

No. _____

**In the
Supreme Court of the United States**

DR. DOUGLAS SCHOTTENSTEIN AND
SCHOTTENSTEIN PAIN AND NEURO, PLLC,
D/B/A NY SPINE MEDICINE,

Petitioners,

v.

ORTHOGEN INTERNATIONAL GMBH,

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

Richard Bruce Rosenthal, Esq.
LAW OFFICE OF RICHARD
BRUCE ROSENTHAL, ESQ.
545 E. Jericho Turnpike - # 12
Huntington Station, NY 11746
(631) 629-8111

Edward D. Altabet, Esq.
Counsel of Record
BRACH EICHLER, LLC
5 Penn Plaza, 23rd Floor
New York, NY 10001
(212) 896-3974
ealtabet@bracheichler.com

June 29, 2026

Counsel for Petitioners

SUPREME COURT PRESS

♦ (888) 958-5705 ♦

BOSTON, MASSACHUSETTS

QUESTION PRESENTED

28 U.S.C. § 1782 authorizes federal courts to order discovery “for use in a proceeding in a foreign or international tribunal.” The Second Circuit affirmed orders authorizing what it repeatedly called “pre-suit discovery” — Rule 45 subpoenas for use in a “contemplated” private German civil action that Respondent, Orthogen Int’l GmbH, has not filed.

The Question Presented is:

Whether 28 U.S.C. § 1782 permits a district court to authorize a private foreign party to serve Rule 45 subpoenas for “pre-suit discovery” — to develop unpleaded foreign-law claims against a U.S. resident — in aid of a putative civil action it says it will file in the “conventional courts” of a foreign jurisdiction, where no administrative or quasi-judicial proceeding affords the applicant “significant procedural rights.”

PARTIES TO THE PROCEEDINGS

Petitioners and Intervenors-Appellants below

- Dr. Douglas Schottenstein
- Schottenstein Pain and Neuro, PLLC,
d/b/a NY Spine Medicine
(collectively hereinafter, “Schottenstein”)

Respondent and Petitioner-Appellee below

- Respondent is Orthogen International GmbH
a German limited-liability company
(hereinafter “Orthogen”)

CORPORATE DISCLOSURE STATEMENT

Schottenstein Pain and Neuro, PLLC has no parent corporation and no publicly held company owns 10% or more of its stock.

To the best of Petitioners’ knowledge, Orthogen International GmbH is not publicly traded.

LIST OF PROCEEDINGS

Direct Proceedings Below

U.S. Court of Appeals for the Second Circuit

No. 25-1253 (Lead), 25-1258 (Con)

In re Orthogen International GmbH

Summary Order: April 1, 2026

U.S. District Court, Southern District of New York

1:24-mc-00504

In re Orthogen International GmbH

Opinion and Order: April 30, 2025

U.S. District Court, Southern District of New York

No. 1:23-mc-00152

In re Orthogen International GmbH

Opinion and Order: February 28, 2025

Order Denying Reconsideration: April 30, 2025

Other Related Proceedings

U.S. District Court, Western District of Texas

No. 5:24-mc-00687-OLG

In re Application of Orthogen International GmbH

Case is an ongoing proceeding that has not reached final judgment

U.S. District Court, Southern District of Florida

No. 9:23-cv-80743-DMM

In re Application of Orthogen International GmbH

Order closing case: November 30, 2023

Appealed, U.S. Court of Appeals for the Eleventh Circuit, No. 24-10411; appeal dismissed April 4, 2024 (no decision on the merits)

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
CORPORATE DISCLOSURE STATEMENT	ii
LIST OF PROCEEDINGS.....	iii
TABLE OF AUTHORITIES	vii
OPINIONS BELOW	1
JURISDICTION.....	1
STATUTORY PROVISIONS INVOLVED	1
INTRODUCTION	2
STATEMENT OF THE CASE.....	6
A. Factual Background.....	6
B. District Court Proceedings	8
C. The Second Circuit’s Decision	9
REASONS FOR GRANTING THE PETITION.....	10
I. The Second Circuit’s Decision Conflicts with <i>Intel</i> By Converting § 1782 Into a Private Pre-Suit Discovery Power.....	11
II. The Second Circuit’s Decision Gives Private Parties Access to Federal Compulsory Process Without Any Tether to Any “Governmental or Intergovernmental Adjudicative Bodies.”	15
III. <i>ZF Automotive</i> Confirms That Private Plans to File Litigation Do Not Give Rise to Any Comity Interest § 1782 Was Enacted to Serve	18

TABLE OF CONTENTS (Cont.)

	Page
IV. <i>Atlantic Marine</i> Precludes Granting § 1782 Discovery Based on Private Litigation Interests in Derogation of the Bargained-For Procedures of the Foreign Forum	22
V. This Case Is a Clean Vehicle for Resolving Recurring and Important § 1782 Questions .	25
CONCLUSION.....	29

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Summary Order, U.S. Court of Appeals for the Second Circuit (April 1, 2026).....	1a
Opinion and Order, U.S. District Court Southern District of New York, Case No. 24-MC-504 (April 30, 2025)	11a
Opinion and Order, U.S. District Court Southern District of New York, Case No. 23-MC-152 (February 28, 2025)	34a

RECONSIDERATION ORDER

Opinion and Order Denying Reconsideration, U.S. District Court Southern District of New York, Case No. 23-MC-152 (April 30, 2025)	46a
--	-----

TABLE OF AUTHORITIES

	Page
CASES	
<i>Application of Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.</i> , 747 F.3d 1262 (11th Cir. 2014)	27
<i>Arnett v. Kennedy</i> , 416 U.S. 134 (1974)	17
<i>Atlantic Marine Constr. Co. v. U.S. Dist. Court for W. Dist. of Tex.</i> , 571 U.S. 49 (2013)	22, 23, 24, 26
<i>Bayer AG v. Betachem, Inc.</i> , 173 F.3d 188 (3d Cir. 1999).....	20
<i>Certain Funds, Accts. and/or Inv. Vehicles v. KPMG, L.L.P.</i> , 798 F.3d 113 (2d Cir. 2015)	9, 13, 14, 26, 27
<i>Committee on the Judiciary v. McGahn</i> , 415 F. Supp. 3d 148 (D.D.C. 2019)	16
<i>Davis v. Mills</i> , 194 U.S. 451 (1904)	25
<i>First Choice Women’s Resource Centers, Inc. v. Davenport</i> , 608 U.S. __ (2026).....	17
<i>Fund for Prot. of Inv. Rts. v. AlixPartners, LLP</i> , 5 F.4th 216 (2d Cir. 2021)	18
<i>In re Letter of Request from the Crown Prosecution Serv. of the United Kingdom</i> , 870 F.2d 686 (D.C. Cir. 1989)	14
<i>In re Venequip, S.A. v. Caterpillar Inc.</i> , 83 F.4th 1048 (7th Cir. 2023).....	27

TABLE OF AUTHORITIES (Cont.)

