No. 25-381

In the
Supreme Court of the United States

ADVANFORT COMPANY,

Petitioner,

v.

ZAMIL OFFSHORE SERVICES COMPANY and SAUDI PORTS AUTHORITY, a foreign sovereign state,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF FOR THE PETITIONER

H. Brent McKnight, Jr.
MCGUIREWOODS LLP
501 Fayetteville St.
Suite 500
Raleigh, NC 27601
(919) 755-6600

Jonathan Y. Ellis
Counsel of Record
Grace Greene Simmons
MCGUIREWOODS LLP
888 16th Street N.W.
Suite 500
Washington, DC 20006
(202) 828-2887
jellis@mcguirewoods.com

Counsel for Petitioner

December 15, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTRODUCTION

The Fourth Circuit affirmed dismissal of this case for *forum non conveniens* even though no other court in the world would afford Petitioner AdvanFort Company the right to bring all of its claims. AdvanFort is thus forced to split its claims across multiple foreign courts. The court of appeals' split decision deepens a circuit conflict over whether *forum non conveniens* allows such case splitting and aligns the Fourth Circuit with the wrong side. The Court should grant the petition and reject the Fourth Circuit's erroneous approach.

Respondent Zamil Offshore Services Company's attempt to downplay the split is unpersuasive. It makes no difference whether a case must be split between courts in the same country, same city, or same building. Case splitting creates the risk of inconsistent judgments, litigation inefficiencies, and the potential for gamesmanship. And there are only two ways to read "an alternative forum." It is either one alternative court or any number of courts in one alternative jurisdiction. Most courts hold "one court"; the Fourth Circuit holds "one jurisdiction."

Zamil's efforts to salvage the court of appeals' decision also fall flat. *Forum non conveniens* is a common-law venue rule for foreign courts. The question is whether another venue (i.e., another court) is more convenient for the litigation, not whether another country's courts could resolve the overall dispute. Federal courts do not transfer cases to multiple domestic courts under the federal venue statute. It makes no sense for a court to effectively force such a transfer under the judicially created common-law equivalent for foreign venues.

Finally, Zamil identifies no obstacle to this Court's review. The lower courts' decisions rest solely on *forum non*

conveniens. That question is squarely teed up here, and reversal would dispose of the defense. Zamil is free to assert other defenses on remand. But they provide no barrier to resolving the important and recurring question presented here. The petition should be granted.

ARGUMENT

A. The Circuits Are Split Over Whether *Forum Non Conveniens* Allows Case Splitting.

1. Zamil cannot persuasively deny an entrenched circuit conflict on whether *forum non conveniens* may be used to divide claims between multiple courts. Pet. 10-14. As Zamil acknowledges (at 8-9), the Second and Fourth Circuits permit such case splitting. *See* Pet. App. 16a-19a; *Aenergy, S.A. v. Rep. of Angola*, 31 F.4th 119, 131 (2d Cir. 2022). Meanwhile, as Zamil also accepts (at 9-10), the Ninth and Tenth Circuits have squarely rejected such efforts. *See Dole Food Co. v. Watts*, 303 F.3d 1104, 1118 (9th Cir. 2002); *DIRTT Env't Sols., Inc. v. Falkbuilt Ltd.*, 65 F.4th 547, 555 (10th Cir. 2023). That square conflict warrants this Court's resolution.

The Ninth and Tenth Circuits' positions, moreover, are supported by the consensus among most courts of appeals that *forum non conveniens* can apply only when an entire case may be brought against all defendants in the alternative forum—a standard with little room for case splitting. *See* Pet. 10-11 (collecting cases). Zamil dismisses that consensus as "snippets" of "dicta." Opp. 10-11. But that is not how the Tenth Circuit saw things when it grounded its holding explicitly barring claim splitting in the very decisions Zamil asserts are inapt. *See DIRTT*, 65 F.4th at 554-55 (citing *Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824, 835 (5th Cir. 1993); *Associação Brasileira de Medicina de Grupo v. Stryker Corp.*, 891 F.3d

615, 620 (6th Cir. 2018); and *Fischer v. Magyar Allamvasutak Zrt.*, 777 F.3d 847, 867 (7th Cir. 2015)).

The bottom line is that, other than the Second and Fourth Circuits, the courts of appeals broadly understand *forum non conveniens* to allow a court to "dismiss an action on the ground that a court abroad"—not a country—"is the more appropriate and convenient forum for adjudicating the controversy." *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 429 (2007).

