case involves private parties and issues and is already "ensconced" in a U.S. court. *Id.* at 9a.

The Fifth Circuit's application of its approach shows concretely just how little weight comity concerns carry under its test. As Judge Jones observed, the injunction it affirmed was issued "in the face of Ganpat's ongoing disregard of the Indian court's order," and in effect "greenlit Ganpat's contempt." App., *infra*, 27a & n.21. That is a direct affront to comity.

The majority justified its disregard for the Indian court in part by casting doubt on the sufficiency of that tribunal's procedures. App., *infra*, 1a-4a. The court of appeals opined that "basic procedural and substantive protections guaranteed litigants in American courts" are "sharply limited or missing entirely before tribunals in foreign lands." *Id.* at 1a. It criticized the Indian court's hearing as "procedurally stacked against" Ganpat, objected to Ganpat's detention for defying the Indian court's orders, and berated the Indian court for "bull[ying]" Ganpat and following "a bizarre way for a court of law to proceed." *Id.* at 4a & nn.2-3. As Judge Jones explained, the majority's "criticisms of the Indian court procedures, which derive from English law, * * * are unsupported by the facts," *id.* at 16a, and overstate the differences between American and Indian law, see, *e.g.*, *International Union, United Mine Workers of America* v. *Bagwell*, 512 U.S. 821, 827 n.2 (1994) (courts may summarily sanction contempts in their presence); *Turner* v. *Rogers*, 564 U.S. 431, 448 (2011) (no automatic right to counsel in civil-contempt proceedings). More fundamentally, those critiques show that the Fifth Circuit's test accords minimal weight to international comity—which calls for respecting the "judicial acts of another nation," *Hilton* v. *Guyot*, 159 U.S. 113, 164 (1895).

The Fifth Circuit's disregard of comity considerations is all the more troubling because of the dispute's near-total lack of ties to the United States. "[T]he district court wheeled out th[e] extraordinary remedy" of an anti-suit injunction "so that a sailor from India can sue a Singaporean ship management company under the Jones Act, claiming that he got malaria in Africa after his Liberian-flagged vessel docked briefly in Savannah, Georgia and received insufficient anti-malaria pills." App., *infra*, 16a (Jones, J., dissenting). The controversy has virtually no connection to this country, and none whatsoever to the Eastern District of Louisiana. Respect for India's far greater interest in a maritime-employment dispute between an Indian seaman and the ship's manager and for the Indian court counsels decisively in favor of restraint.

C. The Fifth Circuit's approach also drives an unnecessary wedge between the standards for foreign anti-suit injunctions and the principles that govern equitable remedies generally.

Federal-court plaintiffs seeking preliminary injunctive relief ordinarily must meet the traditional four-factor test—including likelihood of success on the merits and irreparable harm. See *NRDC*, 555 U.S. at 20. Litigants seeking permanent injunctive relief must similarly clear a high threshold. See *id.* at 32; *Monsanto*, 561 U.S. at 156-157. As courts following the majority rule have explained, the proper test in effect translates those well-settled requirements to the context of foreign anti-suit injunctions. See, *e.g.*, *Goss International*, 491 F.3d at 361 n.4; *Quaak*, 361 F.3d at 19-20. The D.C. Circuit has described the ultimate inquiry as whether such an injunction is needed "to prevent an irreparable miscarriage of justice." *Laker Airways*, 731 F.2d at 927. And the Third Circuit has held that the prevailing test for foreign anti-suit injunctions is "more restrictive than the general requirements of [Federal Rule of Civil Procedure] 65." *Stonington Partners*, 310 F.3d at 129. Whether the majority rule channels the traditional standard to account for the heightened sensitivities in this context, or sets a standard at least equally stringent, it prevents such injunctions from becoming more readily available than ordinary equitable remedies.

The Fifth Circuit's approach leaves foreign anti-suit injunctions unmoored from traditional principles. It has expressly decoupled such injunctions from other equitable remedies and the standards that govern them. See App., *infra*, 11a. The multifactor approach it applies instead either makes such injunctions available as a "routine" matter, as Judge Jones observed, *id.* at 19a, or else provides no meaningful guidance about when they are appropriate, thus swapping the sensible, workable majority rule that reduces the risk of international friction for the Chancellor's foot.

III. THIS CASE IS AN IDEAL VEHICLE TO RESOLVE THIS IMPORTANT AND RECURRING QUESTION

The widely acknowledged conflict on the legal standard for foreign anti-suit injunctions warrants this Court's intervention now. The issue is important—both legally and practically—and recurring. This case provides a prime opportunity to settle it.

