No. 23-183

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Once this lawsuit between two private parties in a U.S. district court was underway, did the district court abuse its discretion by issuing an anti-suit injunction to protect its jurisdiction after the defendant (petitioner here) filed suit concerning the same issues in a foreign court with the goal of interfering with the U.S. proceedings and secured an order from a foreign court enjoining the plaintiff (respondent) from continuing with his U.S. case?

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STATEMENT OF THE CASE

A. Factual background

Petitioner Eastern Pacific Shipping (EPS) is an international ship-management company overseeing dozens of vessels that land in American ports each year. Pet. 5; *see* Pl.'s Mem. Regarding Choice of Law, Ex. B, ECF No. 232-2 (over four hundred dockings in U.S. ports recorded in recent sixteen-month period).

Respondent Vishveshwar Ganpat Kholkar is a citizen of India and a former seaman.[1] Pet. App. 2a. In 2016, Mr. Kholkar entered into an employment agreement with a Liberian company called Ventnor Navigation. Pet. 5. The contract was executed on Ventnor's behalf by petititioner's subsidiary, EPS India. *Id.* Under the agreement, Mr. Kholkar was to work aboard the *Stargate*, a ship managed by petitioner. *Id.*

A few months after Mr. Kholkar joined the *Stargate*'s crew, the ship landed in an American port. Pet. App. 2a. While docked there, petitioner received warnings that its required supply of anti-malarial medicine was low. *Id.* But petitioner failed to restock the medicine. *Id.*

After leaving the U.S. port, the *Stargate* sailed to Colombia and then to the West African nation of Gabon—a "predictably high-risk area for malaria." Pet. App. 2a. While the ship was docked in Gabon, Mr. Kholkar contracted the most virulent form of

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[1] Consistent with the petition for certiorari, the caption of this brief styles Mr. Kholkar's name as Kholkar Vishveshwar Ganpat. But his surname is actually Kholkar.

malaria. Pet. 6; Compl. ¶ 40, ECF No. 1. On the next leg of the *Stargate*'s voyage, Mr. Kholkar repeatedly asked for medical care. Compl. ¶ 33. But the *Stargate*'s medical officer dismissed his symptoms as the product of a common cold. *Id.* ¶ 34. His condition worsened by the day. *See id.* ¶¶ 34-41.

After the ship reached its next destination, in Brazil, Mr. Kholkar was taken to the hospital, where he lapsed into a fourteen-day coma and ultimately remained for seventy-six days. Compl. ¶¶ 34-41. During that time, Mr. Kholkar suffered from loss of vision, organ failure, and gangrene. *Id.* ¶ 40. Eight of his toes had to be amputated. *Id.* His injuries left him permanently disabled and unable to continue working as a seaman. *Id.* ¶ 44.

B. Procedural background

1. In December 2018, Mr. Kholkar sued petitioner for damages in the Eastern District of Louisiana under the Jones Act, general maritime law, and his collective bargaining agreement. Pet. App. 32a.[2]

A few months later, petitioner waived any objections to personal jurisdiction and venue. Pet. App. 10a. But it disputed Mr. Kholkar's initial effort at service, in which he had served the captain of an EPS-managed vessel anchored along the Mississippi River. *Ganpat v. E. Pac. Shipping, PTE. Ltd.*, No. 18-

[2] Although petitioner's negligent acts occurred while the *Stargate* was docked in Savannah, Georgia, Pet. 6, Mr. Kholkar is entitled to sue petitioner in any federal venue for violations of federal law, *see* Fed. R. Civ. P. 4(k)(2). Petitioner does not contend otherwise.

13556, 2019 WL 2359208, at *1 (E.D. La. June 4, 2019). The district court agreed that the service was imperfect but found good cause to extend the time to complete service, noting the defect was not for "lack of diligence." *Ganpat v. E. Pac. Shipping, PTE. Ltd.*, 434 F. Supp. 3d 441, 462 (E.D. La. 2020).

Mr. Kholkar then made multiple additional attempts to perfect service upon petitioner. *Ganpat v. E. Pac. Shipping, PTE. Ltd.* (*Ganpat VI*), 553 F. Supp. 3d 324, 326-28 (E.D. La. 2021). All the while, and during the height of the COVID-19 pandemic, petitioner "sought to slow down [the lawsuit] by repeatedly refusing service" and generally engaging in "evasive" tactics. Pet. App. 3a n.1.

2. In the spring of 2020—fifteen months and 136 docket entries into the U.S. proceeding—petitioner sued Mr. Kholkar in India. Pet. App. 34a. Petitioner alleged that Mr. Kholkar's employment contract (which was between it and him,but rather was between M. Kholkar and Ventnor) limits the damages he can recover against it for his injuries. *See id.* 35a; 59a-60a. The "aim[]" of this Indian suit was "to thwart American jurisdiction by coercing [Mr. Kholkar] into dropping his suit." *Id.* 3a n.1.

In service of that goal, petitioner asked the Indian court to issue an *ex parte* injunction against Mr. Kholkar, forbidding him from continuing with his U.S. suit. Pet. App. 3a, 6a. The Indian court acceded to this request. *Id.* 4a.