2. Zamil attempts to distinguish splitting a case between two courts located in the same foreign country and two courts located in different countries. Opp. 8-11. That is a distinction without a difference. Either way, the result is "piecemeal litigation that is inherently inconvenient for both the parties and the courts." *DIRTT*, 65 F.4th at 555.

A plaintiff forced to split its case across multiple forums rather than litigate its entire case against all defendants in its chosen forum faces duplicative pleadings, discovery, and trials, not to mention the possibility of inconsistent judgments. The two courts could be on the same floor of the same building or even share a courtroom. Geographic proximity within a foreign country does not change that litigating separate cases before separate judges is far less convenient than litigating a single case before a single judge in the Eastern District of Virginia.

Nothing in the Ninth and Tenth Circuits' bans on case splitting suggests that they would make an exception on those grounds. That is why Judge Thacker correctly asserted in her dissent that the majority's ruling ran afoul of their "sister circuit's" direction that *forum non conveniens* "is not available as a tool to split or bifurcate cases." Pet. App. 31a (citation omitted).

3. Finally, even if Zamil's distinction had merit in the abstract, it has none here. The only reason AdvanFort's case must be split between two tribunals in a single foreign country, rather than between the Eastern District of Virginia and the Commercial Court of Saudi Arabia, is because the Fourth Circuit permitted the district court to dismiss the Ports Authority for *forum non conveniens* too, even though the Ports Authority defaulted, did not ask for that relief, and has failed to defend it. Pet. 19-20. Had the courts below not improperly excused that failure, dismissing Zamil for *forum non conveniens* would have split the case between two different countries—which even Zamil does not defend.

B. *Forum Non Conveniens* Does Not Permit Case Splitting.

The Fourth Circuit erred in allowing AdvanFort's claims to be split across two foreign courts. Pet. 14-20. *Forum non conveniens* is, at bottom, a venue rule for "determining which among various competent courts will decide the case." *Am. Dredging Co. v. Miller*, 510 U.S. 443, 453 (1994). Just as the Eastern District of Virginia would not transfer a case to the State of North Carolina, writ large, but to a particular federal district court within that State, so too must a district court identify a particular foreign court in which a suit should be brought—not simply a country containing multiple possible courts. *See, e.g., Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964); Pet.16. The question presented is that simple, and yet Zamil does not even acknowledge that context.

1. Zamil principally argues that this Court already resolved the question presented in a footnote in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981). Opp. 11-12 (citing *Piper Aircraft*, 454 U.S. at 254 n.22). But Zamil badly

misreads that footnote. In *Piper Aircraft*, this Court explained that a threshold requirement for a *forum non conveniens* dismissal is that "there exists an alternative forum." 454 U.S. at 254 n.22. That requirement, the Court explained, is "[o]rdinarily," but not always, "satisfied when the defendant is 'amenable to process' in the other jurisdiction." *Id.* (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 506-07 (1947)). One example when that is not enough, as the Ninth and Tenth Circuits recognize, is where there is no single alternative forum in which all defendants could be meaningfully served with such process.

Because this Court offered, as another counterexample, an instance in which no court in a foreign country could provide a remedy, Zamil argues that this Court must have been equating "alternative forum" with all courts in a foreign country, not a particular court in that jurisdiction. Opp. 12. But that is wrong. The whole point of the *Piper Aircraft* footnote was the requirement to identify "*an* alternative forum." 454 U.S. at 254 n.22 (emphasis added). The Court principally relied on its earlier decision in *Gulf Oil* for its counterexample—a case where the "two forums" were *a* federal court in New York and *a* federal court in Virginia, two courts in the same country. *Gulf Oil*, 330 U.S. at 503, 507. And the Court's only other citation was to a lower-court decision that considered the availability of an alternative "Ecuadorean tribunal," not alternative Ecuadorean tribunals. *Piper Aircraft*, 454 U.S. at 254 n.22 (citing *Phoenix Canada Oil Co. v. Texaco, Inc.*, 78 F.R.D. 445 (Del. 1978)).

The Court's other passing and single reference to "Ecuador" as the "alternative forum," not the particular "Ecuadorean tribunal [that] [would] hear the case," cannot bear the weight Zamil's reading requires. *Id.*; *cf.* Opp. 12.

The Fourth Circuit drew no such conclusion from *Piper Aircraft*. Zamil cites to no decision from any court that has read *Piper Aircraft* that way. And we are not aware of any. To the extent that *Piper Aircraft* bears on the question, it supports AdvanFort's position, not Zamil's. Pet. 17-19. It certainly does not foreclose AdvanFort's position or provide any basis to deny review.

