

No.

In the Supreme Court of the United States

FS MEDICAL SUPPLIES, LLC, PETITIONER,

v.

TANNER PHARMA UK LIMITED, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The federal diversity-jurisdiction statute, 28 U.S.C. § 1332, grants district courts jurisdiction over civil actions with more than \$75,000 in controversy that are “between ... citizens of different States and in which citizens or subjects of a foreign state are additional parties.” 28 U.S.C. § 1332(a)(3).

Petitioner is a limited liability company with members who were citizens of Texas, California, and China. It brought suit against respondents, who were citizens of North Carolina and the United Kingdom. Thus, the jurisdictional lineup was:

Plaintiff		Tex. Cal. China
Defendant 1		U.K.
Defendant 2		N.C.
Defendant 3		N.C.
Defendant 4		N.C.

The Fourth Circuit held that because of petitioner’s Chinese member, “there isn’t a U.S. citizen on the plaintiff side. So we don’t have a suit between ‘citizens of different States.’” App. 10a (quoting 28 U.S.C. § 1332(a)(3)). The question presented is:

Whether 28 U.S.C. § 1332(a)(3) confers diversity jurisdiction over a civil action in which the sole plaintiff is an LLC with both state and foreign citizenship, the defendants include both state and foreign citizens, and the state citizenships on opposite sides are completely diverse.

PARTIES TO THE PROCEEDING

Petitioner FS Medical Supplies, LLC was Plaintiff-Appellant below.

Respondents TannerGAP, Inc., a corporation organized under the law of North Carolina; Tanner Pharma UK Limited, a limited company organized under the law of England and Wales; Raymond Fairbanks Bourne, a/k/a Banks Bourne; and Mary Everett Whitehurst Bourne, a/k/a Molly Bourne were Defendants-Appellees below.

Stephen J. Scalia was a defendant in the district court.

Zhejiang Orient Gene Biotech Co., Ltd.; Healgen Scientific Limited Liability Company; John Bly; and Apiro LLP appeared as non-parties on discovery matters in the district court.

RULE 29.6 STATEMENT

FS Medical Supplies, LLC is a limited liability company. It does not have a parent corporation and is not a publicly held corporation. No publicly held corporation or public entity owns 10% or more of the company, which has never issued stock.

RELATED PROCEEDINGS

United States District Court for the Western District of
North Carolina (W.D.N.C.):

*FS Medical Supplies, LLC v. TannerGAP, Inc., et
al.*, No. 21-cv-00501 (Oct. 1, 2025)

*FS Medical Supplies, LLC v. Tanner Pharma UK
Limited, et al.*, No. 23-cv-00598 (Oct. 1, 2025)

United States Court of Appeals for the Fourth Circuit
(4th Cir.):

*FS Medical Supplies, LLC v. Tanner Pharma UK
Limited*, No. 25-2199 (June 25, 2026)

FS Medical Supplies, LLC v. TannerGAP, Inc.,
No. 25-2200 (June 25, 2026)

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Ron DeCarlo et al., <i>Partnership Returns, Tax Year 2023</i> , IRS, Fall 2025	18, 19

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OPINIONS BELOW

The opinion of the court of appeals (App. 1a-14a) is reported at 179 F.4th 278. The opinions of the district court are unpublished but available at 2025 WL 2794502 (App. 15a-19a) and 2025 WL 2794503 (App. 20a-23a). The magistrate judge's memoranda and recommendations are unpublished but available at 2025 WL 2917111 (App. 24a-38a) and 2025 WL 2902128.

JURISDICTION

The judgment of the court of appeals was entered on June 25, 2026. App. 1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2 of the Constitution reads in part:

The judicial Power shall extend...to Controversies... between Citizens of different States ... and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Section 1332 of Title 28 of the United States Code reads in part:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

- (1) citizens of different States;
- (2) citizens of a State and citizens or subjects of a foreign state...;
- (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
- (4) a foreign state... as plaintiff and citizens of a State or of different States.

INTRODUCTION

This case concerns an important, recurring, and unsettled question of diversity jurisdiction that has produced an acknowledged circuit split. Section 1332(a)(3) grants district courts jurisdiction over civil actions “between ... citizens of different States” in which foreign citizens are “additional parties.” This case asks whether that grant applies when one side consists of a single LLC that is deemed a citizen both of a U.S. State and of a foreign country. The Fourth and Seventh Circuits now give opposite answers on materially identical facts.

Petitioner is an LLC. At the relevant time, its members were citizens of California, Texas, and China. It brought suit against respondents, who were citizens of North Carolina and the United Kingdom. Respondents conceded below that if petitioner’s individual *members* were suing there would be jurisdiction. But the Fourth Circuit held that the outcome is different because the members formed an unincorporated entity: The entity’s Chinese member means “there isn’t a U.S. citizen on the

plaintiff side. So we don't have a suit between 'citizens of different States.'" App. 10a (quoting 28 U.S.C. § 1332(a)(3)).