Armed with that injunction, a bailiff and an EPS lawyer came to Mr. Kholkar's house in India multiple times to serve him, and to tell him that "his case in the United States was 'stopped.'" *See* Pet. App. 36a, 38a. But Mr. Kholkar "refused to be bullied into

dropping" his U.S. suit. *Id.* 4a n.2. In response, the Indian court ordered Mr. Kholkar's arrest. *Id.* Mr. Kholkar then appeared for the first time before the Indian court. *Id.* 38a. Mr. Kholkar had no lawyer, so the judge "instructed one of the [EPS] attorneys to advise" him. *Id.* 4a. The EPS lawyer "lied to the judge, absurdly claiming that [Mr. Kholkar] opposed his own release on bail." *Id.* The court then shipped Mr. Kholkar to prison, "where he was strip searched and held in a cramped cell." *Id.*

3. Back in the United States, the district court concluded that Mr. Kholkar had perfected service on petitioner in April 2021. *Ganpat VI*, 553 F. Supp. 3d at 327-28, 334.

Mr. Kholkar then asked the district court to issue an "anti-suit injunction"—that is, an injunction forbidding petitioner from continuing to pursue its Indian litigation. Pl.'s Mot. for Perm. Inj., ECF No. 199. Within a week of that request, petitioner filed two motions to dismiss. One was on *forum non conveniens* grounds, asking that the case be transferred to India. Eastern Pacific's Mot. to Dismiss on Grounds of *Forum Non Conveniens*, ECF No. 204. The other advanced a choice-of-law argument, contending that Indian law should govern Mr. Kholkar's claims and that he failed to state a claim under Indian law. Eastern Pacific's Mot. to Dismiss – India Law Choice, ECF No. 203.

The district court denied petitioner's *forum non conveniens* motion, finding that petitioner had been "dilator[y]" because it had waited two-and-one-half years to raise this issue. *Ganpat v. E. Pac. Shipping, PTE. Ltd.* (*Ganpat VII*), 581 F. Supp. 3d 773, 794 (E.D. La. 2022). Petitioner's actions thus gave "the

appearance of gamesmanship." *Id.* The district court also denied petitioner's choice-of-law motion. *Ganpat v. E. Pac. Shipping, PTE. Ltd.*, No. 18-13556, 2022 WL 219054, at *3 (E.D. La. Jan. 25, 2022).

Subsequently, the district court granted Mr. Kholkar's anti-suit injunction motion and ordered petitioner and its subsidiaries to dismiss their claims in Indian court. Pet. App. 67a. The district judge concluded that petitioner's "stratagem"—contesting service for over two years, waiting to file a *forum non conveniens* motion until after service was perfected, and seeking an *ex parte* injunction in India in "direct response" to the American litigation, *id.* 33a, 53a & n.104—"smack[ed] of cynicism, harassment, and delay." *Id.* 53a (citation omitted).

4. Petitioner sought a writ of mandamus in the Fifth Circuit, asking it to reverse the district court's *forum non conveniens* ruling, which is not otherwise appealable before final judgment. Pet. 7. The Fifth Circuit denied the request. *Id.*

In addition, petitioner appealed the district court's choice-of-law ruling. That appeal is currently pending. Notice of Appeal, *Ganpat v. E. Pac. Shipping, PTE. Ltd.*, No. 23-30021 (5th Cir. Jan. 9, 2023).

5. Invoking 28 U.S.C. § 1292(a)(1), petitioner also took an interlocutory appeal challenging the anti-suit injunction.

The Fifth Circuit affirmed. Writing for the majority, Judge Ho concluded that the injunction was "amply warranted" by the "extraordinary conduct of [petitioner] and the Indian court" toward Mr. Kholkar. Pet. App. 11a. In particular, the Fifth Circuit explained that the Indian suit was duplicative

of the U.S. litigation because both cases shared "the same or similar legal bases." *Id.* 8a (citation omitted). The court of appeals also found that petitioner obtained the injunction from the Indian court to "thwart American jurisdiction" by "coercing" Mr. Kholkar into dropping his suit. *Id.* 3a n.1. This conduct "effectively translate[d] into an attempt to enjoin the American court itself." *Id.* 7a (internal brackets omitted).

The Fifth Circuit also analyzed "principles of comity" and concluded that comity concerns were "at a minimum" here. *Id.* 8a (citation omitted). The court of appeals emphasized that the case is a dispute between private parties that "has long been ensconced" in the American judicial system. *Id.* 10a. It also has "no obvious consequences" for international relations. *Id.* 8a-10a. Accordingly, comity considerations did not overcome the need to prevent petitioner's "vexatious and oppressive" litigation in India from obstructing Mr. Kholkar's U.S. lawsuit. *Id.* 7a.

Judge Jones dissented. She took a different view of various facts and argued that the Fifth Circuit misapplied its own legal test for reviewing anti-suit injunctions. Pet. App. 15a-30a (Jones, J., dissenting). The Fifth Circuit denied rehearing en banc. Pet. 11.

6. While the various Fifth Circuit proceedings were pending, the Indian court dismissed petitioner's suit. Pet. 8.

7. Petitioner has filed a petition for a writ of certiorari, challenging only the anti-suit injunction order. Pet. 5. Petitioner does not dispute that the district court has personal and subject matter jurisdiction. *Ganpat VII*, 581 F. Supp. 3d at 778. Nor

does petitioner challenge here the district court's decisions on *forum non conveniens* and choice of law.