2. Zamil points (at 12-13) to other instances of courts using "forum" (singular) in considering whether the defendants were amenable to process in the "courts (plural)" of a particular foreign jurisdiction, not a particular foreign court. Those cases do not support Zamil's cause. All involved situations where the defendants, unlike Zamil, consented to the jurisdiction of the alternative foreign courts. *See Fischer*, 777 F.3d at 867; *Baumgart*, 981 F.2d at 835; *R. Maganlal & Co. v. M.G. Chem. Co.*, 942 F.2d 164, 167 (2d Cir. 1991). That the defendant was subject to the jurisdiction of all the country's courts demonstrated that the foreign court at issue was an available alternative. There was thus no occasion, as here, to inquire into a specific court's availability. Even then, the cases still frame the *forum non conveniens* inquiry in terms of whether *a* foreign forum can hear the entire case against all defendants. *See, e.g.*, *Baumgart*, 981 F.2d at 835 ("A foreign forum is available when the entire case and all parties can come within the jurisdiction of that forum.").

3. Contrary to Zamil's suggestion (at 13-14), AdvanFort is not seeking review of the district court's weighing of the public and private interest factors. As the Fourth Circuit recognized and this Court has made clear, before a court can intelligently evaluate those factors, it must first identify an "alternative forum." *See* Pet. App. 16a ("At the outset of any forum non conveniens inquiry, the court must

determine whether there exists an alternative forum.") (quoting *Piper Aircraft*, 454 U.S. at 254 n.22). It is that threshold requirement—not the discretionary determination that follows—that AdvanFort challenges.

Nothing about AdvanFort's and the Tenth Circuit's discussion of convenience is inconsistent with that challenge. Indeed, it would be more than a little surprising—to say the least—for the Court to resolve any question about the *forum non conveniens* doctrine (literally, "an inconvenient forum" in Latin) without considering convenience. And as AdvanFort has argued, forcing a plaintiff to proceed with one case by multiple lawsuits, rather than the forum of its choice, "fundamentally contradicts the central purpose of *forum non conveniens*" by requiring duplicative proceedings. *DIRTT*, 65 F.4th at 554.

Zamil's sole response is that the "inconvenience" of litigating two cases in two Saudi courts would be "*de minimis*." Opp. 14. Not so. Again, litigating two cases requires two sets of pretrial proceedings, two trials, duplicative witness testimony, and the possibility of inconsistent judgments. AdvanFort would also face greater risk of unfair treatment, inability to hire counsel for fear of retribution, and a judiciary that is not independent. Pet. 5-6, 21.

4. Zamil frets that requiring a single foreign court would "create a significant risk of gamesmanship" by allowing plaintiffs to add unnecessary parties to preclude an alternative forum. Opp. 15. That concern is misplaced. District courts are perfectly suited to see through such ploys, akin to misjoinder of a party, before ruling on *forum non conveniens*. *See* Fed. R. Civ. P. 21.

To be clear, there is no gamesmanship here: The Ports Authority is a co-equal and joint tortfeasor with Zamil. Not only did the "Ports Authority own[] the port that

Zamil leased," Opp. 15, but the two parties "jointly operated Jeddah Shipyard" together—indeed, quotes and invoices issued to AdvanFort bore the logos of both entities. CA4 App. 10, 15. Ports Authority supervised and oversaw the port's operations, shared revenue with Zamil from the port's commercial operations, and facilitated theft from the *Seaman Guard Virginia*. *Id.* at 15, 36. The Ports Authority has much more than a "tenuous[] connect[ion]" to AdvanFort's claims, and naming it as a defendant has nothing to do with "procedural manipulation." Opp. 15.

The real concern is not plaintiffs' gamesmanship but defendants abusing a venue doctrine to avoid liability. A plaintiff, as the master of its complaint, is entitled to bring all properly joined claims and parties in a single suit. A defendant should not be allowed to defeat that chosen forum *and* break up the case, such that it is infeasible to adjudicate at all. That is particularly true here, where ample reason exists to doubt that Saudi courts would provide fair and impartial fora to U.S. parties, especially in a suit involving an arm of the Saudi government and a family with close ties to the Saudi royal family. Pet. 4. AdvanFort experienced that once, as the Saudi court not only let Zamil off the hook for destroying AdvanFort's ship but ordered *AdvanFort* to pay *Zamil* for its purported damages. Pet. 5. It should not be forced to go through that again.

