No.

IN THE
Supreme Court of the United States

JAMES OWENS, ET AL.,

Petitioners,

v.

TURKIYE HALK BANKASI A.S.,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In applying the doctrine of *forum non conveniens*, this Court has long held that U.S.-resident plaintiffs are entitled to a "strong presumption" in favor of their choice of a U.S. forum. *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235, 255 (1981). The Second Circuit, however, has replaced that presumption with a test that affords "less deference" to U.S. plaintiffs' chosen forum when a majority of co-plaintiffs reside abroad. App., *infra*, 19a. Applying that approach here, the court of appeals upheld dismissal of an action by hundreds of victims of terrorism to satisfy U.S.-court judgments against assets of Iran under U.S. law. The court held that the preference of 202 U.S.-resident plaintiffs to litigate in the United States deserved only "minimal deference," *id.* at 20a, because their suit was also joined by more than 400 non-U.S.-resident co-plaintiffs. The question presented is as follows:

Whether the choice of a U.S. forum by U.S.-resident plaintiffs is entitled to "less deference" under the doctrine of *forum non conveniens*, rather than the strong deference typically accorded to a U.S. resident's choice of forum, when the U.S. plaintiffs are joined by foreign co-plaintiffs.

PARTIES TO THE PROCEEDING

Petitioners were the plaintiffs-appellants below. They are James Owens; Victoria J. Spiers; Gary Robert Owens; Barbara Goff; Frank B. Pressley, Jr.; Yasemin B. Pressley; David A. Pressley; Thomas C. Pressley; Michael F. Pressley; Berk F. Pressley; Jon B. Pressley; Marc Y. Pressley; Sundus Buyuk; Montine Bowen; Frank Pressley, Sr.; Bahar Buyuk; Serpil Buyuk; Tulay Buyuk; Ahmet Buyuk; Dorothy Willard; Ellen Marie Bomer; Donald Bomer; Michael James Cormier; Andrew John William Cormier; Alexandra Cormier; Patricia Feore; Clyde M. Hirn; Alice M. Hirn; Patricia K. Fast; Inez P. Hirn; Joyce Reed; Workley Lee Reed; Cheryl L. Blood; Bret W. Reed; Ruth Ann Whiteside; Lorie Gulick; Pam Williams; Flossie Varney; Lydia Sparks; Howard Sparks; Tabitha Carter; Howard Sparks, Jr.; Michael Ray Sparks; Gary O. Spiers; Victoria Q. Spiers; Julita A. Qualicio; Judith Abasi Mwila; Donte Akili Mwaipape; Donti Akili Mwaipape; Victoria Donti Mwaipape; Elisha Donti Mwaipape; Joseph Donti Mwaipape; Debora Donti Mwaipape; Nko Donti Mwaipape; Monica Akili; Akili Musupape; Valentine Mathew Katunda; Abella Valentine Katunda; Venant Valentine Mathe Katunda; Veidiana Valentine Katunda; Diana Valentine Katunda; Edwine Valentine Mathe Katunda; Angelina Mathew Felix; Edward Mathew Rutaheshelwa; Elizabeth Mathew Rutaheshelwa; Happiness Mathew Rutaheshelwa; Eric Mathew Rutaheshelwa; Enoc Mathew Rutaheshelwa; Angelina Mathew-Ferix; Mathew-Ferix; Samuel Thomas Marcus; Cecilia Samuel Marcus; Coronella Samuel Marcus; Hanuni Ramadhani Ndange; Shabani Saidi Mtulya; Adabeth Said Nang'oko; Kulwa Ramadhani; Rizwan Khaliq; Jenny Christiana Lovblom; Imran Khaliq; Tehsin Khaliq; Imtiaz Bedum; Irfan Khaliq; Yasir Aziz; Naurin

Khaliq; Kenneth Spencer, Jr.; Samuel P. Rice; Steven A. Diaz; Estate Of David Brown; Estate Of Jesse James Ellison; Robert Sword; Steven Sibille; Frances Spencer; Estate Of Kenneth Spencer, Sr.; Amy Morrow; Karen Brown; Kris Boerger; Samuel O. Rice; Belinda Rice; Amy Cogswell; David Rice; Todd Rice; Valerie Trail; Daniel Rice; Lisa Schultz; Steven James Diaz; Jane Astrid Diaz; Robert Diaz; Teresa Diaz; Magdalena Mary Diaz; Raul Diaz; Edward Diaz; Estate Of Daniel P. Diaz; Carmella Wood; Patsy Mcentire; Lewis Brown; Lisa Maybin; Ronny Brown; Cynthia Burt; Estate Of Therisa Edwards; Estate Of Andres Alvarado Mirbal; Estate Of Nerida Tull Baez; Estate Of Margaret O'Brien; Mitchell Anderson; Estate Of Virginia Ellison; Estate Of Kenneth Ellison; Kimberly Carlson; Gary Carlson; Daniel Carlson; William Carlson; Penny Nelson; Beulah Sword; William Sword; John Sword; Jerry Sword; Caroline Broadwine; Estate Of Verian Sibille; Estate Of Victor Sibille, Jr.; Victor Sibille IV; Kevin Sibille; Valerie Unkel; Pamela Schultz; Stephanie Hardy; Mary Jane Howell; Ronald Howell; Donna Black; Mario H. Vasquez; Denny West; The Estate Of John Chipura; Eileen Chipura; Nancy Chipura; Gerard Chipura; Susan Cohen; Estate Of Roscoe Hamilton; Freda Sue Gayheart; Ramona Green; Robert Hamilton; James Edwards; Ray Edwards; Betty Sue Rowe; Gary Edwards; Ralph Edwards; Estate Of Larry Edwards; Estate Of David Worley; Nancy Worley; David Worley; Bryan Worley; Estate Of John Buckmaster; Esther Buckmaster; Gregg Buckmaster; Vickie Buckmaster; Arley Buckmaster; Estate Of Malka Roth; Frimet Roth; Pesia Roth; Rivka Roth Rappaport; Zvi Roth; Shaya Roth; Pinchas Roth; Estate Of Jacob Fritz; Noala Fritz; Estate Of Lyle Fritz; Ethan Fritz; Daniel Fritz; Estate Of Bryan Chism; Elizabeth Chism;

Danny Chism; Vanessa Chism; Julie Chism; Estate Of Shawn Falter; Linda Falter; Marjorie Falter; Estate Of Russell J. Falter; Russell C. Falter; Andrew Lucas; David Lucas; Timothy Lucas; Marsha Novak; Jason Sackett; Estate Of Ahmed Al-Taie; Hathal K. Taie; Kousay Al-Taie; Nawal Al-Taie; Monicah Okoba Opati, In Her Own Right, As Executrix Of The Estate Of Caroline Setla Opti; Selifah Ongecha Opati; Rael Angara Opati; Salome Ratemo, In His Own Right, As Executor Of The Estate Of Sally Cecilia Mamboleo; Kevin Ratemo; Fredrick Ratemo; Louis Ratemo; Stacy Waithera; Michael Daniel Were; Judith Nandi Busera; Roselyne Karsorani; George Mwangi; Bernard Macharia; Gad Gideon Achola; Gad Gideon Achola; Jonathan Karania Nduti; Gitionga Mwaniki; Rose Nyette; Elizabeth Nzaku; Patrick Nyette; Cornel Kebungo; Phoebe Kebungo; Joan Abundo; Benard Abundo; Nancy Njoki Macharia; Sally Omondi; Jael Nyosieko Oyoo; Edwin Oyoo; Miriam Muthoni; Priscah Owino; Greg Owino; Michael Kamau Mwangi; Joshua O. Mayunzu; Zackaria Musalia Ating'a; Julius M. Nyamweno; Polychep Odhiambo; David Jairus Aura; Charles Oloka Opondo; Ann Kanyaha Salamba; Erastus Mijuka Ndeda; Techonia Oloo Owiti; Joseph Ingosi; William W. Maina; Peter Ngigi Mugo; Simon Mwanhi Nhure; Joseph K. Gathungu; Dixon Olubinzo Indiya; Peter Njenga Kungu; Charles Gt. Kabui; John Kiswilli; Fransisca Kyalo; Charity Kitao; Leilani Bower; Winnie Ndioda Kimeu; Audrey Maini Nasieku Pussy; Kennedy Okelo; Kennedy Okelo; Hellen Okelo Nyaiego; Ronald Okelo; Elizabeth M. Akinyi Okelo; Lesley Hellen Achieng; Rispah Jessica Auma; Stephen Jonathan Omandi; Andrew Thomas Obongo; Laura Margaret Atieno; Wallace Njorege Stanley Nyoike; Peter Kinyanjui; Lukas Ndile Kimeu; Jackson Kthuva Muskoya; Gladys Munanie Musyoka; Arcy