REASONS FOR DENYING THE WRIT

The Court has denied certiorari in cases involving the propriety of foreign anti-suit injunctions several times over the years, including twice in 2008 after procuring the views of the Solicitor General.[3] In both cases (which raised multiple issues, including the general issue petitioner raises here), the Solicitor General explained that the question of what standard governs the issuance of anti-suit injunctions was not certworthy.[4] There is no reason for a different outcome here. No court of appeals would have reversed the district court's injunction. There are also procedural deficiencies that make this case a poor vehicle for considering the propriety of foreign anti-suit injunctions. And the Fifth Circuit's decision is correct.

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[3] *See Goss Int'l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft*, 491 F.3d 355 (8th Cir. 2007), *cert. denied*, 554 U.S. 917 (2008) (No. 07-618); *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 500 F.3d 111 (2d Cir. 2007), *cert. denied*, 554 U.S. 929 (2008) (No. 07-619); *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624 (5th Cir. 1996), *cert. denied*, 519 U.S. 821 (1996) (No. 95-2019); *Seattle Totems Hockey Club, Inc. v. Nat'l Hockey League*, 652 F.2d 852 (9th Cir. 1981), *cert. denied*, 457 U.S. 1105 (1982) (No. 81-738).

[4] U.S. Br. at 18, *Goss Int'l Corp. v. Tokyo Kikai Seisakusho*, 554 U.S. 917 (2008) (No. 07-618); U.S. Br. at 10, *PT Pertamina (Persero), fka Perusahaan Pertambangan Minyak Dan Gas Bumi Negara v. Karaha Bodas Co.*, 554 U.S. 929 (2008) (No. 07-619).

I. This case does not implicate any circuit split.

Petitioner asserts that six courts of appeals follow a "restrictive" approach to reviewing the propriety of issuing foreign anti-suit injunctions, while three courts of appeals—including the Fifth Circuit—follow a "permissive" approach. Pet. 12, 15, 18-19. But it is not clear there is any real difference underlying the labels, and no court of appeals would have decided this particular case differently.

1. To begin, courts on both sides of the purported split engage in fact-intensive analyses and consider the same basic factors when deciding whether district courts properly issued a foreign anti-suit injunction:

- Whether the foreign proceeding concerns "the same parties and issues" as the U.S. proceeding, *Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren*, 361 F.3d 11, 18 (1st Cir. 2004); *compare* Pet. App. 8a (petitioner's Indian lawsuit relies on "the very same legal theory it raises as an affirmative defense in U.S. court");

- Whether the foreign proceeding threatens to cause "delay, inconvenience, [or] expense" and thereby impede the efficient resolution of the U.S. proceeding, *Hapag-Lloyd Aktiengesellschaft v. U.S. Oil Trading LLC*, 814 F.3d 146, 155 (2d Cir. 2016) (citation omitted); *compare* Pet. App. 6a (inquiring if the foreign lawsuit causes "unwarranted inconvenience and expense" (citation and internal brackets omitted));

- Whether the foreign court has ordered a party to cease litigating in the United States, thus "destroy[ing] the [d]istrict [c]ourt's jurisdiction," *Gen. Elec. Co. v. Deutz AG*, 270 F.3d 144, 159 (3d

Cir. 2001); *compare* Pet. App. 7a (injunction "necessary to protect the court's jurisdiction" because the Indian court "s[ought] to prevent the American litigation from proceeding" (citation omitted));

- Whether the injunction would unjustifiably raise "concerns of international comity," *Goss Int'l Corp. v. Man Roland Druckmaschinen Aktiengesellschaft*, 491 F.3d 355, 360 (8th Cir. 2007) (citation omitted); *compare* Pet. App. 8a-9a (assessing "principles of comity" (citation omitted)).

Petitioner takes issue with the last point, contending that the Fifth Circuit's approach gives comity "the back of the hand." Pet. 29. But in the words of the Solicitor General, "[a]lthough the courts of appeals have enunciated different verbal formulations of the proper test, it appears that all of them give weight to comity concerns[.]" U.S. Br. at 18, *Goss Int'l Corp. v. Tokyo Kikai Seisakusho*, 554 U.S. 917 (2008) (No. 07-618). Indeed, the Fifth Circuit has articulated specific factors for its comity analysis, asking whether the case implicates "public international issue[s]" and whether the dispute has become "ensconced" within the U.S. judicial system. Pet. App. 8a-9a (citation omitted).

2. To be sure, courts sometimes place different emphases on the various factors, and some have categorized various formulations as "restrictive" or "permissive." *E.g.*, Pet. App. 12a. Petitioner makes much of these labels. *See* Pet. 3, 15, 18.

But in practice, "it is not clear that the different formulations have actually produced different results in cases with comparable facts." U.S. Br. at 18, *Goss*

Int'l Corp., *supra* (No. 07-618). Courts of appeals have concluded on various fact patterns that they need not choose among formulations because the result under any would be the same. *See E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 995 (9th Cir. 2006) (declining to express an opinion on any "possible difference[]" between the standards because "an anti-suit injunction would be appropriate under any test"); *Philips Med. Sys. Int'l B.V. v. Bruetman*, 8 F.3d 600, 605 (7th Cir. 1993) (declining to "decide whether the differences between the standards are more than verbal, that is, whether they ever dictate different outcomes" because the injunction was warranted under any standard). And petitioner fails to point to a single case—over the past fifty years of case law on the issue—where a court of appeals has stated that the outcome of an anti-suit injunction appeal would be different under another circuit's precedent.