The Seventh Circuit reached the opposite conclusion in a case brought by an LLC with members from New Jersey and the United Kingdom against citizens of Delaware, New York, and the United Kingdom, holding that "the U.S. parties are diverse." *Tango Music LLC v. DeadQuick Music, Inc.*, 348 F.3d 244, 245 (7th Cir. 2003) (Posner, J.). The Seventh Circuit explained that the statute "describes this case exactly." *Ibid.* The court added that "we cannot think of a reason to depart in this instance from a literal reading" of the text and that applying the text as written furthers the purposes of diversity—"to neutralize any bias that a local court may have in favor of a local resident" and to promote "international harmony." *Id.* at 245-246.

The Fourth Circuit said that the Seventh Circuit's *Tango Music* decision "doesn't persuade us." App. 11a.

The Fourth Circuit's decision is also in conflict with Fifth Circuit law and in tension with Second Circuit law. The Fifth Circuit simply rejected the argument now adopted by the Fourth Circuit. *Leland v. De Havilland Aircraft Co. of Canada*, 987 F.2d 771, 1993 WL 67203 (5th Cir. 1993) (unpublished table decision). There, a defendant incorporated in Delaware and headquartered in Canada removed to federal court. The plaintiffs were citizens of Texas and Ethiopia. They argued that "because [the corporation's] principal place of business is in Canada, it cannot be held to be a citizen of a state for the purposes of § 1332(a)(3)." *Id.* at *2. Writing for the court, Judge Jones held that "[t]his counterintuitive proposition has no support in the case law." *Ibid.* And the Second Circuit upheld diversity in a case involving an LLC with a permanent resident member by looking to whether the court would have jurisdiction "if the case involved only an

unincorporated association’s permanent resident members but not the association itself.” *Windward Bora LLC v. Browne*, 110 F.4th 120, 129 (2d Cir. 2024).

The consequences of the Fourth Circuit’s holding are staggering. With the proliferation of unincorporated entities, cross-border investment, and international travel, this question has recurred with increasing frequency in the lower courts. Increasing numbers of businesses have both foreign and domestic citizenship—either because they are unincorporated entities with both foreign and domestic members or because they are corporations with their place of incorporation or principal place of business (but not both) abroad. In the Fourth Circuit, every single one of these entities is now ineligible for diversity jurisdiction, even if the amount in controversy is satisfied and the parties on the other side are not citizens of the same State as the entity.

Review is warranted now. Jurisdictional rules should be uniform, clear, and easy to apply. Yet materially identical cases now receive opposite treatment depending on the circuit. And the conflict is unlikely to resolve itself. Many such rulings take the form of remand orders that cannot be appealed; and plaintiffs dismissed at the outset often proceed in state court rather than pursue an appeal. This case presents a pure legal question on undisputed citizenship facts, fully briefed and squarely resolved in a published appellate decision. Only this Court can restore a uniform national rule faithful to Congress’s text.

The Fourth Circuit’s decision is wrong. Section 1332 permits diversity in civil actions “between ... citizens of different States and in which citizens or subjects of a foreign state are additional parties.” 28 U.S.C. §1332(a)(3). By 1948, when Congress enacted this provision, the first clause—“citizens of different States”—had taken on a settled meaning: “no defendant shall be a citizen of the same state with the plaintiff, but

otherwise there is no limitation upon such jurisdiction.” *Greeley v. Lowe*, 155 U.S. 58, 72 (1894). That requirement is satisfied here: petitioner’s state citizenships are Texas and California; respondents’ state citizenship is North Carolina. No State appears on both sides. The Fourth Circuit nevertheless effectively rewrote “citizens of different States” to mean “citizens *only* of different States.” Nothing in § 1332(a)(3) says that a party must be exclusively domestic before its state citizenship counts. By adding a new limitation—that an entity with members who are citizens of a foreign state and of a U.S. State “isn’t a U.S. citizen,” App. 10a—the Fourth Circuit departed from this settled meaning and undermined the purposes of diversity jurisdiction.

The statute’s history also supports jurisdiction. Before 1948, some courts had ruled that the presence of aliens *and* citizens on one side of a case destroyed diversity. Congress superseded that approach by adding paragraph (a)(3), which confers jurisdiction when citizens of different States are opposed and foreign citizens are additional parties. See *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828 (1989). The decision below turns that expansion upside down: it makes foreign citizenship a jurisdictional disqualification whenever domestic and foreign citizenships are attributed to the same entity.

Finally, the decision below is in substantial tension with this Court’s precedents. This Court has repeatedly held that “diversity jurisdiction in a suit by or against [an unincorporated] entity depends on the citizenship of *all* its members.” *Americold Realty Tr. v. Conagra Foods, Inc.*, 577 U.S. 378, 381 (2016) (emphasis added) (cleaned up). That rule is irreconcilable with the Fourth Circuit’s conclusion that an unincorporated plaintiff with members domiciled in Texas and California “isn’t a U.S. citizen.” App. 10a.