	Page
<i>Intel Corp. v. Advanced Micro Devices, Inc.</i> , 542 U.S. 241 (2004)	2, 3, 4, 9-15, 17, 18, 22, 23, 25, 26
<i>Jones v. SEC</i> , 298 U.S. 1 (1936)	17, 27
<i>Life Receivables Tr. v. Syndicate 102 at Lloyd’s London</i> , 549 F.3d 210 (2d Cir. 2008)	24
<i>M/S Bremen v. Zapata Off-Shore Co.</i> , 407 U.S. 1 (1972)	5
<i>Qatar Nat’l Bank v. Perles Law Firm, P.C.</i> , No. 25-7029, 2025 WL 2945746 (D.C. Cir. Oct. 17, 2025)	26
<i>Scherk v. Alberto-Culver Co.</i> , 417 U.S. 506 (1974)	24
<i>Servotronics, Inc. v. Rolls-Royce PLC</i> , 975 F.3d 689 (7th Cir. 2020)	4, 20
<i>SPS Corp I v. General Motors Co.</i> , 110 F.4th 586 (3d Cir. 2024)	26
<i>Trump v. Mazars USA, LLP</i> , 591 U.S. 848 (2020)	18
<i>United States v. Morton Salt Co.</i> , 338 U.S. 632 (1950)	16
<i>Viking River Cruises, Inc. v. Moriana</i> , 596 U.S. 639 (2022)	24
<i>ZF Automotive US, Inc. v. Luxshare, Ltd.</i> , 596 U.S. 619 (2022)	2, 4, 10, 13, 15, 17-20, 27

TABLE OF AUTHORITIES (Cont.)

Page

STATUTES

28 U.S.C. § 1254(1)	1
28 U.S.C. § 1782.....	i, 2-15, 17-28
28 U.S.C. § 1782(a)	1, 2, 3, 11, 12

JUDICIAL RULES

Fed. R. Civ. P. 12(b)(6).....	20
Fed. R. Civ. P. 26	20
Fed. R. Civ. P. 27	20, 28
Fed. R. Civ. P. 27(a)(1)(A).....	20
Fed. R. Civ. P. 32	20
Fed. R. Civ. P. 45	i, 2, 4, 7, 8, 15, 17, 18, 20, 24, 25, 28
Fed. R. Civ. P. 60(b)(1).....	8
Fed. R. Civ. P. 81	20
Sup. Ct. R. 10	26
Sup. Ct. R. 10(c)	10

LEGISLATIVE MATERIALS

28 U.S.C. § 1782, Historical and Revision Notes (1948 Act).....	20
S. Rep. No. 1580, 88th Cong., 2d Sess. (1964)	2, 12, 15

TABLE OF AUTHORITIES (Cont.)

	Page
 FOREIGN AUTHORITIES	
Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 138 (Ger.)	21
Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 253 (Ger.)	21
 OTHER AUTHORITIES	
3 William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND (1768)	16
Erwin Spiro, <i>Forum Regit Processum (Procedure Is Governed by the Lex Fori)</i> , 18 INT’L & COMP. L.Q. 949 (1969).....	24
Harry Leroy Jones, <i>International Judicial Assistance: Procedural Chaos and a Program for Reform</i> , 62 YALE L.J. 515 (1953)	12
John H. Langbein, <i>The German Advantage in Civil Procedure</i> , 52 U. CHI. L. REV. 823 (1985)	21
Peter L. Murray & Rolf Stürner, <i>German Civil Justice</i> (2004)	21
Wright & Miller, 9A Fed. Prac. & Proc. Civ. § 2451 (3d ed. 1970)	16
Yanbai Andrea Wang, <i>Exporting American Discovery</i> , 87 U. CHI. L. REV. 2089 (2020)	5, 10



OPINIONS BELOW

The summary order of the United States Court of Appeals for the Second Circuit (App.1a-10a) is unreported. The opinions and orders of the United States District Court for the Southern District of New York are unreported. App.11a-33a (opinion and order dated April 30, 2025); App.34a-45a (opinion and order dated February 28, 2025); *see* App.46a-57a (opinion and order denying reconsideration dated April 30, 2025).



JURISDICTION

The United States Court of Appeals for the Second Circuit entered its summary order on April 1, 2026. App.1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

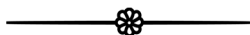


STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1782(a) provides, in relevant part:

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory

issued, or request made, by a foreign or international tribunal or upon the application of any interested person The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing [or may be] the Federal Rules of Civil Procedure.



INTRODUCTION

The Second Circuit held that 28 U.S.C. § 1782 authorizes “pre-suit discovery” — its words — for a putative private foreign civil action that has not been filed in any tribunal. App.4a-7a. All an applicant must do to clear the second statutory threshold, and thereby avail itself of the full coercive machinery of a Rule 45 subpoena enforced by an Article III court’s contempt power, is proffer a declaration by its foreign attorney that it fully intends to commence a private foreign civil action — just as soon as it gets documents responsive to its document requests and deposes Petitioners, the parties it intends to sue. App.5a. The Second Circuit’s holding cannot be squared with this Court’s decisions in *Intel* and *ZF Automotive*.

In the context of Section 1782, two kinds of foreign matter must be kept distinct: ordinary civil litigation in “conventional courts,” and “administrative and quasi-judicial proceedings” before a governmental body. *See* S. Rep. No. 1580, 88th Cong., 2d Sess. 7–8 (1964). In *Intel Corp. v. Advanced Micro Devices, Inc.*,

542 U.S. 241 (2004), this Court addressed § 1782’s reach in the context of a formal antitrust complaint filed with the European Commission — a governmental body that acts as a “first-instance decisionmaker” rendering “dispositive ruling[s]” subject to judicial review. *Id.* at 246, 255, 258. Critically, the complainant in that proceeding had defined participation rights: though “lacking formal ‘party’ or ‘litigant’ status,” AMD “ha[d] significant procedural rights” — it could “submit . . . information in support of its allegations” to the Commission and “seek judicial review of the Commission’s disposition of a complaint.” *Id.* at 255. Rejecting the contention that § 1782 reaches discovery only when a foreign proceeding is already pending or imminent, the Court held the “for use” requirement satisfied by the interested private party because “§ 1782(a) requires only that a dispositive ruling by the Commission, reviewable by the European courts, be within reasonable contemplation.” *Id.* at 259. That “reasonable contemplation” language was carefully bounded: it described a scenario in which a governmental adjudicative body was already seized of a complaint and would inevitably render an administrative decision reviewable by courts.