3. Even if the circuits' different formulations were capable of producing different results, there is no reason whatsoever to believe that any other court would decide *this* case differently.

a. In affirming the district court's anti-suit injunction, the Fifth Circuit reasoned that the need "to protect the [district] court's jurisdiction[]" outweighed the "scant" comity interests at stake. Pet. App. 7a, 10a (citations omitted). In doing so, it relied on several key facts.

In particular, the Fifth Circuit observed that the Indian suit was "duplicative" because it rested on "the same or similar legal bases" as the American suit. Pet. App. 8a (citation omitted). Moreover, by the time the Indian suit was filed, the U.S. suit was "well

underway." *Id.* 10a. The U.S. suit had also become "ensconced in the United States" because petitioner had waived any objections to personal jurisdiction and appeared in the case. *Id.* At the same time, petitioner "aimed to thwart American jurisdiction" by obtaining an injunction from the Indian court forbidding Mr. Kholkar from litigating his first-filed case in the United States. *Id.* 3a n.1, 7a. The Fifth Circuit then turned explicitly to comity considerations and confirmed they did not preclude the injunction. *See id.* 8a-10a. None of the parties were government entities, and the case raised no public law issues. *Id.* 9a. So the district court could issue an anti-suit injunction without triggering any significant "consequences for international relations." *Id.*

b. None of the six courts of appeals applying the so-called "restrictive" approach would have reversed this injunction. In fact, two circuits applying that standard have upheld anti-suit injunctions in substantially similar situations. And none of the other four circuits has ever reversed an anti-suit injunction under comparable circumstances.

D.C. and First Circuits. The D.C. Circuit's decision in *Laker Airways* is the "seminal opinion in this field of law," *Quaak*, 61 F.3d at 18, and the case petitioner repeatedly propounds as taking the correct approach, *see* Pet. 13, 16, 25, 31. In that case, the D.C. Circuit *affirmed* an anti-suit injunction issued where, as here, a foreign court had ordered the plaintiff to stop "taking any further steps" in its preexisting suit in U.S. district court. *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 918, 938-39 (D.C. Cir. 1984). The D.C. Circuit

concluded that "where the foreign proceeding is not following a parallel track but"—as here—"attempts to carve out exclusive jurisdiction over concurrent actions" involving the same issues, an anti-suit injunction is justified. *Id.* at 930; *see also id.* at 915, 926-27. The D.C. Circuit further explained that comity considerations do not counsel otherwise where—again, as here—"the action before the [foreign] court[] is specifically intended to interfere with and terminate" a U.S. suit. *Id.* at 938. And as in this case, the parties were private and not owned by the foreign forum state. *Id.* at 942.

In *Quaak*, the First Circuit likewise *upheld* a foreign anti-suit injunction against a defendant who asked a foreign court to enjoin the plaintiffs from complying with a U.S. court's discovery order. 361 F.3d at 20. The court of appeals first noted the "parties and issues are substantially similar." *Id.* The First Circuit then reasoned that "[w]here, as here, a party institutes a foreign action in a blatant attempt to evade the rightful authority of the forum court, the need for an antisuit injunction crests." *Id.* The First Circuit found that comity concerns did not counsel against an anti-suit injunction where—as here—the defendant "fil[ed] a foreign petition calculated to generate interference with an ongoing American case." *See id.* at 20-21.

Second, Third, Sixth, and Eighth Circuits. None of the other four circuits that petitioner says follows the "restrictive" approach have been confronted with a case like this one. And there is no evidence that, if they were, they would decide the case differently from the Fifth Circuit. All four of these circuits have adopted the D.C. Circuit's approach in *Laker*

Airways. *See China Trade & Dev. Corp. v. M.V. Choong Yong*, 837 F.2d 33, 36-37 (2d Cir. 1987); *Gen. Elec. Co.*, 270 F.3d at 160-61; *Gau Shan Co. v. Bankers Trust Co.*, 956 F.2d 1349, 1355-58 (6th Cir. 1992); *Goss Int'l Corp.*, 491 F.3d at 362-63. And as just explained, the reasoning and result in *Laker Airways* mirror this case.

Petitioner does cite decisions from these four circuits reversing anti-suit injunctions. But none of those cases involved the key fact here: an injunction from the foreign court interfering with the U.S. court's jurisdiction. *See China Trade & Dev. Corp.*, 837 F.2d at 37 (no "threat to the district court's jurisdiction" because the foreign court "has not attempted to enjoin the [U.S.] proceedings"); *Gen. Elec. Co.*, 270 F.3d at 159 ("little basis" for fears that the foreign proceeding "might have destroyed the [d]istrict [c]ourt's jurisdiction" because the foreign court refused to enjoin parties from litigating in the United States); *Gau Shan*, 956 F.2d at 1356 (no "threat to jurisdiction" because movant could not show that foreign courts "would enter an antisuit injunction"); *Goss Int'l Corp.*, 491 F.3d at 365, 367 (anti-suit injunction unnecessary to protect U.S. jurisdiction because a judgment in the U.S. case had already been reached and executed). Absent that key fact, it cannot be said that any decision reversing an anti-suit injunction conflicts with the Fifth Circuit's decision here.