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Ndegwa; Phoeba Nyaguthi Ndegwa; Solomon Mbugua Mbuun; Barbara Muli; Ephanus Njagi; Stella Wambui Mbugua; Nancy Wanjeru; Raphael Peter Munguti; Reuben Nyaga; Reuben Nyaga; Mary Mbeneka Munguti; Hudson Chore Makidiah; Anne Muchogo; Sammy Ng'ang Mwangi; Nancy Nagak; Charles Mwaka Mulwa; Meshark Ireri; George Magak Mimba; Estate Of Francis Mbogo Njunge; Catherin Nduki Mwaka; Samuel Mbugua Ndungu; Angela Mwongeli; Isack Kariuki; Anastasiah Lucy Mugure; Maureen Ndeda; Edith Njeri; Lydiah Mdila Makau; Omuchirwa Charles Ochola; Margret Ndibui Ndibui; Estate Of Francis Ndungu Mbugua; Valentine Ndeda; Charles Mwangi Ndibui; James Ndeda; Nigeel Andika Namai; John Mwiry; Mary Muthoni; Roselyne Kasorani; Mary Makau Ofisi; Aaron Makau Ndivo; Samuel Mbugwa; Sara Tikolo Naniai; Winfred Maina; Lucy N. Ng'ang'a; Anges Wanjiku; Francis Maina Ndibui; Rael Ochola; Estate Of Moses Namai; Estate Of Abdulrahman M. Abdalla; Pauline D. Abdallah; Aggrey N. Abuti; Abdulrahman R. Bashir; Annastaciah Lucy Boulden; Olambo Charles; Jennifer J. Chebol; Boniface Chege; Joseph T. Gathecha; Caroline W. Gichuru; Wunnie W Gichuru; Mary Majugu Gitonga; Peris Gitumbu; Estate Of Klyeliff C. Bonyo; Olambo Charles; Jennifer J. Chebol; Boniface Chege; Lucy Chege; Peris Gitumbu; Sajjad Gulamali; Christant Hiza; Estate Of Hamida Iddi; Estate Of Hindu Omar Iddi; Ramdan Kimam Jurau; Frederick Kabodya; Elsie Kagimbi; Iddi A. Kaka; Estate Of Geoffrey Mulu Kalio; Estate Of Joel Gitumbo Kamau; James Kanja; Eddieson Kapesa; Marini Karima; Limmles I. Kasui; Bernard M. Kaswii; Valentry Katunda; Henry Bathazar Kessy; David M. Kimani; Cynthia Kimble; Marina Kirima; Samuel Kivindyo; Blasio Kubai; Moses M. Kuiyva; Peter N. Kung'u; Edward Kung'u; Lorna Kung'u;

Wambui Kung'u; Thomas G. Kuria; Evitta Francis Kwimbere; James M Macharia; Milka Wangari Macharia; Livingstone Busera Madahana; Sita Magua; Estate Of Ramadhani Mahundi; Aaron Makau; Menelik Kwamia Makonnen; Nafisa Malik; Toitoro O. Masanga; Robert M. Matheka; Edson Maumu; Richard N Maweu; Gideon K. Mazitim; Matthew M Mbithi; Christopher Mcmullen; Laurel Mcmullen; Justina Mdobilu; Makonnen K. Meneric; Emily K. Minayo; Tibruss Minja; Hosianna Mmbaga; Estate Of Abdallah M. Mnyolya; Charles Mwaka Mulwa; Paul K Musau; Estate Of Dominic Musyoka; Edward M. Muthama; Thomas M. Mutua; Laydiah Wanjiru Mwangi; Gitonga Mwanike; Estate Of William Abbas Mwila; Paul G. Mwingi; Valerie Nair; Estate Of Yusuf Ndange; James Babira Ndeda; Charles M. Ndibul; Lucas M Ndile; John Muiru Ndungu; Margaret W. Ndungu; Anthony Ngingya; Caroline Ngui Ngugi; Charles Mwirigi Nkanatha; Estate Of Bakari Nyumbu; Enos Nzalwa; Julius M. Nzivo; Caroline N. Ochieng; John Makau Ofisi; Julius Gwardo Ogoro; Julius Ogoro; Patrick Ouma Okechi; Joash O. Okendo; Wellingtone Oluoma; Estate Of Eric Onyango; Samuel O. Oriaro; Tobias O. Otieno; Estate Of Elisha E. Paul; Estate Of Mtendeje Rajabu; Estate Of Dotto Ramadhani; Estate Of Saidi Rogath; Blasio Shikami; Elizabeth Slater; Stacy Waithere; Justus M. Wambua; Rachel Wambui Watoro; Benjamin Winford; Jennifer Njeri; Anthony Njoroge; Hamida Idi; Peter Mulwa Mwaka; Valentine Jemo; Phelister Okech; Richard Otolo; Estate Of Roger Toka Otolo; Caroline Ochi Okech; Hilario Ambrose Fernandes; Mischeck Mbogo; Abraham Otolo; Trusha Patel; Elizabeth Kerubo Gwaro; Lydia Nyaboka Otao; Dennis Okoth; Estate Of Edwin Opiyo Omori; Alexander Vrontamitis; Julius Ogoro Ogoro; Samuel Odhiambo Oriaro; Isaac Kariuki

Mbogo; Patrick Ouma Okechi; Margaret Kanini Otolo; Victor Otolo; Victor Otolo; Victor Otolo; Betty Obunga; Bryan Boaz Omori; Samson Ogolla; Nancy Mbogo; Estate Of Maurice Ogollaokatuh; Jackline Achieng; Johnathan Gilbert Okech; Ann Mbogo; Leonidas Vrontamitis; Ephantus Mbogo; Estate Of Francis Olewe Ochilo; Jackline Achieng; Reuben Nyaga Mbogo; Florence Pamela Omori; Oport Oport; Michael Ware; Stephen Mbogo; Mary Akotsi Mudeche; Rachel Oyanda; Rosemary A. Olewe; Priscilla Ndula Okatch; Annah Wangechi; Phaedra Vrontamitis; Joash Otao Okindo; Jacinta W. Wahome; Jerry Oreta Omori; Roselyne Ndeda; Philemon Oport; Hannah Wambui; Doreen Atieno Oport; Charles Olewe; Estate Of Evans Onsongo; Edwin Nyangau Onsongo; Venice Onsongo; Mary Onsongo; Vincent Owuor; Peris Onsongo; Jomo Matiko Boke; Gaudens Thomas; James Andayi Mukabi; Martha Achieng Onyango; Irene Kung'u; Velma Akosa Bonyo; Ally Kindamba; Estate Of Chrispine Bonyo; Osborn Olwch Awalla; Hamida Boke; Joyce Onyango; George Onsongo; Enoch Onsongo; Juliana Atieno Onyango; Edwina Owuor; Bernard Onsongo; Milly Mikali Amduso; Warren Awala; Marita Onyango; Edward Rutasheherwa; Estate Of Eric Onyango; Estate Of Abaliah Musydkya Mwilu; Yvonne Bochart; Salome Onsongo; Irena Kung'u; Hamsa Safula Asdi; Monicah Kebayi Matiko; Zephania Mboge; Gladys Onsongo; Onsongo Mweberi; Estate Of Josia Owuor; Vonzaidriss Mwilu; Gerald Bochart; Asha Mwilu; Victor Mpopo; Joyce Auma Ombese Abur; Catherine Waithera Gitau; Faith Wanza Kamau; Carolyne W. Kamau; Grace Njeri Gicho; Beatrice Mugemi Bwaku; Hannah Ngenda Kamau; Merab Godia; Estate Of Lawrenceambrose Gitau; Margaret Wambui Gitau; Monicah Wairimo Kamau; Simon Ngugi; Alexander Verontamitis; Murabu Chaka;