The petition for a writ of certiorari should be granted.

STATEMENT

A. Legal Background

1. The Framers included diversity and alienage jurisdiction in Article III to ensure the social and economic success of the new republic. As this Court has explained, the “aim and purpose” of diversity jurisdiction “is to make the people think and feel, though residing in different States of the Union, that their relations to each other were protected by the strictest justice, administered in courts independent of all local control or connection with the subject-matter of the controversy between the parties to a suit.” *Dodge v. Woolsey*, 59 U.S. (18 How.) 331, 354 (1856). Foreign policy undergirded the alienage jurisdiction. As Alexander Hamilton explained in *The Federalist*, mistreatment of a foreign citizen at the hands of a state court is “among the just causes of war,” so “the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned,” to ensure “the security of the public tranquility.” *The Federalist* No. 80. At the Pennsylvania Convention, James Wilson articulated the same rationale: “If the United States are answerable for the injury” to a foreign merchant, “ought they not to possess the means of compelling the faulty state to repair it?” 2 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 493 (Jonathan Elliot ed., 2d ed. 1836); see *JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88, 95-97 (2002).

2. The Judiciary Act of 1789 granted original jurisdiction in civil cases where “the suit is between a citizen of the State where the suit is brought, and a citizen of another State” or where “an alien is a party.” Ch. 20, § 11, 1 Stat. 73, 78. This Court construed the 1789 text to require that in cases with joint plaintiffs or joint

defendants, “each of the plaintiffs must be capable of suing each of the defendants in the courts of the United States.” *E.g., Louisville, C & C. R. Co. v. Letson*, 43 U.S. (2 How.) 497, 555 (1844); see *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, 267 (1806).

In 1875, Congress amended the jurisdictional grant to track Article III, permitting jurisdiction in “a controversy between citizens of different States ... or a controversy between citizens of a State and foreign states, citizens, or subjects.” Jurisdiction and Removal Act of 1875, ch. 137, § 1, 18 Stat. 470, 470. This Court continued to require that “no defendant shall be a citizen of the same state with the plaintiff,” but said that “otherwise there is no limitation upon such jurisdiction.” *Greeley*, 155 U.S. at 72.

3. Lower courts divided over whether Congress authorized diversity jurisdiction in cases in which a citizen of a State was aligned against citizens of diverse States together with citizens of foreign states. Some courts upheld jurisdiction in such cases because “[t]he act does not declare that the controversy shall be one wholly between citizens of different states.” *Roberts v. Pac. & A. Ry. & Navigation Co.*, 121 F. 785, 788 (9th Cir. 1903). Others disagreed, saying that “a case where citizens of a state are plaintiffs and citizens of a different state and aliens are defendants ... is a *casus omissus* in the statute.” See *Ryan v. Ohmer*, 233 F. 165, 166 (S.D.N.Y. 1916) (collecting cases).

The 1948 revision to the Judicial Code superseded the decisions denying jurisdiction. See James W. Moore, *Moore’s Judicial Code: Commentary* 154 (1949). Congress recodified the existing diversity and alienage provisions in section 1332 as paragraphs (a)(1) and (a)(2) and added paragraph (a)(3), conferring jurisdiction over disputes between “citizens of different States and in which citizens or subjects of a foreign state are additional

parties.” Act of June 25, 1948, ch. 646, § 1, 62 Stat. 869, 930 (1948). By adding paragraph (a)(3), Congress thus “confer[red] jurisdiction in the District Court when a citizen of one State sues both aliens and citizens of a State (or States) different from the plaintiff’s.” *Newman-Green, Inc.*, 490 U.S. at 828.

4. A juridical entity, like an individual, may be deemed to have more than one citizenship under the diversity statute. Today, as has been the case since the nineteenth century, “diversity jurisdiction in a suit by or against [an unincorporated] entity depends on the citizenship of all its members.” *Americold*, 577 U.S. at 381 (cleaned up).

This case concerns the treatment of such persons under paragraph (a)(3).

B. Factual And Procedural Background

1. Petitioner FS Medical Supplies, LLC (FS Medical) executed a non-circumvention agreement with respondents TannerGAP, Inc., and Tanner Pharma UK Limited providing that they would not conduct business with manufacturers with which petitioner had a relationship. App.46a-47a; J.A. 143. The parties then entered a distribution agreement under which respondents promised to buy specific products from petitioner, including covid tests; the contract provided that the parties would split the gross profit from those products’ sales. App. 51a-52a.