4. Petitioner nonetheless suggests that the district court in this case "confirmed" the anti-suit injunction would not pass muster under the "restrictive" standard. Pet. 34. Not so. During the hearing petitioner references, the district court

indicated that Mr. Kholkar's request for an anti-suit injunction might not satisfy the four-part test that governs garden-variety preliminary injunctions. Evid. Hr'g Tr. 91-92, ECF No. 280; *see Winter v. NRDC*, 555 U.S. 7, 20 (2008). But even courts following the "restrictive" approach have explained that they do not apply the *Winter* standard to foreign anti-suit injunctions. *See, e.g.*, *Quaak*, 361 F.3d at 19 (disavowing that test as "an awkward fit in cases involving international antisuit injunctions"); *Goss Int'l Corp.*, 491 F.3d at 361 n.4 (same). Nor does petitioner seem to be asking for the *Winter* standard to apply. *See* Pet. 31, 34 (asserting that Mr. Kholkar's request for an injunction would have failed under the restrictive test and hedging over whether the *Winter* test applies).[5]

II. This case is a poor vehicle for considering when district courts may issue foreign anti-suit injunctions.

Not only do the particular facts of this case mean all circuits would resolve it the same way, but there are several other vehicle problems that make this a poor case to address any uncertainty in the courts of appeals regarding when foreign anti-suit injunctions may be issued.

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[5] The closest petitioner comes to suggesting the *Winter* standard should govern here is its reference to the D.C. Circuit's comment in *Laker Airways* that courts should ask whether an anti-suit injunction is "needed 'to prevent an irreparable miscarriage of justice.'" Pet. 31 (quoting *Laker Airways*, 731 F.2d at 927). But this case has the same key facts that led the D.C. Circuit to conclude an injunction was warranted. *See supra* at 11-12.

1. An appeal of an anti-suit injunction can become moot when the foreign suit is dismissed during pendency of appeal. *See A.P. Moller-Maersk A/S v. Comercializadora De Calidad S.A.*, 429 Fed. Appx. 25, 30 (2d Cir. 2011). Such appears to be the case here: The Indian court has dismissed petitioner's suit, and petitioner is unlikely to be able to revive it.

a. *The Indian case has been dismissed with prejudice.* In light of the U.S. district court's anti-suit injunction, petitioner asked the Indian court to dismiss its lawsuit. Pet. 8. The Indian court granted this request. It also noted as part of its order of dismissal that petitioner did not appear for the dismissal hearing. Pl.'s Mot. for Leave to File Doc., Ex. A, at 14, ECF No. 314-2. Under Indian law, that component of the dismissal order bars petitioner from refiling its Indian lawsuit regardless of the outcome of this appeal.

Specifically, Indian law provides that when a plaintiff fails to appear for a hearing regarding dismissal, the plaintiff "shall be precluded from bringing a fresh suit in respect of the same cause of action." *See* Code of Civil Procedure, 1908, 1st sched., order IX, r. 8-9 (India), https://perma.cc/ANV9-7AEU. In other words, a plaintiff's failure to appear at a hearing regarding dismissal renders that dismissal with prejudice. This is exactly what happened here.

Perhaps recognizing this, petitioner has applied for an order to set the dismissal aside. *See* Eastern Pacific's Resp. to Pl.'s Mots. for Leave to File, Ex. A, at 3-15, ECF No. 316-1. But as things stand now, it is a real stretch to say the Indian lawsuit is "in limbo." Pet. App. 18a n.4 (Jones, J., dissenting). Unless petitioner obtains relief from the Indian court, it

cannot reinstate the Indian suit. And insofar as the Indian lawsuit cannot be revived, this appeal is moot.

b. *Statute of limitations bar.* Even if the Indian court were to reconsider its dismissal and deem it *without* prejudice, petitioner cannot refile the same claims because the statute of limitations has long run.

Petitioner sued in India for a declaration that Mr. Kholkar's employment contract caps the damages he could receive. Pet. 7. The 1963 Limitation Act indicates that all suits seeking contractual enforcement or declaratory relief have a statute of limitations of three years. Limitation Act, 1963, sched., 1st div., pts. II-III (India), https://perma.cc/K9HJ-D7VS. And this limitations rule starts running "[w]hen the right to sue first accrues." *Id.* sched., 1st div., pt. III, art. 58.

Petitioner's right to sue for a declaration related to contract enforcement "first accrue[d]," at the very latest, on the date Mr. Kholkar filed his U.S. lawsuit—the point at which petitioner was put on notice that it could be found liable for damages exceeding the cap. *See Shakti Bhog Food Indus. Ltd. v. Cent. Bank of India*, 2020 SCC Online SC 482, ¶ 12, https://perma.cc/Y2VH-SRR5. That date was December 12, 2018. More than three years have now passed, and petitioner has not advanced any argument for tolling the limitations period.

2. In any event, petitioner's Indian lawsuit was baseless. That is because petitioner lacks any entitlement to bring contract claims against Mr. Kholkar in an Indian court. Under Indian law, only those who are "entitled to any legal character, or to any right as to any property," may institute a suit to

obtain a declaratory decree. Specific Relief Act, 1963, pt. II, ch. VI, § 34 (India), https://perma.cc/782U-APKT. Yet neither petitioner nor EPS India is a party to the contract in question. Mr. Kholkar's contract is with a different company (Ventnor, *see supra* at 1), and the district court explicitly rejected the notion that "there is a 'contractual relationship' between [Mr. Kholkar] and EPS India." Pet. App. 35a-36a.