Jotham Odiango Godia; Earnest Gichiri Gitau; Diana Njoki Macharia; Jane Kamau; Estate Of Phaedra Verontamitis; Estate Of Vincent Kamau Kyoike; Joan Wanjiko Kamau; Doreen Bonyo; Estate Of Tilda Abur; Venis Onsongo; Selina Boke; Hamida Mwilu; Joyce Onyango; George Onsongo; Enoch Onsongo; Juliana Atieno Onyango; Bernard Onsongo; Peninah Onsongo; Milly Mikali Amduso; Warren Awala; Marita Onyango; Edward Rutasheherwa; Estate Of Eric Onyango; Estate Of Abaliah Musydkya Mwilu; Yvonne Bochart; Salome Onsongo; Irena Kung'u; Hamsa Safula Asdi; Monicah Kebayi Matiko; Zephania Mboge; Gladys Onsongo; Onsongo Mweberi; Estate Of Josia Owuor; Abur Onyango; Vonzaidriss Mwilu; Gerald Bochart; Asha Mwilu; Victor Mpopo; Joyce Auma Ombese Abur; Catherine Waithera Gitau; Faith Wanza Kamau; Carolyne W. Kamau; Catherine Lucy Nyambura Mwangi; Caroline Nguhi Kamau; Grace Njeri Gicho; Beatrice Mugemi Bwaku; Hannah Ngenda Kamau; Merab Godia; Estate Of Lawrenceambrose Gitau; Winnie Bonyo; Estate Of Vincent Kamau Kyoike; Margaret Wambui Gitau; Monicah Wairimo Kamau; Simon Ngugi; Alexander Verontamitis; Murabu Chaka; Jotham Odiango Godia; Earnest Gichiri Gitau; Diana Njoki Macharia; Jane Kamau; Estate Of Phaedra Verontamitis; Hindu Omari Idi; Estate Of Vincent Kamau Kyoike; Joan Wanjiko Kamau; Doreen Bonyo; Anastasia Gianopulos; Mercy Wanjiru; Angela Bonyo; Rashid Idi; Susan Njeri Gitau; Christine M. Kamau; Belinda Chaka; Estate Of Peter Kabau Macharia; Paul Verontamitis; Duncan Nyoike; Japeth Munjal Godia; Lucy Wairimu; Estate Of Joseph Nduta Kamau; Benson Bwaku; Josinda Katumba Kamau; Josinda Katumba Kamau; Leon Verontamitis; Mahamud Idi; Grace Akanya; Elijah Bonyo; Merab A. Godia; Stanley

Nyoike; Lucy Muthoni Gitau; Alexander C. Njeru; Angelina Mathew Rutaheshelwa; Clifford Tarimo; Daniel Owiti Oloo; Desidery Valentine Mathe Katunda; Donnie Gaudens; Elly Mugove Musalia; Estate of Aisha Mawazo; Estate of Eric Onyango, Jr; Estate of Osborn Olwch Awalla; Eunice Muthoui; Eunice Onsongo; Francis Maine Ndibul; Francis N. Mburu; Frederick O. Obanga; Geoffrey Mulu Kalio; Jackson Madegwa; James M. Mutuku; Jamleck Gitau; Japeth Munjal Gitau; John Nduati; John Sackett; Juliet Olewe; Kenneth Spencer; Kimani Kamau; Magdaline Anyango Owiti; Margret Mwangi Ndibui; Mary Njoki Muirui; Maurice Okatch Ogolla; Mercy Makungu; Michael N. Mworia; Nephat Mbogo; Onael David Mdobilu; Pankay Patel; Patrick Okech; Pauline Wankia Kamau; Raphel N. Kivindyo; Renson M. Ashika; Rosemary Anyango; Steven Joseph Diaz; Thomas Ohuoro; and Wendy Olewe.

Respondent Turkiye Halk Bankasi, A.S. was the defendant-appellee below. Respondent is a financial institution majority-owned by the sovereign wealth fund of Turkey.

RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

Owens v. *Turkiye Halk Bankasi A.S.*,
No. 20-cv-02648 (Feb. 16, 2021)

United States Court of Appeals (2d Cir.):

Owens v. *Turkiye Halk Bankasi A.S.*,
No. 21-610-cv (May 2, 2023)

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IN THE

Supreme Court of the United States

No.

JAMES OWENS, ET AL.,

Petitioners,

v.

TURKIYE HALK BANKASI A.S.,

Respondent.

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

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PETITION FOR A WRIT OF CERTIORARI

James Owens, et al., respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a) is not published in the Federal Reporter but is available at 2023 WL 3184617. The opinion and order of the district court (App., *infra*, 29a) is not published in the Federal Supplement but is available at 2021 WL 638975.

JURISDICTION

The judgment of the court of appeals was entered on May 2, 2023. On July 26, 2023, Justice Sotomayor extended the time within which to file a petition for certiorari to and including August 30, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix to this petition. App., *infra*, 65a-68a.

INTRODUCTION

Petitioners in this case include hundreds of U.S. victims of international terrorism who hold U.S. federal judgments against Iran that they now seek to enforce under New York law and a federal anti-terrorism statute. Those U.S. residents, along with hundreds of foreign victims of the same attacks seeking to enforce indistinguishable judgments, asked a New York federal court to order respondent Turkiye Halk Bankasi (Halkbank), a state-owned Turkish bank, to turn over approximately $1 billion in Iranian funds that Halkbank had laundered through the U.S. financial system in violation of U.S. sanctions.

Despite the many connections between this case and the United States, the Second Circuit upheld the dismissal of petitioners' suit on *forum non conveniens* grounds, concluding that Turkey is the appropriate forum. In doing so, the Second Circuit refused to apply the "strong presumption" that this Court has made clear must be afforded to a U.S. plaintiff's choice of a U.S. forum to adjudicate his claim. *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235, 255 (1981). Instead, applying its entrenched outlier approach, the Second Circuit

accorded "minimal deference" to petitioners' choice of forum because the more than 200 U.S. plaintiffs in this case are outnumbered by foreign co-plaintiffs.

The Second Circuit's approach contravenes this Court's precedents. Its minimal-deference test carves out an arbitrary and unwarranted exception to *Piper*'s strong presumption. And by dissolving the deference owed to U.S. plaintiffs, it eliminates an essential check on federal courts' improper refusal to exercise the jurisdiction that Congress has created. The Second Circuit went so far here as to undermine the ability of terrorism victims to bring (and U.S. courts to adjudicate) New York and federal statutory claims for enforcing judgments issued by U.S. courts.

The Second Circuit's decision also perpetuates a circuit conflict. The D.C., Ninth, and Eleventh Circuits have correctly ruled that the strong presumption in favor of U.S. plaintiffs' choice of a U.S. forum is not "somehow lessened" merely because the U.S. plaintiffs sue alongside foreign residents. *Carijano* v. *Occidental Petroleum Corp.*, 643 F.3d 1216, 1228 (9th Cir. 2011). As those courts have recognized, "the ratio of domestic to foreign plaintiffs does not necessarily have a bearing on [the defendant's] convenience." *Otto Candies, LLC* v. *Citigroup, Inc.*, 963 F.3d 1331, 1345 (11th Cir. 2020). And "the addition of foreign plaintiffs does not render for naught the weighty interest of Americans seeking justice in their own courts." *Simon* v. *Republic of Hungary*, 911 F.3d 1172, 1183 (D.C. Cir. 2018), vacated and remanded on other grounds, 141 S. Ct. 691 (2021).

The Second Circuit's nose-counting approach directly conflicts with these decisions. This Court's intervention is necessary to ensure consistency among

the circuits in making the important determination of whether a U.S. forum is available to U.S. plaintiffs.

The petition should be granted.