After petitioner secured about 5,000 test kits for respondents to provide to the government of the United Kingdom, App.48a-51a, respondents secretly began ordering products directly from petitioner’s supplier, a Chinese manufacturer, App.56a-59a. Eventually, respondents disclosed some of this activity. App.59a. Petitioner alleges that respondents violated their non-circumvention promises and vastly underreported

petitioner's share of gross profit from the relevant sales. App. 60a. Respondents eventually sold more than \$1 billion worth of product as a result of this circumvention. App. 61a.

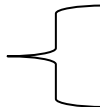
2. In 2021, petitioner sued two of the respondents in state court in California for breach of contract. App. 3a-4a. Respondents removed that case to federal court and successfully moved to dismiss for lack of personal jurisdiction. App. 4a. Petitioner then refiled its breach-of-contract suit in the United States District Court for the Western District of North Carolina, App. 39a, seeking more than \$200 million in damages, App. 84a. Respondents have counterclaimed for more than \$6 million and allege that petitioner misled them into signing the contract at issue. D. Ct. Doc. 228, ¶¶ 60-68, No. 21-cv-501 (Nov. 21, 2024).

The complaint invoked diversity jurisdiction, alleging that petitioner's members were citizens of Texas and California and that respondents were citizens of North Carolina and the United Kingdom. App. 41a-42a.¹

In 2023, petitioner filed a second suit against one of the corporate respondents and its owners, respondents Raymond and Mary Bourne, for fraudulent conveyance, after learning that the Bournes had stripped approximately \$200 million of assets from the entity, leaving it unable to pay the breach-of-contract damages. App. 86a-87a. Petitioner again asserted diversity jurisdiction, alleging that respondents were North Carolina and U.K. citizens. App. 87a-88a. The cases were consolidated and proceeded through fact discovery. App. 27a.

¹ The parties agree that Tanner Pharma UK is a citizen of the U.K. but dispute whether it is also a citizen of North Carolina. In the court of appeals, the parties agreed that this dispute is not germane to the question presented here.

In early 2025, shortly after petitioner’s counsel learned that one of petitioner’s members was actually a citizen of China and a lawful permanent resident domiciled in California, petitioner filed an amended citizenship disclosure, App.22a, 101a-103a. The parties’ citizenships at the time the complaints were filed were thus:

Plaintiff	 Tex. Cal. China
Defendant 1	U.K.
Defendant 2	N.C.
Defendant 3	N.C.
Defendant 4	N.C.

Respondents moved to dismiss for lack of subject matter jurisdiction, asserting that diversity jurisdiction did not exist because there were “aliens on both sides of the dispute.” D. Ct. Doc. 295, at 1, 4, No. 21-cv-501 (Feb. 10, 2025).

3. The magistrate judge recommended dismissal. App.37a. The judge rejected defendants’ theory, acknowledging that courts applying paragraph (a)(3) “have found that ‘federal diversity jurisdiction is not defeated where (1) there is a legitimate controversy between diverse citizens and aliens are additional parties; and (2) there is complete diversity as to the citizens.’” App. 30a (quoting *Transure, Inc. v. Marsh & McLennan, Inc.*, 766 F.2d 1297, 1298 (9th Cir. 1985)).

The judge also recognized a split of authority over the application of paragraph (a)(3) in the circumstances presented here. App. 31a-35a. “Some courts,” he said, had held that subject matter jurisdiction exists where an

LLC's U.S.-citizen members differ in citizenship from the U.S. citizens on the other side of the dispute, because the "U.S. parties are diverse" in that scenario. App. 31a (emphasis omitted) (quoting *Tango Music*, 348 F.3d at 245). "Other courts," he said, "have rejected this approach." App. 32a. The judge explained that these courts had concluded that where an entity was "a citizen of at least one foreign state," the foreign citizenship would "destroy[] diversity." App. 32a-33a (quoting *FPACP4 Lex, LLC v. Stantec, Inc.*, 586 F. Supp. 3d 824, 826-827 (N.D. Ill. 2022)).

The judge chose one side of the doctrinal split, recommending dismissal. App. 34a-37a. The district court adopted the recommendation without change. App. 18a.

4. The Fourth Circuit affirmed. App. 14a. The court said that its analysis could "begin and end" with the first clause of paragraph (a)(3), and in particular with whether there were "citizens of different States on both sides of the case caption." App. 8a. The court said it "must 'test' diversity for each LLC member to determine whether there is subject matter jurisdiction." *Ibid.* (discussing *General Technology Applications, Inc. v. Exro Limitada*, 388 F.3d 114 (4th Cir. 2004), and *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567 (2004)). The court applied this test by first focusing exclusively on petitioner's "foreign citizenship" and then focusing exclusively on its "domestic citizenship." App. 10a-11a.

Applying this framework, the court held that petitioner was not a citizen of a State. App. 11a. The court reasoned that "when we test [petitioner] FS Medical's Chinese citizenship, there isn't a U.S. citizen on the plaintiff side. So we don't have a suit between 'citizens of different States.'" App. 10a (quoting 28 U.S.C. § 1332(a)(3)).