3. This petition does not present the full array of legal issues that the Court ought to consider when addressing how a U.S. court should proceed when its jurisdiction is threatened by a foreign defendant bringing litigation over the same issues in a foreign court. If this Court ever wishes to address that question (or the related concerns petitioner raises), it should wait for an occasion where all relevant doctrines are presented.

a. *Forum non conveniens.* Petitioner argues that the district court should not have issued an anti-suit injunction because this case has "virtually no connection" to the United States and India has a "far greater interest" in the dispute. Pet. 30; *see also id.* 10, 14, 34. But these concerns are more appropriately addressed in a *forum non conveniens* analysis than an anti-suit injunction analysis.

The *forum non conveniens* doctrine enables U.S. courts to dismiss a case in certain circumstances. Under this doctrine, district courts must consider, among other factors, "the connection" of the relevant conduct "to the plaintiff's chosen forum," *Van Cauwenberghe v. Biard*, 486 U.S. 517, 528 (1988), "the convenience to the parties[,] and the practical difficulties that can attend the adjudication of a

dispute in a certain locality," *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 723 (1996); *see also Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257-61 (1981). If the balance tips in favor of a foreign forum that is available to adjudicate the case, the U.S. court may dismiss the lawsuit.

This appeal, however, does not present any *forum non conveniens* issue. The district court rejected petitioner's motion to dismiss on *forum non conveniens* grounds, *Ganpat VII*, 581 F. Supp. 3d at 792-94, and petitioner does not seek certiorari on this issue. If and when any final adverse judgment is issued against petitioner, it could appeal the district court's *forum non conveniens* decision along with any other properly preserved issues. *See Van Cauwenberghe*, 486 U.S. at 530. Petitioner's current request to review the anti-suit injunction in a vacuum makes no sense.

b. *Personal jurisdiction.* Petitioner repeatedly contends that this case has "virtually no domestic ties." Pet. 14; *see also id.* 30, 34. Appellate courts, in cases where anti-suit injunctions have been issued, sometimes consider such arguments under the personal jurisdiction doctrine. *See, e.g.*, *Gen. Elec. Co.*, 270 F.3d at 150-56; *In re Rationis Enters., Inc. of Pan.*, 261 F.3d 264, 266 (2d Cir. 2001); *see also* Pet. App. 13a (noting that petitioner's contacts with the United States would "surely be an appropriate consideration" in a personal jurisdiction analysis). But because petitioner has waived any argument about the U.S. court's jurisdiction, Pet. App. 10a, that issue is not before this Court. Consequently, even if petitioner and this case truly lacked any meaningful ties to this country (they do not, *see supra* at 1), this

case does not provide a good opportunity to consider how to deal with that concern.

c. *Choice of law.* Petitioner asserts that India has a "far greater interest" in this case. Pet. 30. This type of assertion can be relevant to a choice-of-law analysis. Choice-of-law principles ensure that interests protected by foreign law are honored. In fact, this Court has squarely held that courts must provide "due recognition . . . for the relevant interests of foreign nations" in maritime choice-of-law analysis. *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 382-83 (1959); *see also Lauritzen v. Larsen*, 345 U.S. 571, 582 (1953).

But here again, petitioner does not bring this issue to this Court. The district court weighed petitioner's choice-of-law arguments in a twenty-page opinion, ultimately holding that U.S. law governs most of Mr. Kholkar's claims. *Ganpat v. E. Pac. Shipping, PTE. Ltd.*, 642 F. Supp. 3d 524 (E.D. La. 2022). After the district court certified that order for immediate appeal, petitioner appealed the decision to the Fifth Circuit. That appeal is currently pending. Petitioner could decide at some point to bring a choice-of-law question to this Court, but it is premature to do so now. Consequently, this case is a defective vehicle for considering petitioner's purported concerns.

III. The question petitioner presents is not important enough to warrant review.

The Fifth Circuit's standard for reviewing anti-suit injunctions dates to 1970, and other courts of appeals also have had their standards in place for decades. *See* Pet. 19. Yet for over fifty years, the Court has never seen fit to consider this issue. For

good reason: Anti-suit injunctions are neither frequently issued nor easy to obtain.

1. District courts issue very few foreign anti-suit injunctions. A recent law review note counted fewer than seven requests for anti-suit injunctions per year across all thirteen federal circuits—and of those, fewer than four per year were granted. *See* Connor Cohen, Note, *Foreign Antisuit Injunctions and the Settlement Effect*, 116 Nw. L. Rev. 1577, 1598, 1608 tbl.1 (2022). If, as petitioner suggests, there really were a lax standard in the Fifth, Seventh, and Ninth Circuits, we would expect to see many more anti-suit injunctions.

2. Nor is there any empirical evidence supporting petitioner's claim that anti-suit injunctions are "within easy reach" in the circuits where a so-called "permissive" approach prevails. Pet. 25. To the contrary, those courts routinely reverse anti-suit injunctions. *See, e.g.*, *MWK Recruiting Inc. v. Jowers*, 833 Fed. Appx. 560 (5th Cir. 2020); *Sanofi-Aventis Deutschland GmbH v. Genentech, Inc.*, 716 F.3d 586 (Fed. Cir. 2013) (applying Ninth Circuit law); *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357 (5th Cir. 2003). Furthermore, the Fifth Circuit made clear that the injunction here was warranted only because of petitioner's "extraordinary conduct." Pet. App. 11a.