C. This Case Is an Ideal Vehicle to Address the Scope of *Forums Non Conveniens*.

This case presents an ideal vehicle to resolve this important question. This Court has rightly prioritized ensuring that federal courts exercise their full statutory and constitutional jurisdiction. *See, e.g.*, *First Choice Women's Res. Ctrs. v. Platkin*, No. 24-781; *Axon Enter. v. FTC*, 598 U.S. 175 (2023); *Knick v. Twp. of Scott*, 588 U.S.

180 (2019); *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014); *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69 (2013). It is no less important to ensure—as this Court has repeatedly cautioned—that the exercise of this judge-made limit on federal jurisdiction remains "rare." Pet. 21-22 (collecting cases). Numerous courts have addressed the case-splitting expansion of the doctrine in published opinions over the past few years alone. Its propriety is squarely presented, dispositive of the doctrine's application, and ripe for review. Pet. 20-23.

1. Zamil contends that the question is not implicated because, according to its expert, the Board of Grievances "has discretion to hear claims against *both* the Ports Authority and Zamil." Opp. 16. But both lower courts pointedly declined to rely on that assertion, *see* Pet. App. 17a-18a, 44a—and rightly so.

The promise is illusory. As AdvanFort's expert explained, "[t]he Board of Grievances does not have authority over commercial entities like Zamil." Pet. App. 30a (Thacker, J., dissenting). And as Judge Thacker observed, "Zamil's legal expert did not meaningfully refute this claim." *Id.* He "offered only that the Board of Grievances 'allows a claimant that has submitted a lawsuit' before it 'to request that [it] involve another party in the case *provided that the conditions required by the relevant law are met*.'" *Id.* at 30a-31a (quoting CA4 App. 323) (brackets in original; emphasis added). He "did not explain what the 'conditions required by the relevant law' are, nor did he provide an analysis or opinion as to whether those requirements could be satisfied here." *Id.* at 31a.

The only assurance that AdvanFort has, then, is Zamil's speculation that, once AdvanFort gets to Jeddah,

it can ask the Board of Grievances to also hear the claims against a party not properly before it. Unlike in the many cases Zamil cites where the defendant consented to suit in the foreign forum, it has conspicuously not agreed to be subject to suit in the Board of Grievances. There is no reason to expect it would.

2. Lastly, Zamil asserts (at 17) that even if *forums non conveniens* does not apply, it should prevail on personal-jurisdiction grounds. Even if true, that would provide no obstacle to review. The district court dismissed on *forum non conveniens* alone, Pet. App. 52a, and the court of appeals passed on only that question, *id.* at 28a. *Forum non conveniens* is thus the sole issue presented. The resolution of that question would have significance generally and in this case, even if Zamil ultimately prevailed on other grounds on remand. At minimum, reversal would allow AdvanFort to pursue the Ports Authority, which already defaulted, thus waiving any personal-jurisdiction defense. *See* CA4. App. 356.

Regardless, Zamil's personal-jurisdiction defense fails. AdvanFort explained below that Zamil had Virginia employees, its affiliates engaged in the Virginia-based U.S.-Saudi Business Counsel (which promoted Zamil), and Zamil solicited business from Virginia companies. AdvanFort hired Zamil because of Zamil's Virginia advertising and its website, which AdvanFort viewed from Virginia. Zamil has known from the beginning that it was advertising to and doing business with a Virginia entity. It contacted AdvanFort by phone and email in Virginia and received payments wired from Virginia. *See* CA4 App. 166-76. Such extensive Virginia contacts create a clear "relationship among the defendant, the forum, and the litigation." *Walden v. Fiore*, 571 U.S. 277, 284 (2014).

Zamil is properly subject to suit in AdvanFort's chosen forum. It should not be permitted to avoid that suit (much less judgment) based on an erroneous application of the separate judge-made doctrine of *forum non conveniens*.

CONCLUSION

For the foregoing reasons and those asserted in the petition, certiorari should be granted.

Respectfully submitted,

H. Brent McKnight, Jr.
McGuireWoods LLP
501 Fayetteville St.
Suite 500
Raleigh, NC 27601
(919) 755-6600

Jonathan Y. Ellis
Counsel of Record
Grace Greene Simmons
McGuireWoods LLP
888 16th Street N.W.
Suite 500
Washington, DC 20006
(202) 828-2887
jellis@mcguirewoods.com

Counsel for Petitioner

Dated: December 15, 2025