The court rejected petitioner's argument that its Texas and California members "count[]" for deciding if it

qualifies as a citizen of a State. App. 10a. “That analysis may be appropriate for dual-citizen individuals, for whom we can ignore foreign citizenship,” the court explained, “[b]ut it doesn’t work for an LLC.” *Ibid.* (emphasis omitted).

The court further held that no “other subsection of Section 1332(a) support[ed] jurisdiction.” App. 12a n.7. Paragraph (a)(1) did not apply “for the same reason” as (a)(3): “the LLC’s *foreign* member.” *Ibid.* And the court held that “[t]he same holds true for (a)(2), involving disputes between ‘citizens of a State and citizens or subjects of a foreign state.’” *Ibid.*

The Fourth Circuit considered and rejected the Seventh Circuit’s contrary decision in *Tango Music*, 348 F.3d at 245, which, it said, “doesn’t persuade us.” App. 11a. The court asserted that *Tango Music* did not “directly answer” whether “jurisdiction is destroyed when the sole plaintiff is a dual-citizen LLC,” while recognizing that *Tango Music* “found (a)(3) diversity jurisdiction when a dual-citizen LLC (New Jersey and United Kingdom) sued a domestic corporation (Delaware and New York) and a United Kingdom individual.” *Ibid.* The court also considered the Seventh Circuit’s decision “inconsistent with” this Court’s decision in *Grupo Dataflux*. *Ibid.*

Finally, the court rejected the assertion that dismissing the only alien on respondents’ side of the case could restore jurisdiction. App. 12a. According to the court, “the jurisdictional defect stems from [petitioner] FS Medical’s involvement in this case, not [respondent] Tanner Pharma UK’s.” *Ibid.*

REASONS FOR GRANTING THE PETITION

The decision below created a square, acknowledged circuit split over a recurring and important question of federal jurisdiction: Whether an entity deemed to be a

citizen of both a U.S. State and a foreign state can invoke diversity jurisdiction when its state citizenships are completely diverse from the state citizenships of the opposing parties. In rejecting diversity jurisdiction here, the Fourth Circuit broke with the Seventh and Fifth Circuits and created tension with the Second Circuit's reasoning.

The question presented is important and recurring. It affects LLCs and other unincorporated entities with both domestic and foreign members, as well as corporations deemed citizens of both a State and a foreign state. In addition to four courts of appeals, at least ten district-court decisions since just 2021 have divided over the question. The affected class of litigants is substantial and growing as unincorporated business forms and cross-border ownership become increasingly common. And the issue is resistant to appellate review because plaintiffs dismissed on a jurisdictional ruling are more likely to move to state court, and defendants who remove unsuccessfully have no appellate recourse. The nationwide split will persist absent this Court's intervention.

This case presents an ideal vehicle. The parties' relevant citizenships are undisputed; the question is purely legal; it was fully briefed and resolved by the magistrate judge, the district court, and the court of appeals; and it determined the disposition of both actions. No factual dispute or antecedent issue would impede review.

Finally, the Fourth Circuit's decision is incorrect. The statute's text, history, structure, and purposes all support jurisdiction. In concluding otherwise, the Fourth Circuit effectively rewrote "citizens of different States" to mean "citizens *only* of different States," nullifying an unincorporated entity's U.S. citizenships and turning § 1332(a)(3)'s express accommodation of foreign parties

into a jurisdictional bar. It also misreads *Grupo Dataflux* and this Court's other precedents governing the citizenship of unincorporated entities.

I. THERE IS AN ACKNOWLEDGED CIRCUIT SPLIT

The Fourth Circuit expressly broke with the Seventh Circuit, which confronted the exact same jurisdictional lineup presented in this case. There, the plaintiff was a dual-citizen LLC like petitioner here; it sued a U.S. corporation and two individuals, one of whom was a foreign citizen. *Tango Music LLC v. DeadQuick Music, Inc.*, 348 F.3d 244, 245 (7th Cir. 2003).

Thus, the jurisdictional lineup in *Tango Music* was materially indistinguishable from the lineup in this case:

<i>Tango Music</i>		<i>FS Medical</i>	
Plf.	{ N.J. U.K.	Plf.	{ Tex. Cal. China
Def. 1	U.K.	Def. 1	U.K.
Def. 2	{ Del. N.Y.	Def. 2	N.C.
Def. 3	Va. or U.K.	Def. 3	N.C.
		Def. 4	N.C.