The decision below transforms *Intel*’s bounded language into authorization for something far broader: private pre-suit discovery of the party who will purportedly be a defendant in the would-be suit. Orthogen is a private German company whose § 1782 applications were premised on a future case it called the “Contemplated German Proceeding,” (App.5a, App.23a, App.35a, App.47a) not on any actually filed civil action in a German court nor in connection with any administrative or quasi-judicial proceeding in

which it had “significant procedural rights.” *Intel*, 542 U.S. at 255. On that basis, the district court authorized Rule 45 subpoenas compelling Petitioners and third parties to produce documents and sit for depositions — and the Second Circuit affirmed. App.2a, App.20a, App.45a.

That result cannot be reconciled with the statutory text or this Court’s precedents. *ZF Automotive US, Inc. v. Luxshare, Ltd.*, 596 U.S. 619 (2022), arose from a different § 1782 question — whether the statute reaches discovery in aid of private and treaty-based foreign arbitrations — but its statutory holding controls here. In *ZF Automotive*, this Court unanimously held that a § 1782 “tribunal” reaches only “governmental or intergovernmental adjudicative bodies,” and emphasized that “[t]he animating purpose of § 1782 is comity.” *Id.* at 632–33. The Court found it “hard to conjure a rationale” for reading § 1782 to give foreign private arbitration proceedings “broad access to federal-court discovery assistance” while “precluding such discovery assistance for litigants in domestic arbitrations.” *Id.* at 633 (quoting *Servotronics, Inc. v. Rolls-Royce PLC*, 975 F.3d 689, 695 (7th Cir. 2020)). The same reasoning applies with even greater force here: it is hard to conjure a rationale for reading § 1782 to give a private foreign would-be plaintiff access to the coercive machinery of federal discovery before that party has filed the very lawsuit for which it seeks discovery.

The question is cleanly presented. The Second Circuit squarely affirmed the grant of “pre-suit discovery” for a “contemplated” foreign civil action that had not been commenced, has not commenced, and may never be commenced. App.2a. The question is purely statutory, the procedural posture is final, and

the issue is of recurring national importance. Indeed, § 1782 applications have surged over the past two decades, are granted at remarkably high rates, and increasingly seek pre-suit discovery for foreign actions not yet filed — a pattern documented below. *See* Yanbai Andrea Wang, *Exporting American Discovery*, 87 U. CHI. L. REV. 2089 (2020). Every subpoena served necessarily curtails the recipient’s liberties. The recipient must produce private records upon threat of contempt. The recipient must appear and give testimony under oath or be held in contempt. The Second Circuit’s holding represents a sweeping expansion of the federal judicial subpoena power. It authorizes non-U.S. residents to conduct pre-suit discovery to develop foreign claims — provided the § 1782 petitioner’s foreign counsel submits a declaration that the petitioner plans to sue in the “conventional courts” of a foreign jurisdiction, just as soon as it gets responsive documents and deposition testimony.

This case implicates a second concern as well: the parties chose a German forum, and this Court has long recognized the strong federal policy favoring enforcement of forum-selection clauses — bargained-for terms that are an “indispensable element in international trade, commerce, and contracting.” *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 13–14 (1972). The decision below lets a private party invoke that bargain as a shield while wielding § 1782 as a sword to obtain the very pre-suit discovery its chosen forum withholds. This is an alternative ground for reversal argued below and preserved herein. The question for which a writ of certiorari is sought is the statutory question: Does § 1782 permit a district court to authorize a private would-be plaintiff to serve pre-suit discovery subpoenas

for use by that private foreign party to develop a case to file against a U.S. resident in Germany’s “conventional courts”?



STATEMENT OF THE CASE

A. Factual Background

Orthogen International GmbH is a German company. Petitioners are Dr. Douglas Schottenstein and his clinical practice, Schottenstein Pain and Neuro, PLLC, d/b/a NY Spine Medicine, located in New York. The parties’ prior commercial relationship was governed by a German-law contract containing a mandatory forum-selection clause designating Düsseldorf, Germany, as the exclusive jurisdiction for any disputes. App.6a.

On December 27, 2022, Petitioners filed a plenary action in the Southern District of New York against Orthogen, Edward Capla (the third counterparty to the German-law contract under which this dispute arises), and others in connection with the parties’ licensing relationship. App.13a; *see Schottenstein v. Capla*, No. 22-cv-10883 (S.D.N.Y.), ECF No. 1. Orthogen invoked the German forum-selection clause as a shield, first previewing a motion to dismiss on that basis and later moving, on February 2, 2024, to dismiss Petitioners’ claims against it principally under that clause. *See* No. 22-cv-10883, ECF Nos. 62, 115–18. App.43a.

Before Orthogen was dismissed from that plenary action, it turned the same clause into a sword. On May 4, 2023, Orthogen filed the first SDNY § 1782 application

against Petitioners and, the same day, filed a separate § 1782 application in the Southern District of Florida against Edward and Yolanda Capla — each for use in the putative “Contemplated German Proceeding.” App.14a, App.35a-36a; *see also In re Application of Orthogen Int’l GmbH*, No. 9:23-cv-80743-DMM (S.D. Fla.), ECF No. 1 (May 4, 2023); No. 22-cv-10883 (S.D.N.Y.), ECF No. 129 (voluntary dismissal of Orthogen so-ordered June 14, 2024). Thus Orthogen used the forum-selection clause to avoid litigating Petitioners’ claims in federal court while simultaneously invoking that same clause as the reason its own unfiled German suit was supposedly certain enough to justify Rule 45 discovery from persons it intended to sue.