STATEMENT

1. Petitioners are hundreds of U.S. citizens, U.S. servicemen, or U.S. government employees or contractors (or surviving family members) who were injured or killed in six different terrorist attacks. App., *infra*, 16a. Those attacks include the 1983 bombing of the U.S. Marine barracks in Beirut, Lebanon, and the 1998 bombings of the U.S. embassies in Dar es Salaam, Tanzania and Nairobi, Kenya. *Ibid.* Of the 670 petitioners whose residency is a matter of record, 202 reside in the United States—including 9 in New York. *Id.* at 49a. The non-U.S.-resident petitioners either were employed by the U.S. government at the time of the terrorist attacks or are relatives of U.S. Government employees or contractors. *Id.* at 16a. None of the petitioners is known to be a resident of Turkey.

The Islamic Republic of Iran provided material support for these terrorist attacks. See, *e.g.*, *Owens* v. *Republic of Sudan*, 826 F. Supp. 2d 128, 135 (D.D.C. 2011). Petitioners brought lawsuits against Iran as a state sponsor of terrorism in the U.S. District Court for the District of Columbia. See, *e.g.*, *id.* at 133-134. Those suits resulted in judgments against Iran totaling more than $10 billion. App., *infra*, 50a. The judgments are final and subject to enforcement under federal and applicable state law. See Fed. R. Civ. P. 69(a). The judgments remain unsatisfied.

Respondent Halkbank is a financial institution majority-owned by the sovereign wealth fund of Turkey. App., *infra*, 50a. In 2020, petitioners brought this action against Halkbank in the Southern District

of New York, which had jurisdiction under 28 U.S.C. §§ 1331 and 1332(d)(11). 2d Am. Compl. ¶ 16 (D. Ct. Doc. 46). They alleged that Halkbank had violated U.S. sanctions by fraudulently conveying at least $1 billion in proceeds of Iranian oil sales through U.S. banks, thereby blocking petitioners' efforts to recover those funds. *Id.* ¶ 13. Halkbank is currently being criminally prosecuted in the Southern District of New York for its role in that scheme. See *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 267-268 (2023). Four of Halkbank's officers have either pleaded guilty to, been convicted of, or remain fugitives charged with federal crimes related to this scheme in prosecutions brought in the Southern District of New York. App., *infra*, 52a.

In this suit, petitioners seek rescission and turnover of the illegally laundered proceeds under New York law and the Terrorism Risk Insurance Act of 2002 (TRIA), Pub. L. No. 107-297, § 201, 116 Stat. 2337 (28 U.S.C. § 1610 note). Because terrorism victims have faced great difficulty collecting on final judgments, in 2002 Congress enacted TRIA Section 201(a), which subjects assets of a "terrorist party" to execution by judgment-holders when those assets have been "blocked" by the President. *Ibid.* Under that provision, petitioners have alleged that they are entitled to execute their judgments against Halkbank's assets, because the assets are beneficially owned by Iran and would have been frozen by presidential sanctions but for Halkbank's fraudulent scheme. In addition, petitioners seek relief under New York's fraudulent-conveyance statutes. 2d Am. Compl. ¶¶ 143-173. Through those federal and state causes of action, petitioners seek the turnover of Iran's fraudulently conveyed assets and damages

towards the satisfaction of Petitioners' judgments. *Id.* at 58.

2. Halkbank moved to dismiss the suit on grounds of *forum non conveniens*. Halkbank contended that Turkey was the proper venue for adjudicating petitioners' claims to enforce their U.S.-court judgments. App., *infra*, 54a-55a. The district court agreed and dismissed the case on the condition that Halkbank submit to the jurisdiction of Turkish courts. *Id.* at 63a.

In doing so, the district court applied a "three-part" *forum non conveniens* test. App., *infra*, 55a. At the "first step," the court "determine[d] the degree of deference properly accorded the plaintiff's choice of forum." *Ibid.* (citation omitted). It observed that, under the Second Circuit's en banc decision in *Iragorri* v. *United Techs. Corp.*, 274 F.3d 65, 71 (2d Cir. 2001), deference to a plaintiff's choice of forum "moves on a sliding scale" depending on a number of factors, including the number of foreign co-plaintiffs. *Id.* at 55a (citation omitted). Applying that "sliding scale" approach, the district court concluded that petitioners' choice of a U.S. forum was entitled to "some," but only "minimal, deference," principally because "the U.S. resident plaintiffs are significantly outnumbered by foreign plaintiffs." *Id.* at 56a, 57a.

At the second step, the district court determined that Turkey was an "adequate alternative forum." App., *infra*, 58a-61a. The court acknowledged "serious" questions about evidence that Turkish officials had interfered with U.S. and Turkish criminal investigations into Halkbank concerning the conduct at issue here. *Id.* at 60a. But it discounted those concerns because plaintiffs' litigation in Turkey would involve

a civil, rather than criminal, proceeding. *Id.* at 60a-61a.

At the third and final step, the district court "weigh[ed]" the "private and public interest factors," and concluded that dismissal was proper. App., *infra*, 61a. The court perceived "almost no connection between this case and New York" or the United States. *Id.* at 62a. In weighing the public-interest factors, however, the court did not address the U.S. policies supporting redress for terrorism victims underlying TRIA. Nor, in evaluating the private-interest factors, did the court note that none of the plaintiffs are known to reside in Turkey.

3. The Second Circuit affirmed. App., *infra*, 28a. It agreed with the district court that petitioners' choice of a U.S. forum is entitled to "minimal deference" based on the involvement of the foreign plaintiffs. *Id.* at 20a. The court of appeals explained that, under Second Circuit precedent, the deference owed to a plaintiff's choice of a U.S. forum moves on a "sliding scale" and can be diminished based on various factors. *Id.* at 19a (quoting *Iragorri*, 271 F.3d at 71). The court observed, for example, that the presumption is weakened where "an expatriate U.S. citizen" residing abroad "brings suit in the United States." *Ibid.* (quoting *Iragorri*, 271 F.3d at 73 n.5).

"Applying these principles," the Second Circuit held that it was appropriate for the district court to "grant minimal deference to [petitioners'] choice of forum." App., *infra*, 19a-20a. The court of appeals expressly rejected petitioners' argument that the presence of hundreds of U.S.-resident plaintiffs "precludes a district court from giving less deference to the choice of forum." *Id.* at 19a n.1. The court cited a recent decision in which the Second Circuit had recounted past

cases where it had "repeatedly affirmed district courts' application of less deference to the plaintiffs' choice of forum in the *forum non conveniens* analysis where the U.S. resident plaintiffs' lawsuit are outnumbered by non-resident plaintiffs." *Wamai* v. *Industrial Bank of Korea*, No. 21-1956, 2023 WL 2395675, at *2 n.1 (2d Cir. Mar. 8, 2023); see App., *infra*, 19a n.1. The Second Circuit adhered to that approach here.

Having zeroed out the deference owed to petitioners' choice of forum, the Second Circuit further agreed with the district court that Turkey was an adequate alternative forum. App., *infra*, 21a-26a. The court of appeals also sustained "the district court's weighing of the private and public factors." App., *infra*, 27a. It rejected petitioners' contention that the public policies underlying TRIA favor maintaining this suit to enforce U.S. judgments in the United States. *Id.* at 28a.

REASONS FOR GRANTING THE PETITION

The Second Circuit's nullification of the deference owed to a U.S. plaintiff's choice of a U.S. forum conflicts with the approach taken by three other circuits and is contrary to this Court's precedents. This Court's *forum non conveniens* decisions accord strong deference to U.S. plaintiffs' choice to sue at home. Absent proof of gamesmanship, that deference should hold regardless of the citizenship of co-plaintiffs. The Second Circuit, however, has rejected that straightforward approach, and in doing so it has created a square circuit conflict. Three other circuits have recognized this Court's clear instruction in refusing to discount the deference enjoyed by U.S. plaintiffs based on their choice to sue in the courts and under the laws of their home country. The Second Circuit stands alone in refusing to apply the Court's teaching.