Petitioner nevertheless suggests review is necessary to prevent "race[s] to the courthouse and reward[ing] parties who seek to avoid anticipated foreign litigation for filing preemptive suits in federal court." Pet. 26. But nothing of the sort happened here. *See supra* at 2-5. And petitioner cites no instance of that ever occurring elsewhere either.

Even if it did, lawsuits that lack any actual connection to the United States can be—and often are—dismissed on other grounds. *See, e.g.*, *In re Rationis*, 261 F.3d at 266 (vacating injunction and remanding for hearing on personal jurisdiction); *see also Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431-32 (2007) (courts may dismiss on grounds of *forum non conveniens* or personal jurisdiction before deciding other questions).

IV. The decision below is correct.

Petitioner sought to subvert ongoing U.S. judicial proceedings via an *ex parte* anti-suit injunction from a foreign court. Because comity concerns here were at a minimum, the district court's anti-suit injunction was appropriate to protect U.S. jurisdiction.

A. Petitioner's foreign lawsuit threatened to prevent ongoing U.S. litigation from proceeding.

"No foreign court can supersede the right and obligation of the United States courts to decide whether Congress has created a remedy for those injured by trade practices adversely affecting United States interests." *Laker Airways*, 731 F.3d at 935-36. Otherwise, any foreign entity could escape accountability in U.S. courts by asking a foreign court to force plaintiffs to drop ongoing U.S. litigation.

Case law petitioner itself endorses therefore makes clear that a U.S. court must be able to "preserve its ability to do justice between the parties in cases that are legitimately before it." *Quaak*, 361 F.3d at 20; *see* Pet. 13, 16, 18, 25, 31. One time-honored way to do so is by issuing a foreign anti-suit

injunction. *See* 2 Joseph Story, *Commentaries on Equity Jurisprudence* § 899 (1st ed. 1836).

These principles apply with full force here. Mr. Kholkar filed this lawsuit in U.S. court, and the district court has jurisdiction over petitioner. *See supra* at 2. But fifteen months later, petitioner sought and obtained an order from the Indian court forbidding Mr. Kholkar from pursuing his U.S. lawsuit. Indeed, the very aim of the foreign suit was to "coerc[e] [Mr. Kholkar] into dropping his suit." Pet. App. 3a n.1. When Mr. Kholkar "refused to be bullied into dropping" his lawsuit, the Indian court jailed him. *Id.* 4a n.2. What's more, the district court found that, absent an anti-suit injunction, there was a "real possibility" that petitioner might persuade the Indian court to send Mr. Kholkar "back to jail and hav[e] his property seized." *Id.* 6a; *see also id.* 53a n.104.

Petitioner responds that, when the Indian court issued its anti-suit injunction, Mr. Kholkar "had not validly invoked U.S. jurisdiction." Pet. 27. But petitioner had already waived any objection to personal jurisdiction in the United States. Pet. App. 3a. And when the Indian court issued its anti-suit injunction, U.S. litigation had been ongoing for fifteen months: The parties had filed 136 docket entries. *See supra* at 3.

To be sure, Mr. Kholkar had not yet perfected service when the Indian court issued its injunction ordering him to cease litigating his U.S. lawsuit. Pet. 26-27. But that was only because petitioner "evade[d] service" for months on end, engaging in a "whole course of conduct" that "smack[ed] of cynicism, harassment, and delay." Pet. App. 1a, 3a n.1 (citation omitted). And Mr. Kholkar did perfect service before

the district court issued its anti-suit injunction. *See id.* 33a-34a.

B. The Fifth Circuit properly concluded that comity considerations did not forbid an anti-suit injunction here.

In light of the "severe" threat to Mr. Kholkar's U.S. proceeding, the "weak" comity concerns here did not forbid an anti-suit injunction. Pet. App. 5a.

1. Comity refers to a "spirit of cooperation," *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa*, 482 U.S. 522, 543 n.27 (1987), that seeks to foster "reciprocity" between nations. *Laker Airways*, 731 F.2d at 937; *see also Quaak*, 361 F.3d at 19. Comity is "neither a matter of absolute obligation . . . nor of mere courtesy and good will." *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895). Instead, comity concerns "must necessarily depend on a variety of circumstances which cannot be reduced to any certain rule." *Id.* at 164 (citation omitted).

Petitioner asserts that the Fifth Circuit "g[ave] comity concerns the back of the hand." Pet. 29. But for several reasons, the Fifth Circuit properly concluded that comity considerations did not forbid an anti-suit injunction here. As an initial matter, this case is a "dispute between private parties." *Karaha Bodas*, 335 F.3d at 372; *see* Pet. App. 9a. And neither party has any relation to a foreign sovereign that could change the comity analysis. Pet. App. 9a; *cf. Republic of Philippines v. Pimentel*, 553 U.S. 851, 866 (2008) ("[c]omity and dignity interests" implicated when foreign state is a party). Nor does the injunction implicate any "public international issues," such as ongoing diplomatic negotiations or a treaty to which the United States is party. *See* Pet.

App. 9a & n.6; *compare Karaha Bodas*, 335 F.3d at 373-74 (anti-suit injunction improper where international arbitration convention was implicated). Indeed, no "international friction" has materialized here. *See* Pet. 4, 14.