Orthogen’s U.S. discovery applications were premised on a putative future action that Orthogen called the “Contemplated German Proceeding.” App.2a. Between May 2023 and November 2024, Orthogen filed *four ex parte* § 1782 applications in federal district courts in New York, Florida, and Texas based on its German lawyer’s stated intention to bring that proceeding on behalf of his client. Only the two SDNY proceedings are before this Court. The Florida district court granted Orthogen’s § 1782 application to subpoena Edward and Yolanda Capla, and they abandoned their appeal to the Eleventh Circuit, and complied with the subpoenas. The Texas application seeks discovery from two former employees of NY Spine and was granted *ex parte*. *In re Application of Orthogen Int’l GmbH*, No. 5:24-mc-00687-OLG (W.D. Tex.). Motions to intervene and vacate the order were filed by Petitioners in the fall of 2024 and remain pending before the Texas district court. In other words, the

issue is recurring and repeatable. And the two SDNY matters consolidated below were only half of that broader § 1782 campaign waged by Orthogen. This petition focuses on the common legal predicate that sustained the consolidated appeals to the Second Circuit: whether § 1782 permits pre-suit Rule 45 discovery subpoenas for a would-be private civil action.

B. District Court Proceedings

On February 28, 2025, the district court (Broderick, J.) granted Orthogen’s § 1782 application in the first SDNY § 1782 proceeding and authorized discovery from Petitioners. App.34a. Petitioners promptly moved under Federal Rule of Civil Procedure 60(b)(1), arguing that the February 28 order rested on a mistake of law.

On April 30, 2025, the district court denied the Rule 60(b)(1) motion. App.46a-57a. That same day, in the related second SDNY § 1782 proceeding, the district court granted Orthogen’s application for discovery from Tomas and Judith Capla, permitted Dr. Schottenstein to intervene, and dismissed Schottenstein’s counterclaims seeking, *inter alia*, damages for breach of the forum-selection clause. App.11a-33a.

Those three orders — the February 28 order granting discovery from Petitioners, the April 30 order denying Rule 60(b)(1) relief, and the April 30 order granting the related discovery application as to Tomas and Judith Capla — were the district court orders affirmed by the Second Circuit. App.1a-10a.

The district court found that Orthogen had provided an “objective indicium” of “reasonable contemplation” of a German civil proceeding — satisfying, in the court’s view, the second statutory

requirement of § 1782. App.5a (citing *Certain Funds, Accts. and/or Inv. Vehicles v. KPMG, L.L.P.*, 798 F.3d 113, 123 (2d Cir. 2015)). The court then applied the discretionary *Intel* factors and concluded that discovery should proceed in both cases.

C. The Second Circuit’s Decision

On April 1, 2026, the Second Circuit affirmed in a summary order. App.1a-10a. Reviewing the statutory question de novo, the panel (Chin, Sullivan, and Lee, JJ.) held that § 1782 authorized the discovery Orthogen sought — repeatedly describing that discovery, in its own words, as “pre-suit discovery.” The panel framed Petitioners’ statutory challenge as the contention “that section 1782 does not permit the sort of pre-suit discovery that [Orthogen] seeks here,” App.4a, because *Intel* had “rejected the view . . . that [section] 1782 comes into play only when adjudicative proceedings are ‘pending’ or ‘imminent,’” App.4a (quoting *Intel*, 542 U.S. at 259). Applying *Certain Funds*’ “objective indicium” test, the panel concluded: “We therefore agree with the district court that the pre-suit discovery requested here was consistent with our Circuit’s caselaw.” App.5a.

The panel then turned to Petitioners’ discretionary arguments, holding that the district court did not abuse its discretion in weighing the *Intel* factors — including by treating the parties’ mandatory German forum-selection clause as merely “a factor” and not “an absolute bar to pre-suit discovery.” App.6a-7a.



REASONS FOR GRANTING THE PETITION

This Court’s review is warranted under Rule 10(c) because the Second Circuit “decided an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c). The conflict is with *Intel* and *ZF Automotive*, the only two cases in which this Court has construed § 1782. The Second Circuit held that § 1782 permits what it called “pre-suit discovery” for a private foreign civil action that has never been filed, App.5a — a holding that cannot be reconciled with either decision.

The question also has unusual practical importance. Section 1782 has become a heavily used — and increasingly contested — gateway to American discovery. The number of § 1782 civil-discovery applications filed in the federal courts approximately quadrupled between 2005 and 2017, and demand from private parties now exceeds demand from foreign tribunals. *See Wang*, 87 U. CHI. L. REV. at 2110–11, 2113. District courts grant these applications at an extraordinary rate — approximately 92% over that period, and as high as 94% in a single year. *Id.* at 2120–22. And a growing share of private-party applications seek discovery for foreign proceedings that have not yet been filed — nearly one in six is for a merely contemplated action. *Id.* at 2115. The rule the Second Circuit adopted thus operates against a backdrop of high-volume, high-grant-rate, and frequently *ex parte* litigation in which pre-suit applications are a recurring and expanding category. Left uncorrected, an erroneous

reading of § 1782 will not remain isolated; it will be replicated at scale.

I. The Second Circuit’s Decision Conflicts with *Intel* By Converting § 1782 Into a Private Pre-Suit Discovery Power

Section 1782 makes discovery available only to an applicant who satisfies three threshold statutory requirements; only then does a court proceed to a discretionary analysis, guided by the non-exhaustive factors identified in *Intel*. This case turns on the second statutory requirement — whether the requested discovery is “for use in a proceeding in a foreign or international tribunal,” 28 U.S.C. § 1782(a) — which the Second Circuit held satisfied by a bare declaration from the applicant’s own foreign attorney professing an intent to file an ordinary civil action in a conventional foreign court, draining the words “in a proceeding in a foreign or international tribunal” of any limiting force. The Second Circuit’s conclusion that § 1782 permits “pre-suit discovery,” App.5a, rests on a misreading of this Court’s holding in *Intel*. There, AMD had already “filed an antitrust complaint” with the European Commission’s Directorate-General for Competition, and the Commission was a governmental body acting as a “first-instance decisionmaker.” 542 U.S. at 246, 258. The relevant “reasonable contemplation” language appeared only after two critical limiting clauses: the contemplated ruling had to be “by the Commission” and “reviewable by the European courts.” *Id.* at 259.