The Second Circuit's erroneous approach to this threshold deference issue predictably leads to illogical results by easing the burden that defendants must carry to obtain dismissal on *forum non conveniens* grounds. This case shows how far the Second Circuit has strayed. Here, hundreds of U.S. victims of terrorism were deprived of state-law and federal statutory remedies to enforce U.S. judgments against sponsors of terrorism in U.S. courts. If the Second Circuit could dismiss even this case, then its practice of diluting deference is likely to deprive U.S. plaintiffs of their home forum whenever they are outnumbered by foreign co-plaintiffs.

The Second Circuit's rule also incentivizes piecemeal litigation, creating inefficiencies that *forum non conveniens* is designed to prevent. Its approach undermines the collective litigation that is often necessary to the effective enforcement of judgments, including by victims of terrorism. Those judgments are often entered in cases brought by multiple plaintiffs arising out of the same terrorist act. Splitting enforcement proceedings thus pits judgment holders against themselves to the benefit of no one.

The deference issue is squarely presented in this case and is outcome-determinative. Correctly applying the strong deference due to petitioners' forum choice will require (at a minimum) a remand for the courts below to re-weigh the private and public-interest factors. The Court should grant the petition and resolve this important issue.

I. THE DECISION BELOW IMPLICATES A CIRCUIT CONFLICT ON THE LEGAL STANDARD FOR *FORUM NON CONVENIENS* DISMISSAL IN SUITS INVOLVING U.S. AND FOREIGN PLAINTIFFS

The Second Circuit's ruling according "minimal deference" (App., *infra*, 20a) to the choice of more than 200 U.S.-resident plaintiffs to sue in U.S. court perpetuates a direct circuit conflict. All three other circuits to consider the question have squarely rejected arguments to abandon the "strong presumption" in favor of U.S. plaintiffs' choice of a U.S. forum, *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235, 255 (1981), whenever a majority of co-plaintiffs in a case reside abroad. For 15 years, however, the Second Circuit has followed its own path, effectively eliminating *Piper*'s presumption in such cases and erecting an arbitrary and unjustified barrier to suits brought by both domestic and foreign residents. Only this Court's intervention can resolve the entrenched split.

A. Three circuits faithfully apply *Piper*'s strong presumption to U.S. and foreign co-plaintiffs' choice of a U.S. forum

The D.C., Ninth, and Eleventh Circuits all have correctly recognized that the "strong presumption" in favor of U.S. plaintiffs' choice of a U.S. forum, *Piper*, 454 U.S. at 255, does not disappear merely because the U.S. plaintiffs are joined in a suit by a larger number of foreign co-plaintiffs.

In *Simon* v. *Republic of Hungary*, 911 F.3d 1172 (D.C. Cir. 2018), vacated and remanded on other grounds, 141 S. Ct. 691 (2021), the D.C. Circuit reversed a district-court decision that had accorded "minimal deference" to four U.S. plaintiffs because they had sued alongside ten foreign co-plaintiffs. *Id.*

at 1183. The case involved 14 Holocaust survivors who sued Hungary and its national railway for their roles in perpetrating atrocities during World War II. *Simon* v. *Republic of Hungary*, 277 F. Supp. 3d 42, 46-48 (D.D.C. 2017). The district court had "lessened" the deference owed to the American Holocaust survivors' choice of a U.S. forum on the ground that their ties to the United States were "attenuated" by the presence of foreign co-plaintiffs. *Id.* at 63.

The D.C. Circuit reversed. Relying on this Court's decision in *Piper*, the D.C. Circuit explained that one of the "ground rules" of *forum non conveniens* is "'a strong presumption in favor' of the plaintiff's choice of forum," a choice which "merits still 'greater deference when the plaintiff has chosen her home forum.'" *Simon*, 911 F.3d at 1182 (quoting *Piper*, 454 U.S. at 255-256; brackets omitted). The court held that *Piper*'s strong presumption continues to apply even when most plaintiffs reside abroad. *Id.* at 1182-1184. The D.C. Circuit explained that "the addition of foreign plaintiffs does not render for naught the weighty interest of Americans seeking justice in their own courts." *Id.* at 1183. To the contrary, the court observed that, absent proof that the U.S. plaintiffs were included as "jurisdictional makeweights," their "preference for their home forum continues to carry important weight." *Ibid.* The D.C. Circuit further held that the district court's "legal error" at the deference stage was fundamental: It had "set the scales wrong from the outset" and "pull[ed] the legs out from under much of the district court's *forum non conveniens* analysis." *Id.* at 1183-1184.

The *Simon* court's *forum non conveniens* holding remains binding precedent in the D.C. Circuit irrespective of this Court's vacatur of other aspects of the

opinion addressing sovereign immunity, see *Republic of Hungary* v. *Simon*, 141 S. Ct. 691 (2021). As the *Simon* district court itself recognized on remand following this Court's mandate, the *forum non conveniens* portions of *Simon* "remain the law of the Circuit" under "the D.C. Circuit's rule regarding the continuing precedential effect of vacated opinions." *Simon* v. *Republic of Hungary*, 579 F. Supp. 3d 91, 138 (D.D.C. 2021), aff'd in part and vacated in part on other grounds, __ F.4th __, 2023 WL 5023437 (D.C. Cir. Aug. 8, 2023); see *ibid.* (citing, *inter alia*, *United States* v. *Adewani*, 467 F.3d 1340, 1342 (D.C. Cir. 2006)).

The Ninth Circuit likewise has rejected a nose-counting approach. See *Carijano* v. *Occidental Petroleum Corp.*, 643 F.3d 1216, 1228-1229 (2011). In *Carijano*, 25 members of a Peruvian indigenous group and one U.S.-based environmental group sued an energy company for negligently polluting the waters of the Peruvian rainforest. *Carijano* v. *Occidental Petroleum Corp.*, 548 F. Supp. 2d. 823, 826 (C.D. Cal. 2008). Like the district court in *Simon*, the district court in *Carjiano* had "lessen[ed] the degree of deference" owed to the plaintiffs' forum choice because most of the plaintiffs were residents of a foreign country (Peru). *Id.* at 834-835. The Ninth Circuit reversed, holding that the "[t]he district court abused its discretion by recognizing Amazon Watch as a domestic plaintiff but then erroneously affording reduced deference to its chosen forum." *Carijano*, 643 F.3d at 1229. The district court's approach, the Ninth Circuit reasoned, is "directly contrary" to *Piper*, which "does not in any way stand for the proposition that when both domestic and foreign plaintiffs are present, the strong presumption in favor of the domestic plaintiff's choice of forum is somehow lessened." *Id.* at 1228.

The Eleventh Circuit has embraced the same approach as the D.C. and Ninth Circuits. In a case involving two U.S. plaintiffs suing alongside 37 foreign plaintiffs, the Eleventh Circuit identified no "practical or doctrinal basis to reduce deference to domestic plaintiffs who sue alongside foreign plaintiffs," except in cases of "blatant gamesmanship." *Otto Candies, LLC* v. *Citigroup, Inc.*, 963 F.3d 1331, 1339, 1344-1345 (11th Cir. 2020). The court approvingly cited *Simon* and *Carijano* and rejected district-court cases allowing for reduced deference when foreign co-plaintiffs are present. *Id.* at 1344. The Eleventh Circuit explained that "the ratio of domestic to foreign plaintiffs does not necessarily have a bearing on [the defendant's] convenience." *Id.* at 1345.

Each of these cases involved fewer than five U.S. plaintiffs who were significantly outnumbered by foreign co-plaintiffs. Yet in each case, the courts of appeals recognized that the U.S. plaintiffs' choice of a U.S. forum was still entitled to "strong" deference. *Simon*, 911 F.3d at 1182; *Carijano*, 643 F.3d at 1228; *Otto Candies*, 963 F.3d at 1346. Had petitioners in this case filed suit in any of those circuits, the choice of a U.S. forum by more than 200 U.S. residents also would have been entitled to strong deference.