Finally, the Indian court had already issued an order seeking to forestall the district court's proceedings, breaching the reciprocal respect underlying comity. "[C]ertainly our law has not departed so far from common sense that it is reversible error for a court not to capitulate" to a foreign court's order "designed to prevent the court from resolving legitimate claims placed before it." *Laker Airways*, 731 F.2d at 939. Put another way, there is no basis for requiring a district court to acquiesce on comity grounds to "foreign court [proceedings] that refuse[] to respect the American court." Pet. App. 10a; *cf. Hilton*, 159 U.S. at 214 ("Nor can much comity be asked for the judgments of another nation[] which . . . pays no respect to those of other countries." (citation omitted)). If anything, reversing here would have improperly "legitimize[d]" the Indian court's *ex parte* injunction and thus "undercut[]" the "goals served by comity." *Laker Airways*, 731 F.2d at 937.

2. Quoting the dissent below, petitioner contends that the Fifth Circuit's comity analysis is "unsupported by the facts." Pet. 29. But this Court does not grant review to engage in mere error correction.

In any event, the majority's comity analysis was well-grounded in the record. *See supra* at 6. What is more, the district court's "fact- and context-specific" analysis is entitled to respect, especially given that

comity is a "complex and elusive concept" that is best assessed in light of the "unique circumstances" of each case. *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872, 886-89 (9th Cir. 2012) (citation omitted).

C. Petitioner's additional arguments lack merit.

Petitioner also criticizes several other aspects of the Fifth Circuit's analysis. None of these arguments withstands scrutiny.

1. Petitioner complains that this case bears "virtually no connection" to the United States. Pet. 30. But this is better addressed under doctrines not at issue here, *see supra* at 17-19, and it is also inaccurate. Petitioner's negligent conduct (failing to restock anti-malarial medicine) occurred in a U.S. port. *See supra* at 1-2 & 2 n.2. And there is nothing unusual about bringing a tort claim in the place where the negligent conduct occurred. *Cf. Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (specific personal jurisdiction "principally" turns on whether the defendant's tortious activity "t[ook] place in the forum State"). The Jones Act also permits U.S. courts to require foreign employers that dock in U.S. ports to compensate seamen for their injuries. *See Hellenic Lines Ltd. v. Rhoditis*, 398 U.S. 306, 310 (1970).

2. Petitioner argues that litigating in India "would be vastly more convenient and cost-efficient." Pet. 26. The district court, however, found to the contrary. It explained when dismissing petitioner's *forum non conveniens* motion that relative travel costs are a "non-issue . . . in the age of Covid-19, when persons and institutions throughout the world, including this Court, have amassed experience in

conducting business via ZOOM and similar video conferencing technologies." *Ganpat VII*, 581 F. Supp. 3d at 789 (internal quotation marks omitted).

At bottom, petitioner's argument about convenience is really just an attempt to achieve what it could not via ordinary appellate process. Petitioner unsuccessfully sought dismissal on *forum non conveniens* grounds. But a party has no right to appeal the denial of a *forum non conveniens* motion until final judgment. *See Van Cauwenberghe*, 486 U.S. at 530. Petitioner thus challenges the district court's anti-suit injunction in this Court, seeking relief on the basis of purported inconvenience. If successful, that could lead to further foreign interference with—if not an outright end to—this U.S. proceeding. This Court should not sanction petitioner's end run around ordinary judicial processes.

3. Next, petitioner raises concerns about a "stalemate" arising from "an untenable tit-for-tat cycle" of anti-suit injunctions. Pet. 28 (citation omitted). But it is "well settled" that district courts have the power to issue foreign anti-suit injunctions. *Gau Shan*, 956 F.2d at 1352; *see also* 2 Story, *supra*, § 899. And once one agrees—as petitioner does—that this power exists, it is inevitable that conflicting injunctions will occasionally be issued. The only question is whether a district court acts within its discretion when issuing its own anti-suit injunction. And for the reasons described above, the district court did so here.

4. Finally, petitioner asserts that the district court's injunction was overbroad because it required petitioner to "'dismiss the Indian action' *altogether*"

instead of, say, to "ask the Indian court to abandon its injunction." *See* Pet. 27 (citing Pet. App. 29a (Jones, J., dissenting)).

To begin, that argument challenges only the *scope* of the anti-suit injunction, not whether one should have been issued in the first place. Petitioner has not properly preserved any such argument. Petitioner did not press it before the Fifth Circuit, and the majority's only discussion of any "overbreadth" argument concerned the *parties* that were enjoined—not the *actions* that were ordered. *See* Pet. App. 13a-14a.

In any event, petitioner's argument is factbound and has nothing to do with the alleged circuit split petitioner asks this Court to resolve. Nor was the scope of the injunction an abuse of discretion. "[T]he suit in India has caused, and threatens to continue to cause, inequitable hardship to [Mr. Kholkar]." Pet. App. 53a. After all, Mr. Kholkar faced "a real possibility of being sent back to jail and having his property seized" at any time. *Id.* 6a, 53a n.104. This ongoing threat "seriously frustrated" the district court's proceedings. *Id.* 54a. It cannot be legally erroneous for a district court to refuse to oblige when a party weaponizes a foreign court to end ongoing U.S. proceedings.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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