In *Tango Music*, the court appears to have raised the jurisdictional issue *sua sponte*. Writing for the court, Judge Posner recited the jurisdictional issue, concluding easily that “the U.S. parties are diverse,” but questioning whether having “U.K. citizens on both sides of the case . . . destroy[ed] diversity jurisdiction.” 348 F.3d at 245. The court began by saying paragraph (a)(3) “describes this case exactly.” *Ibid*. It also explained that applying the statute as written furthered the purposes of diversity jurisdiction: protecting against the fear of “any bias that

a local court may have in favor of a local resident” and “promoting international harmony...by giving foreigners access to the national court system, where they are less likely to encounter provincial prejudices when litigating against U.S. citizens....” *Id.* at 246 (citation omitted).

The Fourth Circuit recognized that its decision conflicted with the Seventh Circuit. *Tango Music*, it wrote, “doesn’t persuade us.” App. 11a. According to the Fourth Circuit, *Tango Music* is “inconsistent with” this Court’s decision in *Grupo Dataflux* on the theory that *Grupo Dataflux* implicitly required “testing” of petitioner’s citizenship by focusing exclusively on one member at a time. App. 8a, 11a. The Fourth Circuit also said that the Seventh Circuit “didn’t directly answer the question before us,” App. 11a, but that is also incorrect. As the Fourth Circuit acknowledged in its own retelling of *Tango Music*, that court “found (a)(3) diversity jurisdiction when a dual-citizen LLC (New Jersey and United Kingdom) sued a domestic corporation (Delaware and New York) and a United Kingdom individual.” *Ibid.* Or, as the Seventh Circuit put it more directly, “the U.S. parties are diverse.” 348 F.3d at 245. (As here, there was only one party on the plaintiff’s side in *Tango Music*.)

The Fourth Circuit’s decision is also in conflict with Fifth Circuit law. In *Leland v. De Havilland Aircraft Co. of Canada*, 987 F.2d 771, 1993 WL 67203 (5th Cir. 1993), individual plaintiffs from Texas and Ethiopia sued Boeing of Canada, which was incorporated in Delaware and headquartered in Canada. *Id.* at *2. The court held that paragraph (a)(3) applied because “there is complete diversity between United States citizens involved in the action.” *Ibid.* The court specifically rejected the assertion that “because [the corporation’s] principal place of business is in Canada, it cannot be held to be a citizen of a state for the purposes of § 1332(a)(3).” *Ibid.* Writing for the court, Judge Jones explained that “[t]his counterintuitive

proposition has no support in the case law....” *Ibid.* The court also reasoned that upholding jurisdiction for companies that operate internationally would “encourage[] world-wide trade.” *Ibid.*

The decision below did not acknowledge *Leland*, perhaps thinking that its unpublished status diminished its precedential force. But *Leland* is precedent under Fifth Circuit law. 5th Cir. R. 47.5.3.

The Fourth Circuit’s decision is also in tension with a recent Second Circuit decision, which reasoned that an unincorporated entity’s access to federal court should mirror that of its members. *Windward Bora LLC v. Browne*, 110 F.4th 120, 129 (2d Cir. 2024). The Second Circuit explained, “if there would be no jurisdiction if the case involved only an unincorporated association’s permanent resident members but not the association itself, there can be no jurisdiction in the case involving the unincorporated association.” *Ibid.* There, the Second Circuit upheld jurisdiction because the LLC’s member could have sued the defendants. *Ibid.* Here, the Fourth Circuit reasoned that *even though* there *would be* jurisdiction if the case involved only the entity’s members, there was no jurisdiction in a case involving the entity because the U.S.-citizen members were canceled out by the foreign member.

II. THE QUESTION PRESENTED IS IMPORTANT AND RECURRING

The decision below has immense consequences for an important issue of federal jurisdiction affecting a large group of litigants.

A. Providing A Federal Forum For Interstate And International Disputes Serves Important National Interests

Diversity and alienage jurisdiction serve important national purposes. This Court has repeatedly explained

that “the purpose of the diversity requirement ... is to provide a federal forum for important disputes where state courts might favor, or be perceived as favoring, home-state litigants.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553-554 (2005). Citing the presence of a foreign member in an unincorporated entity as a reason to *deny* federal jurisdiction would be contrary to that purpose, exposing such litigants to the “penchant of the state courts to disrupt international relations and discourage foreign investment[, which] led directly to the alienage jurisdiction provided by Article III of the Constitution.” *JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88, 94-95 (2002).

Congress decided to grant diversity and alienage jurisdiction to the district courts, and the similarity of phrasing in the statute and in Article III “bespeaks a shared purpose.” *Id.* at 96.

The rule below undermines that purpose by denying a federal forum to an entire category of litigants in exactly the circumstance the diversity grant was designed to reach: an out-of-state litigant suing powerful local citizens. Ironically, it does so by treating foreign citizenship—the quintessential ground for *fear* of local bias and international disharmony—as a reason to *withdraw* federal jurisdiction.