B. The Second Circuit alone affords only "minimal" deference when foreign co-plaintiffs outnumber U.S. plaintiffs

In contrast to all of those courts, the Second Circuit abandons *Piper*'s strong presumption favoring U.S. plaintiffs' choice of a U.S. forum whenever foreign plaintiffs predominate in a case. App., *infra*, 19a-20a. Instead, it has expressly approved according only "minimal deference" to U.S. plaintiffs' choice to sue in the United States if they are joined by a larger

number of non-U.S. plaintiffs—the legal standard other circuits have explicitly rejected. *Id.* at 20a; see *id.* at 19a (affirming district court's ruling affording "some, albeit minimal, deference" (citation omitted)); but see *Simon*, 911 F.3d at 1183 (holding that "[t]he district court committed legal error at the first step by affording the [plaintiffs'] choice of forum only 'minimal deference'"); *Carijano*, 643 F.3d at 1228 (explaining that affording "'only some deference'" where foreign plaintiffs predominate is "directly contrary to the *Piper* Court's clear instruction").

The Second Circuit's reduced-deference approach stems from its en banc decision in *Iragorri* v. *United Technologies Corp.*, 274 F.3d 65 (2001). In *Iragorri*, the Second Circuit interpreted *Piper* to mean that the deference afforded to a plaintiff's chosen forum "moves on a sliding scale depending on several relevant considerations." *Id.* at 71. In the decades since *Iragorri*, the Second Circuit has consistently concluded that the number of foreign co-plaintiffs is foremost among the factors justifying reduced deference and that little deference is due where foreign plaintiffs predominate in a case. As the court of appeals recently observed, it has "repeatedly affirmed district courts' application of less deference to the plaintiffs' choice of forum in the *forum non conveniens* analysis where the U.S. resident plaintiffs' lawsuit are outnumbered by non-resident plaintiffs." *Wamai* v. *Indus. Bank of Korea*, No. 21-1956, 2023 WL 2395675, at *2 n.1 (2d Cir. Mar. 8, 2023); see *Bahgat* v. *Arab Republic of Egypt*, 631 F. App'x 69, 70 (2d Cir. 2016); *Wilson* v. *Eckhaus*, 349 F. App'x 649, 651 (2d Cir. 2009); *Overseas Media, Inc.* v. *Skvortsov*, 277 F. App'x 92, 96-97 (2d Cir. 2008). In each of these cases, the Second Circuit affirmed a district court's dismissal on the basis of *forum non conveniens*. Each panel concluded that affirmance

was appropriate in part because U.S. plaintiffs were in the minority and therefore their choice of forum was entitled to less deference.

The Second Circuit's decision applying the same approach to dismiss this suit on *forum non conveniens* grounds is the latest in that long line of decisions. The court of appeals approved the district court's conclusion that the choice of more than 200 U.S. plaintiffs to sue in U.S. court deserved only "minimal deference" because the U.S. plaintiffs were joined by a larger number of foreign residents (whose claims also have strong U.S. ties). App., *infra*, 19a-20a (citation omitted). The Second Circuit made clear that it was following here the same path it has pursued in prior cases. The court expressly rejected petitioners' contention that *Piper* precludes diluting the deference owed to the forum choice of U.S. plaintiffs, citing a passage in its decision in *Wamai* that had curtly rejected the same argument and collected prior Second Circuit cases applying its outlier approach. *Id.* at 19a n.1 (citing *Wamai*, 2023 WL 2395675, at *2 n.1, in turn citing *Bahgat*, *supra*, *Wilson*, *supra*, and *Overseas Media*, *supra*).

The Second Circuit's rote invocation of prior rulings reflects the court's view that its position on this issue is settled and compelled by its en banc decision in *Iragorri* and other precedents. In *Overseas Media*, for example, the court of appeals cited *Iragorri* as support for affirming the district court's holding that "the plaintiffs' choice of forum overall deserved less deference," even though "the chosen forum was one plaintiff's home," on the ground that "the other two plaintiffs were foreign." 277 F. App'x at 96 (citing *Iragorri*, 274 F.3d at 71-72); see also *Wilson*, 349 F. App'x at 651 (citing *Iragorri*, *supra*, and *Norex Petroleum Ltd.*

v. *Access Industries, Inc.*, 416 F.3d 146, 154 (2d Cir. 2005), in upholding district-court decision that "reduc[ed] the overall deference accorded on the ground that less than half of the plaintiffs are United States residents"). The Second Circuit has now endorsed and applied that approach at least five times over the past 15 years. That it now consistently disposes of appeals presenting the issue in unpublished orders only underscores that the court treats the question as closed.

* * * * *

The Second Circuit's repeated practice of reducing the deference owed to U.S. plaintiffs' choice of their home forum is entrenched and clearly conflicts with the decisions of multiple other circuits. This Court's review is necessary to eliminate the division of authority on this important issue.

II. THE SECOND CIRCUIT'S DECISION IS WRONG

The Second Circuit's minimal-deference approach cannot be reconciled with *Piper* and this Court's other pertinent *forum non conveniens* precedents. Those decisions dictate a "strong presumption" in favor of a U.S. plaintiff's choice of a U.S. forum unless the U.S. plaintiff is merely a makeweight included to manipulate venue, *Piper*, 454 U.S. at 255—a circumstance no one does or could contend is present here. By granting only de minimis consideration to the choice of U.S. plaintiffs who sue along non-U.S. residents, the Second Circuit flouts this Court's clear teaching.

This case typifies the arbitrary results that follow from watering down that presumption. More than 200 U.S. terrorism victims attempting to vindicate their New York and federal statutory rights—alongside similarly situated foreign plaintiffs—were told to seek enforcement of their U.S.-court judgments

in Turkey because U.S. residents do not constitute a majority of the plaintiffs in the lawsuit. That the Second Circuit's test nullifies *Piper*'s presumption even in a case with such strong connections to the United States and its courts demonstrates how far that court has strayed.

A. This Court has recognized a strong presumption in favor of U.S. plaintiffs' choice of a U.S. forum

This Court has made clear that a defendant seeking to dismiss a suit validly filed in U.S. court in favor of a foreign forum based on *forum non conveniens* must clear a high bar. That doctrine is a common-law exception to federal courts' "virtually unflagging obligation," *Mata* v. *Lynch*, 576 U.S. 143, 150 (2015) (citation omitted), to exercise the jurisdiction that Congress has established by statute. It runs up against the general rule that federal courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given," *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) (Marshall, C.J.), and that they "are bound to proceed to judgment, and to afford redress to suitors before them, in every case to which their jurisdiction extends," *Hyde* v. *Stone*, 61 U.S. 170, 175 (1857). The Court has also observed that dismissing a case on *forum non conveniens* grounds is a "harsh result," often requiring plaintiffs to file a new suit abroad. *Atlantic Marine Construction Co.* v. *United States District Court*, 571 U.S. 49, 66 n.8 (2013) (brackets omitted). In keeping with those principles, this Court has consistently held that a "defendant invoking *forum non conveniens* ordinarily bears a heavy burden in opposing the plaintiff's chosen forum." *Sinochem International Co.* v. *Malaysia International Shipping Corp.*, 549 U.S. 422,

423 (2007); see *Gulf Oil Co.* v. *Gilbert*, 330 U.S. 501, 508 (1947) ("[U]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.").

The Court crystallized the defendant's "heavy burden" in *Piper*. The Court held that "there is ordinarily a *strong presumption* in favor of the plaintiff's choice of forum, which may be overcome only when the private and public interest factors *clearly point* towards trial in the alternative forum." 454 U.S. at 255 (emphases added). *Piper* explained that the strong presumption applies with "greater" force when a U.S. plaintiff sues in his "home forum." 454 U.S. at 255. A U.S. plaintiff's convenience in suing in his home forum "normally[s] outweigh the inconvenience the defendant may have shown." *Id.* at 255 n.23 (quoting *Koster* v. *(American) Lumbermens Mutual Casualty Co.*, 330 U.S. 518, 524 (1947)). The Court reasoned that, "when the home forum has been chosen, it is reasonable to assume that this choice is convenient." *Id.* at 255-256. *Piper* acknowledged, conversely, that "the presumption applies with less force when the plaintiff or real parties in interest are foreign." *Id.* at 255.