That is the holding the courts below never confronted. Both stopped short of it. The Second Circuit quoted *Intel* for rejecting the view that § 1782 applies “only when adjudicative proceedings are

‘pending’ or ‘imminent,’” App.4a, and the district court likewise invoked only the shorthand phrase “reasonable contemplation,” App.40a-41a. But neither court recited the sentence that controls this case: “Instead, we hold that § 1782(a) requires only that a dispositive ruling by the Commission, reviewable by the European courts, be within reasonable contemplation.” *Intel*, 542 U.S. at 259. The omission is telling. Once the full sentence is restored, the decision below cannot be squared with *Intel*.

Section 1782 is “the product of congressional efforts, over the span of nearly 150 years, to provide federal-court assistance in gathering evidence for use in foreign tribunals.” *Intel*, 542 U.S. at 247. That history confirms Petitioners’ understanding. In 1964, Congress replaced “any judicial proceeding pending in any court in a foreign country” with “a proceeding in a foreign or international tribunal.” *Intel*, 542 U.S. at 248–49; see Harry Leroy Jones, *International Judicial Assistance: Procedural Chaos and a Program for Reform*, 62 YALE L.J. 515, 541–42 (1953) (predecessor statute confined assistance to a proceeding “pending in any court in a foreign country”). But the Senate Report explained that Congress introduced “tribunal” to ensure that “assistance is not confined to proceedings before conventional courts,” but extends also to “administrative and quasi-judicial proceedings.” S. Rep. No. 1580, at 7; see *Intel*, 542 U.S. at 248–49. Congress then amended § 1782 in 1996 to add “criminal investigations conducted before formal accusation,” which *Intel* described as confirming “the broad range of discovery authorized in 1964.” 542 U.S. at 249, 259. Those changes expanded the kinds of governmental and quasi-governmental proceedings that may qualify,

see *ZF Automotive*, 596 U.S. at 632; they did not replace “pending” with “contemplated,” “possible,” or “imagined,” and they did not create a private pre-suit civil discovery subpoena.

Certain Funds illustrates how the error took hold. In discussing ongoing proceedings, the Second Circuit correctly emphasized what was decisive in *Intel*: there, the applicant could seek review “within the [DG-Competition] proceeding itself” and could “use the evidence obtained through its § 1782 application in that proceeding.” 798 F.3d 113, 122 (2d Cir. 2015). The *Certain Funds* court therefore required “some means of injecting the evidence into the proceeding.” *Id.* at 120. But when the court turned to merely planned proceedings, it articulated a looser formulation: the applicant must have “more than a subjective intent,” must provide “some objective indicium,” and must show that the hypothetical foreign proceeding is “more than just a twinkle in counsel’s eye.” *Id.* at 123–24.

The Second Circuit’s “more than just a twinkle” standard does not and cannot do the rigorous work that *Intel*’s “significant procedural rights” analysis requires. The “more than just a twinkle” standard supplies no meaningful statutory boundary in the private-civil-action context; it requires little more than retaining foreign counsel willing to say that a lawsuit will be filed if U.S. discovery produces enough useful material.¹

¹ The authority *Certain Funds* borrowed for “reliable indications” does not solve that problem: Judge Ginsburg used that phrase in a case involving a letter of request from the Crown Prosecution Service — sovereign criminal prosecutors seeking U.S. judicial

This case shows the consequence of that drift. *Intel* construed what § 1782’s extension to administrative and quasi-judicial bodies requires of an interested person seeking assistance where no action is pending in a conventional court — and it focused on two things absent here. The quasi-adjudicative proceeding had in fact been commenced: AMD had filed a formal antitrust complaint with the European Commission. *Intel*, 542 U.S. at 254. And “significant procedural rights” had attached — though AMD held no formal party or litigant status, it could submit evidence to DG-Competition in support of its complaint and, like *Intel*, could seek judicial review of the Commission’s disposition. *Id.* at 255. The event “within reasonable contemplation” was the Commission’s dispositive ruling itself — the availability of judicial review was not that event, but one of the procedural rights that attached. *Id.* at 259.

Section 1782 does not authorize pre-suit discovery for a private party that merely contemplates an ordinary civil action in a conventional court — which is all Orthogen has ever proposed to do. Yet the Second Circuit held that Orthogen satisfied § 1782’s second statutory requirement on the strength of the district court’s findings that Orthogen had “retained German counsel” and “begun drafting the necessary pleadings” — enough, in its view, to supply the “objective indicium” of “reasonable contemplation” that *Certain Funds* requires. App.5a, App.51a. That is not an objective limiting principle. It is a showing largely within the applicant’s control: a private party

assistance — not a private would-be civil plaintiff. See *In re Letter of Request from the Crown Prosecution Serv. of the United Kingdom*, 870 F.2d 686, 687, 691–92 (D.C. Cir. 1989).

hires a foreign lawyer, who declares that a lawsuit is being prepared. Nothing in the text of § 1782 or its history, *Intel*, or *ZF Automotive* converts that showing into a license for private pre-suit discovery and Rule 45 subpoena power.

The rule Petitioners seek is narrow. Section 1782 does not authorize Rule 45 pre-suit discovery for a would-be private civil action based only on a private party's asserted intent to sue in the conventional courts of a foreign jurisdiction. Petitioners ask not that *Intel* be limited, but that it be applied. *Intel* set out careful criteria for when § 1782 assistance is available in the absence of a conventional-court proceeding: an administrative or quasi-judicial proceeding already underway, in which a dispositive ruling by that non-conventional adjudicative body is reasonably contemplated, and that dispositive ruling is subject to judicial review as of right. It nowhere sanctioned pre-suit discovery for a would-be private plaintiff who has done no more than announce that it may one day sue a United States resident abroad.

II. The Second Circuit's Decision Gives Private Parties Access to Federal Compulsory Process Without Any Tether to Any "Governmental or Intergovernmental Adjudicative Bodies."

The decision below authorizes the deployment of the full coercive machinery of Rule 45 — the contempt power of the United States federal courts — on behalf of a private foreign party when there is no "conventional court" seized of jurisdiction, *see* S. Rep. No. 1580, at 7, nor any quasi-adjudicative proceeding in which "significant procedural rights" have attached. *Intel*, 542 U.S. at 255. That is no modest procedural aid.

“Subpoena” means “under penalty.” *See* Black’s Law Dictionary (11th ed. 2019). The seriousness of the writ is written into its name. An instrument of compulsion from its origin, the subpoena was introduced in the 1380s by John Waltham, Chancellor to Richard II, who adapted an older Chancery writ by commanding the recipient to appear *subpoena centum librarum* — under penalty of one hundred pounds. *See Committee on the Judiciary v. McGahn*, 415 F. Supp. 3d 148, 167 (D.D.C. 2019) (tracing the writ to Waltham); 3 William Blackstone, *Commentaries* *52 (explaining that Waltham “devised the writ of subpoena, returnable in the court of chancery only,” through “a strained interpretation” of the Statute of Westminster 2).