The fact that the circuit split concerns subject-matter jurisdiction heightens the need for the Court’s immediate review. “Clarity is to be desired in any statute, but in matters of jurisdiction it is especially important.” *United States v. Sisson*, 399 U.S. 267, 307 (1970). Straight-forward, uniform “jurisdictional rules ... promote greater predictability,” which “is valuable to corporations making business and investment decisions,” as well as to “plaintiffs deciding whether to file suit in a state or federal court.” *Hertz Corp. v. Friend*, 559 U.S. 77, 94-95 (2010). Confusion about federal versus state court jurisdiction

“complicate[s]” cases, “eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims,” thereby “diminish[ing] the likelihood that results and settlements will reflect a claim’s legal and factual merits.” *Ibid.*

B. This Issue Affects A Large And Growing Category Of Litigants

The decision below affects a large number of litigants. Begin with unincorporated entities, which, for diversity purposes, are deemed to take on the citizenship of all their members. See *Americold Realty Tr. v. Conagra Foods, Inc.*, 577 U.S. 378, 381 (2016); *Carden v. Arkoma Assocs.*, 494 U.S. 185, 195-196 (1990). LLCs “have quickly become the fastest growing form of business organization,” and their formations outstrip corporations by a two-to-one margin. Peter Molk, *Protecting LLC Owners While Preserving LLC Flexibility*, 51 U.C. Davis L. Rev. 2129, 2131 (2018) (citing Rodney D. Chrisman, *LLCs Are the New King of the Hill*, 15 Fordham J. Corp. & Fin. L. 459, 460 (2009)).

The Rules Advisory Committee observed in 2020 that “[t]he great shift of many business enterprises to the LLC form means that the diversity question arises in an increasing number of actions filed in, or removed to, federal court.” Advisory Comm. on Civ. Rules, 116th Cong., Rep. to the Standing Comm. 6 (Dec. 9, 2020). In recognition of this rapidly growing class of litigant, Rule 7.1 was revised in 2022 to require each party to disclose “every individual or entity whose citizenship is attributed to that party” at the time the case is filed or removed. Fed. R. Civ. P. 7.1(a)(2).

According to Internal Revenue Service data, there were more than 4.5 million LLCs and other unincorporated business entities in 2023, “surpassing all other entity types for more than two decades.” Ron DeCarlo et al., *Partnership Returns, Tax Year 2023*, IRS, Fall 2025

at 2, 3 Fig. B, <https://perma.cc/HNC9-FE3A>. There were 30.2 million partners across all entities the IRS classifies as “partnerships”—including LLCs. *Ibid.*

Many of these business organizations include foreign members. In 2022, more than 136,000 partnerships (including LLCs) filed tax forms declaring foreign recipients of U.S. partnership income. IRS, *Foreign Recipients of U.S.-Source Partnership Income*, Table 1 (2022), <https://perma.cc/K3LM-3PD4>. Those partners received nearly \$25 billion in pre-tax income. *Ibid.* About 17 percent of U.S. partnership income flowed to foreign stakeholders from 2011-2019. Michael Love, *Where in the World Does Partnership Income Go? Evidence of a Growing Use of Tax Havens*, 79 Nat’l Tax J. 7, 8 (2026).

The Fourth Circuit’s ruling puts dual-citizen corporations out of federal court, too. Entities incorporated in one country and maintaining a principal place of business in another country are increasingly common. For example, the proportion of “Foreign Private Issuers” of securities that are incorporated in one jurisdiction but headquartered in another rose from 7 percent in 2003 to 48 percent in 2023. Evan Avila and Mattias Nilsson, *Trends in the Foreign Private Issuer Population 2003-2023: A Descriptive Analysis of Issuers Filing Annual Reports on Form 20-F*, SEC Div. of Econ. and Risk Analysis 1, 10 Fig. 2 (Dec. 2024, rev. May 2025), https://www.sec.gov/files/dera_wp_fpi-trends-2412.pdf.

C. The Question Presented Is Recurring

Four courts of appeals have already weighed in directly or indirectly. Since 2021, nearly a dozen district courts have also addressed this question. Some have held that an entity with at least one “member who is a citizen of a state should satisfy § 1332(a)(3) even if another member is a citizen of a foreign country.” *Hil-Tech, LLC v. Shree Mahalaxmi Indus.*, No. 4:22-cv-02310, 2023 WL 4602738, at *4 (S.D. Tex. July 3, 2023), *report and*

recommendation adopted, 2023 WL 4602691 (S.D. Tex. July 18, 2023).² Others have held the opposite, finding no diversity jurisdiction “where there is a limited partnership with dual United States and foreign citizenship on one side of the action and parties with U.S. citizenship on the other side.” *Pattern Energy Grp. LP v. Perillo*, No. 1:25-cv-785, 2025 WL 1112848, at *3 (S.D.N.Y. Apr. 15, 2025).³

III. THE COURT SHOULD ACT NOW

This Court should act in this case. Further percolation will not resolve the split, and this case presents an ideal vehicle for answering this important question.