Piper thus established a clear general rule: The choice of a U.S. forum by U.S.-resident plaintiffs enjoys "strong" deference, whereas "less" deference is appropriate when the plaintiffs are foreign. 454 U.S. at 255. *Piper* recognized only one exception to that general rule: The strong presumption does not apply where the U.S. plaintiff is a token or makeweight included to manipulate jurisdiction and venue. *Piper* itself involved that outlier situation. In *Piper*, the real parties in interest were the estates of Scottish citizens who were killed in a plane crash in Scotland; the named plaintiff was the administratrix of an estate

legally created in the United States to take advantage of U.S. tort law. *Id.* at 239-240. The Court looked through to the real parties in interest and applied the lesser deference owed to foreign plaintiffs. *Id.* at 256. That narrow exception confirms the general rule: So long as a plaintiff is the real party in interest and a U.S. resident, his choice of forum merits "strong" deference and cannot be displaced unless the other factors "clearly point" towards dismissal. *Id.* at 255.

That clear rule should have controlled in this case. Petitioners include 202 U.S. plaintiffs, with at least nine New York residents among them. No one has suggested that these plaintiffs are tokens or make-weights. Nor could they: The U.S. plaintiffs here are all U.S. citizens, U.S. servicemen, or U.S.-government employees or contractors (or their surviving family members) injured or killed by acts of terrorism sponsored by Iran; they obtained judgments against Iran from U.S. courts; and they seek to enforce those judgments against assets of Iran under New York law and a U.S. statute (TRIA) enacted specifically to help terrorism victims recover. *Piper*'s strong presumption in favor of their choice to sue in U.S. court should have applied with full force. But the Second Circuit here approved refusing to apply that presumption altogether.

B. The Second Circuit's approach conflicts with *Piper*

The Second Circuit accorded "minimal deference" to petitioners' choice of a U.S. forum, App., *infra*, 20a, continuing its practice of nullifying *Piper*'s strong presumption whenever U.S. plaintiffs sue alongside a larger number of foreign co-plaintiffs. See pp. 13-16, *supra*. That approach is "directly contrary to the

Piper Court's clear instruction." *Carijano*, 643 F.3d at 1228.

Nothing in the language or logic of *Piper* suggests that the addition of foreign plaintiffs somehow negates the "the weighty interest of Americans seeking justice in their own courts." *Simon*, 911 F.3d at 1183. That non-U.S. residents join a suit with U.S. plaintiffs does nothing to diminish U.S. plaintiffs' stake in vindicating their rights in the courts of their home country. And *Piper*'s recognition in requiring the strong presumption—that "when the home forum has been chosen, it is reasonable to assume that this choice is convenient"—holds just as true for U.S. plaintiffs who sue alone as those who sue alongside one or more foreign co-plaintiffs. *Piper*, 454 U.S. at 255-256.

The Second Circuit's nose-counting approach, moreover, is both arbitrary and illogical. It is arbitrary to apply "less" deference whenever 51% of plaintiffs are foreign, but strong deference when U.S. plaintiffs are in the majority. See *Wamai*, 2023 WL 2395675, at *2 n.1. The precise numerical breakdown of U.S. versus foreign co-plaintiffs in a case "does not necessarily have a bearing on [the defendant's] convenience." *Otto Candies*, 963 F.3d at 1345. That approach also creates incentives to structure lawsuits around the Second Circuit's *forum non conveniens* formula rather than joining plaintiffs whose claims make sense to adjudicate together.

The Second Circuit's approach is also "vague" and indeterminate. *Carijano*, 643 F.3d at 1228. It creates intractable line-drawing problems for which the court has offered no answers. For example, does respect for the U.S. plaintiffs' preferred forum always disappear entirely (as it did in this case) when the number of foreign plaintiffs crosses a particular threshold

beyond a majority, or does it also "mov[e] on a sliding scale"? App., *infra*, 19a (citation omitted).

By introducing ambiguity into the deference owed to a U.S. plaintiff's choice of forum, the Second Circuit's approach threatens the workability of the *forum non conveniens* doctrine as a whole. "Without knowing the level of deference to accord the plaintiff's choice of forum, it is not clear how one would assess whether the *Gulf Oil* factors outweigh the plaintiff's choice." 14D Charles Alan Wright et al., *Federal Practice and Procedure* § 3828 (4th ed. 2023) (italics added). The resulting indeterminacy increases the likelihood that claims brought by U.S. citizens under U.S. laws will not be heard in U.S. courts. It also may force U.S. and foreign plaintiffs to pursue piecemeal litigation, making the overall litigation *more* inconvenient for all parties involved and thereby undermining the values that *forum non convenience* is meant to vindicate.

Despite following its outlier approach for 15 years, the Second Circuit has not rebutted any of these arguments or articulated any persuasive rationale in support of its approach. It nevertheless unflinchingly nullifies the deference owed to U.S. plaintiffs, thwarting the ability of plaintiffs (like petitioners) to maintain valid claims under U.S. law in U.S. courts.

C. The Second Circuit's flawed approach leads predictably to incorrect results

The Second Circuit's approach to this crucial deference determination is far from academic. Its misguided departure from *Piper* skews the outcome in many *forum non conveniens* cases, leading to unwarranted dismissal of cases properly filed in U.S. court.

Several circuits, including the Second Circuit, treat the deference considerations at issue here as a stage-setting first step of the *forum non conveniens* analysis. App., *infra*, 18a (citing *Iragorri*, 274 F.3d at 70-75). As the D.C. Circuit emphasized in *Simon*, an error at this step thus "set[s] the scales wrong from the outset." 911 F.3d at 1183. That is because, as the en banc Second Circuit has observed, "[t]he greater the degree of deference to which the plaintiff's choice of forum is entitled, the stronger a showing of inconvenience the defendant must make." *Iragorri*, 274 F.3d at 74.

The facts and statutory context of this case well illustrate how the Second Circuit's mistaken deference determination leads to untenable outcomes. This case's ties to the United States are manifold. Petitioners are all U.S. citizens, U.S. servicemen, or U.S. government employees or contractors (or surviving family members) who were victims of terrorism that targeted U.S. interests and persons abroad. Congress has legislated a strong federal policy in favor of permitting victims of terrorism—in particular its citizens and employees working abroad—to bring claims in the United States against state sponsors of terrorism. 28 U.S.C. § 1605A(c). That is precisely what petitioners did here, securing final judgments from U.S. courts against Iran totaling more than $10 billion.

Because those federal-court judgments remain unsatisfied, petitioners brought this enforcement suit under New York law and a U.S. statute specifically created by Congress to help terrorism victims like petitioners to obtain relief. In TRIA, Congress has authorized any person holding "a judgment against a terrorist party on a claim based on an act of terrorism" to sue in the United States and execute on any blocked

assets of the terrorist party or its instrumentalities. TRIA § 201(a), 116 Stat. 2337 (28 U.S.C. § 1610 note). TRIA defines "act of terrorism" to include certain attacks on life or property *outside* the United States—attacks that would foreseeably impact many victims who reside abroad. TRIA § 102(1)(A)(iii), 116 Stat. 2324 (15 U.S.C. § 6701 note). Yet Congress afforded *any* person—whether residing here or abroad—the ability to satisfy their judgments in federal court "[n]otwithstanding any other provision of law." TRIA § 201(a), 116 Stat. 2337 (28 U.S.C. § 1610 note). Petitioners filed suit in U.S. court to seek enforcement under that statute (and New York law). Iran is a "terrorist party" under TRIA. See 50 U.S.C. App. § 2405(j). Halkbank moved approximately $1 billion of Iranian assets through U.S. banks to evade U.S. sanctions, and petitioners alleged that those assets are subject to execution in U.S. courts under TRIA (and New York law). 2d Am. Compl. ¶ 13.

Despite all of those U.S. connections that made the plaintiffs' forum choice particularly sensible and consonant with U.S. (and New York) policy, the Second Circuit gave petitioners' selection of a U.S. forum minimal deference, merely because most of the plaintiffs do not reside in the United States. Having eliminated the deference owed to petitioners' chosen forum, the Second Circuit breezed past the weighty public-policy interests favoring a U.S. forum and dismissed. App., *infra*, 27a-28a. It concluded that the dispute over enforcement of petitioners' U.S.-court judgments should be channeled to Turkey, where *none* of the plaintiffs is known to reside. *Id.* at 28a. That result frustrates the enforcement machinery that Congress designed to help victims of terrorism receive redress and recompense from state sponsors of terrorism through the federal court system.