“The issuance of a subpoena must be supported by both constitutional and legislative authority[.]” Wright & Miller, 9A Fed. Prac. & Proc. Civ. § 2451 (3d ed.). As this Court has long recognized, “Federal judicial power itself extends only to adjudication of cases and controversies and it is natural that its investigative powers should be jealously confined to these ends. The judicial subpoena power not only is subject to specific constitutional limitations, . . . but also is subject to those limitations inherent in the body that issues them because of the provisions of the Judiciary Article of the Constitution.” *United States v. Morton Salt Co.*, 338 U.S. 632, 641–42 (1950).

This Court has long warned that compulsory investigative power, once unmoored from a pending matter, encroaches upon liberty by degrees: if government bodies are “permitted gradually to extend their powers by encroachments — even petty encroachments — upon the fundamental rights . . . of the people,” the citizen will “become submerged by a multitude of

minor invasions of personal rights,” and so “even the shortest step” in that direction “must be halted *in limine*.” *Jones v. SEC*, 298 U.S. 1, 24–25, 28 (1936). A § 1782 subpoena issued on behalf of a would-be foreign plaintiff before any conventional court case exists is such a step — federal compulsory process trained on a United States resident not to gather evidence for use in a proceeding in a foreign tribunal, but to decide whether one will be brought at all.

This Court has recently recognized that the coercive pressure of a subpoena is felt at the moment of issuance, not merely upon later enforcement. “[T]he value of a sword of Damocles is that it hangs — not that it drops.” *First Choice Women’s Resource Centers, Inc. v. Davenport*, 608 U.S. ___, ___ (2026) (slip op., at 13) (quoting *Arnett v. Kennedy*, 416 U.S. 134, 231 (1974) (Marshall, J., dissenting)). Section 1782 has important but bounded work to do. Congress enacted it “to assist foreign or international adjudicative bodies in evidence gathering.” *ZF Automotive*, 596 U.S. at 623. *Intel* permitted assistance where an interested person had “significant procedural rights” in an administrative process leading to a “dispositive ruling,” 542 U.S. at 255, 259. But § 1782 does not permit a private litigant with no filed private civil action — and no administrative or quasi-judicial proceeding in which it has significant procedural rights — to become a private pre-suit investigator armed with Rule 45. The orders below authorized subpoenas for records and testimony to support Orthogen’s putative German law claims, even though those claims had not been filed in any conventional German court — and, as of this petition, remain unfiled. App.2a, App.34a-35a, App.45a.

This Court has warned about the dangers inherent in “[a] limitless subpoena power.” *Cf. Trump v. Mazars USA, LLP*, 591 U.S. 848, 862–63, 870 (2020). Yet the Second Circuit’s rule leaves § 1782 without a meaningful statutory limit in this context: so long as a party can hire a foreign lawyer ready to provide a self-serving declaration that a foreign lawsuit is contemplated, the party gains access to the coercive machinery of Rule 45 — before any foreign tribunal has been seized of the dispute and where the applicant can point to no administrative or quasi-judicial proceeding in which it has “significant procedural rights” as AMD and Intel both had in *Intel*.

III. *ZF Automotive* Confirms That Private Plans to File Litigation Do Not Give Rise to Any Comity Interest § 1782 Was Enacted to Serve

In *ZF Automotive*, this Court reversed the Second Circuit’s decision in *Fund for Prot. of Inv. Rts. v. AlixPartners, LLP*, 5 F.4th 216 (2d Cir. 2021), which had treated a treaty-based ad hoc arbitration as a qualifying “foreign or international tribunal.” 596 U.S. at 621–22, 635–36. This Court held instead that even a sovereign’s presence and a treaty-based arbitral option were insufficient absent intent to “imbue the body in question with governmental authority.” *Id.* at 635–36. The Second Circuit’s decision repeats the same basic error in a new form: it treats § 1782 as a free-floating discovery license without adequate attention to the statutory words “for use in a proceeding in a foreign or international tribunal.”

ZF Automotive underscores the statutory limits that the Second Circuit ignored. The Court decided two consolidated § 1782 cases. One involved a private

arbitration under the rules of the German Institution of Arbitration arising from a private contract. 596 U.S. at 624–25. The other involved an ad hoc arbitration in which “[a] sovereign [was] on one side of the dispute” and “the option to arbitrate [was] contained in an international treaty rather than a private contract.” *Id.* at 621–22, 635. Even that was not enough. This Court held that “neither Lithuania’s presence nor the treaty’s existence is dispositive,” and that the relevant question is whether the sovereigns intended “to imbue the body in question with governmental authority.” *Id.* at 635–36.

That holding matters here. *ZF Automotive* explained that, “[f]rom the start,” § 1782 “has been about respecting foreign nations and the governmental and intergovernmental bodies they create,” and that “[t]he animating purpose of § 1782 is comity.” *Id.* at 631–32. Petitioners do not dispute that German courts are governmental adjudicative bodies. But no German court has been asked to adjudicate Orthogen’s contemplated German law claims, and § 1782 is therefore assisting no foreign tribunal at all. A private party’s unilateral plan to file future litigation in a foreign jurisdiction does not and cannot implicate any comity interest. No foreign court or organ of state power has been seized of jurisdiction; no formal complaint has been filed in the putative private civil action; and no administrative or agency process has attached procedural rights to the would-be plaintiff or the subpoena targets.