A. The standard that governs foreign anti-suit injunctions implicates core constraints on federal courts' remedial authority and sensitive questions of foreign affairs. Courts have recognized, and sovereigns have stressed, the foreign-relations concerns inherent with "effectively restrict[ing] [a] foreign court's ability to exercise its jurisdiction." *Laker Airways*, 731 F.2d at 927. As the Sixth Circuit observed, "antisuit injunctions are even more destructive of international comity than, for example, refusals to enforce foreign judgments," which at least do not deprive foreign courts "the opportunity to exercise their jurisdiction." *Gau Shan Co.*, 956 F.2d at 1355. And they can send a "message, intended or not, that the issuing court has so little confidence in the foreign court's ability to adjudicate a given dispute fairly and efficiently that it is unwilling even to allow the possibility." *Ibid.* The Fifth Circuit here explicitly conveyed its lack of "confidence" (*ibid.*) in the foreign court. See p. 29, *supra*.

Unsurprisingly, foreign sovereigns have objected to such injunctions. In *Goss International*, for example, Japan participated as an amicus to resist imposition of an anti-suit injunction—even though the case nominally concerned a private party's ability to sue in Japan. Japan Amicus Br. at 1-4, *Goss International*, *supra* (No. 06-2658), 2006 WL 5736533. "The issuance of an anti-suit injunction would * * * be deeply offensive to Japan," it explained, as it would "prevent a Japanese court from exercising duly conferred jurisdiction." *Id.* at 3, 21. Indonesia and the Republic of Korea have objected on similar grounds, underscoring the stakes. See, *e.g.*, Republic of Korea Reply Br. at 15, *BAE Systems Technology Solution & Services, Inc.* v. *Republic of Korea's Defense Acquisition Program Administration*, 884 F.3d 463 (4th Cir. 2018) (Nos. 17-1041, 17-1070), 2017 WL 2302070 (arguing that anti-suit injunction against a Korean instrumentality would pose a "grea[t] risk to international comity"); Republic of Indonesia Amicus Br. at 3, *PT Pertamina (Persero)* v. *Karaha Bodas Co.*, 554 U.S. 929 (2008) (No. 07-619), 2007 WL 4350777 (arguing that U.S. courts should not "dictate extraterritorially" litigation occurring abroad).

More broadly, this Court has repeatedly cautioned about the risk of international friction when U.S. courts attempt to regulate conduct abroad—particularly given the Judiciary's limited "'institutional capacity' to consider all factors * * * affect[ing] foreign policy." *Nestlé USA, Inc.* v. *Doe*, 141 S. Ct. 1931, 1940 (2021); see *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U.S. 108, 124 (2013) (judicial regulation of "conduct occurring in the territory of another sovereign" can engender "diplomatic strife" and "serious foreign policy consequences"); *Sosa* v. *Alvarez-Machain*, 542 U.S. 692, 728 (2004). Foreign anti-suit injunctions greatly amplify that risk.

The question presented is also recurring. The issue has surfaced in many circuits over the years and continues to arise. Just in the few months since the Fifth Circuit panel's decision, at least two district courts have confronted the issue—one granting an injunction, the other denying an injunction, and both noting the circuit conflict. See *dmarcian, Inc.* v. *DMARC Advisor BV*, 2023 WL 4223536, at *6, *10 (W.D.N.C. June 27, 2023); *Sing Fuels PTE Ltd.* v. *M/V Lila Shanghai*, 2023 WL 3506466, at *2-3, *6 (E.D. Va. May 17, 2023).

B. This case provides an ideal vehicle to resolve this issue and supply much-needed guidance. The Fifth Circuit's watered-down approach was outcome-determinative here. The court of appeals did not suggest that the injunction would pass muster under the majority rule. And the district court confirmed that it would not, apprising Ganpat that he "better hope" a standard more stringent than the Fifth Circuit's test would not apply. 3/28/22 Tr. 92; see *id.* at 23, 26-28.

On that score, the district court was correct. The mere pendency of the Indian-court case did not imperil any U.S. court's jurisdiction. Nor did the Indian court's injunction disturb the validly invoked jurisdiction of any court at the time it was issued. Even if it had done so, that could not justify ordering dismissal of the entire Indian case, the remedy the Fifth Circuit affirmed. See p. 27, *supra*. Neither the Indian suit nor the Indian court's order, moreover, threatened any vital U.S. policy. Ganpat's suit has hardly any connection to the United States. Any arguable, attenuated U.S. interest is dwarfed by the affront to international comity the injunction represents. Had Ganpat sued in any circuit following the majority rule, his request for a foreign anti-suit injunction would have failed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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