III. THIS CASE IS A GOOD VEHICLE TO RESOLVE THIS IMPORTANT AND RECURRING QUESTION

The question presented in this case is critically important—particularly for victims of terrorism—and this is an ideal vehicle for resolving it.

A. The decision below will have severe consequences for victims of terrorism seeking relief in U.S. courts. By their nature, suits under TRIA often involve large numbers of foreign victims. That prospect is inherent in the statute's design. Moreover, Congress explicitly authorized foreign nationals employed by the U.S. government (and surviving relatives) to sue in U.S. courts for injuries sustained in terrorist attacks. 28 U.S.C. § 1605A(c)(3). For TRIA and various similar anti-terrorism statutes to function as Congress intended, U.S. and foreign plaintiffs must be able to seek relief collectively in U.S. courts. Particularly in cases like this one involving hundreds of individual victims, collective action is critically important in order to reduce costs and maximize the chance of recovery. Collective actions in this context allow plaintiffs to benefit from economies of scale, which facilitates the recovery of a large number of claims and lessens the resource imbalance between a group of plaintiffs and a well-resourced defendant. Collective litigation also reduces the risk of lawsuits among terrorism victims themselves, which expend party and judicial resources with little benefit to anyone.

Pursuing collective relief in a U.S. court is often the only way for terrorism victims to obtain any relief at all. Foreign venues often decline to recognize U.S. judgments for idiosyncratic reasons, a possibility eliminated in the federal court system due to the congressionally created process for registering federal judgments for enforcement in other federal venues.

28 U.S.C. § 1963; see Robin Effron, Atlantic Marine *and the Future of Forum Non Conveniens*, 66 Hastings L.J. 693, 709 (2015). That is especially true in the context of U.S. terrorism judgments. By forcing victims of terrorism to engage in piecemeal litigation around the world, the Second Circuit's rule (at best) increases the inconvenience for all parties and (at worst) deprives terrorism victims of their remedies under U.S. law and frustrates TRIA and similar anti-terrorism statutes.

Requiring piecemeal litigation in venues across the globe also will lead to inequitable recoveries among similarly situated victims. Given the size of terrorism-related judgments and the typically limited pool of available assets in terrorism cases, "[d]istributing frozen assets to the first plaintiffs to win judgments would create 'gross inequities in the amounts of compensation received by similarly situated U.S. nationals with claims against foreign governments' because there will simply not be enough funds to go around." Allison Taylor, Note, *Another Front in the War on Terrorism? Problems with Recent Changes to the Foreign Sovereign Immunities Act*, 45 Ariz. L. Rev. 533, 552 (2003) (quoting *Terrorism: Victims' Access to Terrorist Assets: Hearing On Examining Proposals to Further Amend the Foreign Sovereign Immunities Act (FSIA) and Related Terrorism Issues*, 106th Cong., 1st Sess. 35 (1999) (statement of Stuart Eizenstadt, Deputy Secretary, Department of the Treasury)). In this case, for example, if the U.S. plaintiffs are forced to sue on their own while the foreign plaintiffs pursue relief in Turkey, one group might exhaust Iran's fraudulently transferred assets in Halkbank's possession before the other is able to obtain any relief at all.

Consistency across circuits, moreover, is especially important when plaintiffs risk having their claims taken beyond the reach of the U.S. court system altogether. In cases like this one, what hangs in the balance is not whether the plaintiffs' claims must be heard in New York or California, but whether they may be heard in the United States *at all*. Shunting valid U.S. claims to foreign (potentially inhospitable) jurisdictions imposes significant burdens on plaintiffs, particularly when none of them resides in that jurisdiction. Here, for example, to bring claims in Turkey, petitioners (none of whom are known to reside in Turkey) would have to hire Turkish-qualified counsel and possibly start from scratch by pleading Turkish causes of action in the hopes of securing Turkish judgments that they could then possibly enforce in Turkish courts.

Even if petitioners surmounted those hurdles, there is reason to doubt that a Turkish court would fairly resolve their claims that Halkbank, an instrumentality of Turkey, violated U.S. sanctions and must turn over nearly $1 billion. See U.S. Department of State, 2022 Country Reports on Human Rights Practices: Turkey (Türkiye), https://bit.ly/3QKkptZ (in recent years the Turkish "government continued to restrict the enjoyment of human rights and fundamental freedoms and compromised the rule of law"). Tellingly, Turkish officials repeatedly have sought to undermine the federal criminal prosecution of that same state-owned instrumentality for the same underlying conduct—including by investigating the American officials responsible for bringing the case. See Pet. C.A. Br. 45 (citing, *e.g.*, *Turkey Prosecutors Open Probe of Former, Acting US Attorneys*, Associated Press (Nov. 18, 2017)). It is intolerable to impose such significant burdens on petitioners in the Second Circuit, where

bank accounts used to implement Iran's and Halkbank's fraudulent scheme are located, when they would not face such obstacles to enforcing judgments in in the D.C., Ninth, or Eleventh Circuits.

The Second Circuit's erroneous approach also is likely to cause disproportionate harms in other contexts because courts in the Second Circuit hear an uncommonly large number of cases presenting *forum non conveniens* issues. A study of federal district court *forum non conveniens* cases between 1982 and 2006 found that district courts within the Second Circuit decided 39% of all *forum non conveniens* motions—more than twice the number of the next-most-frequent circuit. Michael T. Lii, *An Empirical Examination of the Adequate Alternative Forum in the Doctrine of Forum Non Conveniens*, 8 Rich. J. Global L. & Bus. 513, 528 (2009). That is no surprise. Given New York's status as a hub of global finance—through which disputed assets frequently flow—it is the most important U.S. jurisdiction for judgment enforcement. The outsized effect of the Second Circuit's misguided approach to *forum non conveniens* heightens the need for this Court's intervention.

B. This Court can and should avert these serious harms by definitively rejecting the Second Circuit's reduced-deference approach. This case provides the perfect opportunity.

The question presented was fully briefed and squarely decided in the district court and the court of appeals. And the Second Circuit is highly unlikely to revisit its approach. The court has applied it in at least 5 decisions over the past 15 years and consistently treats the issue as settled without the need for further published precedent. See pp. 14-16, *supra*.

The Second Circuit's erroneous deference determination is also outcome-determinative here. Although *forum non conveniens* decisions are reviewed for abuse of discretion, a court "by definition abuses its discretion when it makes an error of law." *Fox* v. *Vice*, 563 U.S. 826, 839 (2011) (citation omitted); App., *infra*, 17a ("In the context of *forum non conveniens*, a district court abuses its discretion when" its decision "rests * * * on an error of law."). The level of deference courts owe to a plaintiff's choice of forum is indisputably a question of law—one this Court squarely addressed in *Piper*. The Second Circuit's (and the district court's) error on that issue alone justifies a remand for a re-weighing of the public and private interest factors under the proper standard.

Under the proper standard, a re-weighing of the factors is very likely to result in a different outcome. As the Second Circuit has recognized, "[t]he greater the degree of deference to which the plaintiff's choice of forum is entitled, the stronger a showing of inconvenience the defendant must make." *Iragorri*, 274 F.3d at 74; see pp. 21-22, *supra*. With the scales set correctly, Halkbank could not make the showing needed to overcome the strong presumption in favor of a U.S. forum. This case involves hundreds of U.S. terrorism victims and zero known Turkish plaintiffs, and maintaining suit in a U.S. court vindicates congressional policy in favor of the enforcement of U.S. judgments against state sponsors of terrorism. Under the correct legal standard, Turkey is not even arguably—let alone "clearly"—a more appropriate forum for this suit. *Piper*, 454 U.S. at 255. That the Second Circuit upheld dismissal on *forum non conveniens* grounds in favor of Turkish court—despite those powerful U.S. ties to the plaintiffs and their claims—shows the flaws of its approach in sharp relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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August 30, 2023