ZF Automotive also identified a parity concern. The Court observed that “[i]t’s hard to conjure a rationale for giving parties to private foreign arbitrations such broad access to federal-court discovery assistance

in the United States while precluding such discovery assistance for litigants in domestic arbitrations.” *Id.* at 633 (quoting *Servotronics*, 975 F.3d at 695). An analogous — and sharper — asymmetry infects the Second Circuit’s decision here. No domestic litigant may invoke Rule 45 to compel pre-suit discovery from an adversary in order to investigate and frame a complaint it has not filed. The Federal Rules forbid it: a plaintiff must file a complaint, survive a Rule 12(b)(6) motion, and reach the court-supervised discovery sequence before any subpoena issues. Rule 27 is no exception. It allows a petitioner who “expects to be a party” to an action cognizable in a United States court but “cannot presently bring it” to perpetuate testimony that might otherwise be lost — not to gather proof for a suit not yet framed. Fed. R. Civ. P. 27(a)(1)(A). Congress legislated § 1782 against that backdrop: the Revision Notes explain that Congress believed “the ample safeguards of the Federal Rules of Civil Procedure, Rules 26–32, will prevent misuse of this section.” 28 U.S.C. § 1782, Historical and Revision Notes (1948 Act). The courts of appeals have accordingly applied the Federal Rules’ discovery standards to § 1782. *See Bayer AG v. Betachem, Inc.*, 173 F.3d 188, 191 (3d Cir. 1999); *see also* Fed. R. Civ. P. 81. Yet under the Second Circuit’s rule, a private foreign party merely contemplating a German action obtains federal compulsory process, while a domestic litigant — confined to Rule 27 — cannot secure pre-suit discovery to develop a claim at all.

That asymmetry is not merely inequitable — it is a structural signal that the statute has been misread. As this Court recognized in *ZF Automotive*, where a reading of § 1782 produces a “notable mismatch” with

domestic procedural rules, it is strong evidence that the reading is wrong. 596 U.S. at 633. Here the mismatch is doubled. The discovery the Second Circuit approved is available neither under the Federal Rules just described nor under the very German law the parties chose: German civil procedure affords no pretrial discovery — no depositions, and no compelled production of an opponent’s documents — and requires each party to make its case from proof already in hand.²

When a statute is read to override a limit inherent in the foreign forum chosen by the parties, and read to override limits imposed by the Federal Rules and the common-law tradition informing the background against which Congress legislated what is now Section 1782, that convergence is powerful evidence that the reading is wrong. The mismatch here is therefore not merely stark but structural: the Second Circuit’s interpretation hands a private foreign would-be plaintiff a procedural weapon — backed by the full contempt authority of a federal court — that no domestic

² German civil procedure has no analogue to American pretrial discovery. A civil action is commenced by filing a statement of claim, *see Zivilprozessordnung* [ZPO] [Code of Civil Procedure], § 253 (Ger.), and under the principle of party presentation (*Beibringungsgrundsatz*) each side must plead and substantiate its case from evidence already in its own possession, *see* § 138 ZPO; there is no general procedure to depose an opponent or to compel production of an opponent’s documents, and the duty to substantiate forbids *Ausforschungsbeweis* — fishing expeditions for claims not made. *See generally* John H. Langbein, *The German Advantage in Civil Procedure*, 52 U. CHI. L. REV. 823 (1985); Peter L. Murray & Rolf Stürner, *German Civil Justice* (2004). The parties selected those German courts and German law to govern any dispute. App.6a.

party could wield and that the chosen German forum would not supply. Section 1782 should not be construed to confer a novel discovery power that has no analogue in the domestic procedural tradition and no basis in the statute’s text or animating purpose.

IV. *Atlantic Marine* Precludes Granting § 1782 Discovery Based on Private Litigation Interests in Derogation of the Bargained-For Procedures of the Foreign Forum

Even if § 1782’s statutory threshold could be satisfied by a private party’s foreign attorney declaring that a civil action will be filed in a foreign “conventional court” just as soon as the applicant obtains pre-suit document discovery and deposition testimony, the decision below would still warrant review because the district court applied ordinary *Intel* discretion without accounting for the fact that the parties’ German-law contract contains a bargained-for forum-selection clause. *Atlantic Marine* holds that “[t]he calculus changes” when a contract contains a valid forum-selection clause because that clause “represents the parties’ agreement as to the most proper forum.” *Atlantic Marine Constr. Co. v. U.S. Dist. Court for W. Dist. of Tex.*, 571 U.S. 49, 63 (2013). When parties agree to such a clause, they “waive the right to challenge the preselected forum as inconvenient or less convenient for themselves or their witnesses, or for their pursuit of the litigation.” *Id.* at 64. “As a consequence, a district court may consider arguments about public-interest factors only.” *Id.*

Petitioners separately preserved this alternative ground for reversal — that the parties’ German forum-selection clause required the district court to adjust

the ordinary *Intel* analysis under *Atlantic Marine*. App.6a-7a, App.28a-29a. The district court rejected that argument, and the Second Circuit affirmed, holding that the forum-selection clause was only “a factor” and “not dispositive.” App.6a-7a.

But the principles articulated by *Atlantic Marine* apply with special force in the § 1782 setting. Orthogen did not present a public-interest reason why a United States court should override the procedural consequences of the parties’ bargain that any disputes between them would be resolved in Germany’s courts. It offered only private litigation interests: discovery would help Orthogen investigate, plead, prove, or value its contemplated German law claims. But after *Atlantic Marine*, a party’s private interest in improving “the pursuit of the litigation,” *id.*, cannot justify disregarding the forum it selected. And where no German lawsuit has been filed, there is no public adjudicative interest to assist — no German court has requested aid, no German tribunal has a case before it, and no sovereign adjudicative process needs assistance.

Petitioners do not argue that § 1782 incorporates a foreign-discoverability requirement. The point is different: after *Atlantic Marine*, a party’s private desire to improve its litigation position is not a permissible reason to alter the procedural consequences of the forum it selected.

The point is not merely geographic. Parties routinely choose forums whose procedures differ from those available in a plenary federal civil action, including procedures with far more limited proof-gathering. That is not a bug; it is a feature of the bargained-for forum. Arbitration is the familiar example: this Court has described arbitration agreements as “a specialized

kind of forum-selection clause that posits not only the situs of suit but also the procedure to be used in resolving the dispute.” *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 653 (2022) (quoting *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 (1974)). In arbitration, for example, arbitral subpoena power is far more limited than in a federal action. *See Life Receivables Tr. v. Syndicate 102 at Lloyd’s London*, 549 F.3d 210, 216–18 (2d Cir. 2008) (“section 7 does not enable arbitrators to issue pre-hearing document subpoenas to entities not parties” to the arbitration).

So too here. Having selected German courts to adjudicate disputes arising under a German-law contract, Orthogen cannot invoke § 1782 based solely on the private advantage of obtaining discovery unavailable under the chosen forum’s procedures. The parties selected a forum with its own rules for pleading, proof, evidence gathering, and damages. That point is reinforced by the settled conflict-of-laws principle that procedure is governed by the law of the forum: “a judge will always apply his law to procedural questions,” and the “mode and manner of proof as well as the admissibility of evidence” ordinarily depend on the *lex fori*. *See* Erwin Spiro, *Forum Regit Processum (Procedure Is Governed by the Lex Fori)*, 18 INT’L & COMP. L.Q. 949, 949, 954–55 (1969). Those features are not defects to be corrected by Rule 45; they are part of the bargain. The Second Circuit’s contrary approach lets a party keep the foreign forum when it wants the forum-selection clause as a shield, but discard that forum’s proof-gathering limits when it wants Rule 45 as a sword. *Atlantic Marine* does not permit that result.

That principle is not new. Where “the source of the obligation” on which a claim depends is foreign law, the opposing party is “entitled to the benefit of whatever conditions and limitations” that law creates. *Cf. Davis v. Mills*, 194 U.S. 451, 454 (1904) (Holmes, J.). Orthogen cannot invoke German law and a German forum as the foundation for its contemplated claims while using § 1782 to strip Petitioners of the procedural limitations that come with that forum.

V. This Case Is a Clean Vehicle for Resolving Recurring and Important § 1782 Questions

The question presented is squarely and cleanly raised, and it is the basis of the judgment below: the Second Circuit expressly held that § 1782 authorizes “pre-suit discovery” for a merely “contemplated” private foreign civil action. App.4a-5a, App.6a-7a. The case is an excellent vehicle because the question is one of statutory construction: whether the text of Section 1782 supplies authority for a district court to authorize Rule 45 pre-suit discovery subpoenas for a (still) nonexistent private foreign civil action. Should the Court read § 1782 to reach pre-suit discovery to develop claims for private foreign civil actions, the forum-selection point supplies an alternative ground for reversal — whether the district court had to adjust the discretionary framework once the parties’ German-law contract selected German courts operating under their procedures to resolve any disputes between the parties.

The posture is particularly compelling because the statutory question and the alternative ground concerning the discretionary analysis prescribed by *Intel* reinforce one another without depending on one

another. If § 1782 does not reach Orthogen’s contemplated private civil action, the orders below must be reversed. If it does, the Court can still hold that *Atlantic Marine* required the district court to disregard Orthogen’s private litigation interests and demand public-interest reasons before using U.S. compulsory process to alter the proof-gathering consequences of the parties’ selected foreign forum. Either way, the decision below cannot stand.

The question is recurring and important, and it will not resolve itself. Certiorari does not turn on a conflict among the circuits: review is warranted “only for compelling reasons,” and the considerations Rule 10 enumerates are “neither controlling nor fully measuring the Court’s discretion.” Sup. Ct. R. 10. The compelling reason here is not that the courts of appeals are divided, but that those that have addressed the issue are united — wrongly, and without dissent. The order below is unpublished, but it applies the Second Circuit’s precedential *Certain Funds* standard, and no court of appeals of which Petitioners are aware has read § 1782 otherwise: each has treated *Intel*’s “reasonable contemplation” language as satisfied by a private party’s professed intent to litigate abroad, divorced from the holding that produced it. *See SPS Corp I v. General Motors Co.*, 110 F.4th 586, 591 (3d Cir. 2024) (holding the “for use” requirement satisfied by an unfiled but “reasonably contemplated” merits action in the Brazilian courts — on an allegation the court called “unproven” but said “portends future litigation” — while affirming the denial of discovery on the discretionary *Intel* factors); *Qatar Nat’l Bank v. Perles Law Firm, P.C.*, No. 25-7029, 2025 WL 2945746, at *3 (D.C. Cir. Oct. 17, 2025) (per curiam) (affirming the

grant of pre-suit § 1782 discovery for a contemplated, unfiled French-law civil action where the applicant had retained foreign counsel, vetted its claims, and committed to sue “immediately” upon obtaining the discovery needed to identify whom to sue; applying *Certain Funds*’ “more than just a twinkle in counsel’s eye” test); *Application of Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.*, 747 F.3d 1262, 1270–71 (11th Cir. 2014) (affirming a grant of § 1782 discovery for “anticipated” Ecuadorian proceedings held “within reasonable contemplation” on the strength of the applicant’s declaration that it “contemplates bringing a civil action” but “ha[d] not yet brought any action . . . because it [was] still waiting for the evidence it seeks pursuant to the instant discovery application”); *In re Venequip, S.A. v. Caterpillar Inc.*, 83 F.4th 1048, 1054–55 (7th Cir. 2023) (finding the “reasonable contemplation” element satisfied although the applicant had not filed the statement of claim initiating the Swiss proceeding, while affirming the denial of discovery on the *Intel* factors); App.5a (decision below). A reading on which the courts of appeals have converged will not be undone by further percolation. Left in place, it leaves U.S. residents “submerged by a multitude” of pre-suit subpoenas — an encroachment that “must be halted in limine,” and that only this Court can halt. *See Jones*, 298 U.S. at 24–25, 28.

The stakes are exceptional. Congress enacted § 1782 to serve comity — to let federal courts assist foreign and international governmental bodies. *ZF Automotive*, 596 U.S. at 631–32. The decision below turns the purpose of comity into a weapon for would-be private foreign plaintiffs against U.S. residents. It lets a private party abroad train the coercive machinery

of Rule 45 on a person in the United States — compelling documents and testimony before any tribunal has been seized of jurisdiction, and whether or not the applicant ever sues — to build a case it could not build by these means in the U.S., where no litigant may use compulsory process to investigate and frame an unfiled complaint. *See* Fed. R. Civ. P. 27. A statute written to extend assistance to foreign courts and magistrates thus arms private foreign litigants with discovery power over United States residents that no domestic litigant holds. If § 1782's text truly authorizes that, this Court should say so plainly — so that Congress, which wrote the statute to assist foreign tribunals and not to conscript the federal courts to act against United States residents on behalf of private foreign parties, may decide whether to amend it. Either way, only this Court can supply the answer.



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Edward D. Altabet

Edward D. Altabet, Esq.

Counsel of Record

BRACH EICHLER, LLC

5 Penn Plaza, 23rd Floor

New York, NY 10001

(212) 896-3974

ealtabet@bracheichler.com

Richard Bruce Rosenthal, Esq.

LAW OFFICE OF RICHARD BRUCE

ROSENTHAL, ESQ.

545 E. Jericho Turnpike, # 12

Huntington Station, NY 11746

(631) 629-8111

Counsel for Petitioners

June 29, 2026