A. Further Percolation Will Not Resolve The Split

Despite the frequency with which the question arises, appellate guidance is rare. See, e.g., *Auctus Fund, LLC v. Drone Guarder, Inc.*, 588 F. Supp. 3d 177, 184 (D. Mass. 2022) (“It appears that neither the Supreme Court nor the First Circuit ... has dealt with this party configuration.”); *HT Redmond LLC v. HK Heycha Ltd.*, No. 2:25-cv-2572, 2026 WL 796805, at *2 (W.D. Wash. Mar. 23, 2026) (“[t]he

² Accord *Auctus Fund, LLC v. Drone Guarder, Inc.*, 588 F. Supp. 3d 177, 185 (D. Mass. 2022); *Digit. Media Sols., LLC v. Zeetogroup, LLC*, No. 3:22-cv-1184, 2024 WL 1268164, at *3 (S.D. Cal. Mar. 25, 2024); *Bendit v. Canva, Inc.*, No. 23-cv-473, 2023 WL 5391413, at *2-3 (S.D.N.Y. Aug. 22, 2023); *Starr Indem. & Liab. Co. v. Signature Flight Support Corp.*, No. 3:22-cv-179, 2022 WL 17400956, at *4-5 (D. Nev. Dec. 1, 2022).

³ Accord *HT Redmond LLC v. HK Heycha Ltd.*, No. 2:25-cv-2572, 2026 WL 796805, at *2 (W.D. Wash. Mar. 23, 2026); *Phoenix Trading FZCO v. Dennis Corp.*, No. 4:22-cv-02355, 2022 WL 18674462, at *2 (D.S.C. Aug. 29, 2022); *ImagineX Consulting, L.P. v. Reprivata, L.L.C.*, No. 1:20-cv-03045, 2021 WL 520107, at *2 (D. Colo. Feb. 11, 2021); *New York Metro. Reg'l Ctr., L.P. II v. Mammoet USA Holdings, Inc.*, 552 F. Supp. 3d 451, 456-458 (S.D.N.Y. 2021).

Ninth Circuit Court of Appeals has not provided definitive guidance or authority” regarding this issue).

Such guidance is rare because the issue is structurally resistant to review. Diversity issues usually arise at the outset of litigation, when appellate decisions are least likely to follow. A plaintiff confronted with jurisdictional uncertainty will avoid the time, expense, and risk of litigating the issue in federal court or of appealing an adverse ruling. A defendant who removes unsuccessfully simply has no appellate recourse. “An order remanding a case generally ‘is not reviewable on appeal or otherwise.’” *Enbridge Energy, LP v. Nessel ex rel. Michigan*, 146 S. Ct. 1074, 1080 (2026) (quoting 28 U.S.C. § 1447(d)). Indeed, one such unreviewable remand order was entered by a district court in the Seventh Circuit itself. See *FPACP₄ Lex, LLC*, 586 F. Supp. 3d at 826.

Thus, when diversity issues reach this Court, it is usually in the rare instance in which a jurisdictional issue is discovered after substantial investment has already been made in resolving the merits. *E.g.*, *Americold*, 577 U.S. at 380; *Wachovia Bank, NA v. Schmidt*, 546 U.S. 303, 308 (2006); *Exxon Mobil*, 545 U.S. at 550; *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 86-87 (2005); *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567 (2004); *JPMorgan Chase Bank*, 536 U.S. at 91.

Moreover, “[t]his Court has recently and repeatedly granted certiorari in cases arising from 1-1 or 2-1 circuit conflicts.” Pet. 19, *United States Postal Service v. Konan*, No. 24-351 (Sept. 27, 2024).⁴

⁴ Just last term, this Court resolved disputes arising from 1-1 and 2-1 splits in the following cases: *M&K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, No. 23-1209 (cert. granted June 30, 2025) (1-1); *Galette v. New Jersey Transit Corp.*, No. 24-1021 (cert. granted July 3, 2025) (1-1); *Sripetch v. SEC*, No. 25-466 (cert. granted Jan. 9, 2026) (2-1); *First Choice Women’s*

B. This Case Is An Ideal Vehicle

This case is an ideal vehicle to resolve the question presented. The jurisdictional issue was fully briefed and squarely resolved at every level below. The factual record is unequivocal. And the legal question resolved the action, leading to a final judgment. As in other diversity cases this Court has addressed, the parties invested substantial resources in the litigation, which should not be discarded on jurisdictional grounds before the merits are ever reached. See pp. 9-11, *supra*.

IV. THE DECISION BELOW IS INCORRECT

Paragraph (a)(3) of 28 U.S.C. § 1332 grants jurisdiction in civil actions between “citizens of different States and in which citizens or subjects of a foreign state are additional parties.” The Fourth Circuit said that an entity deemed to be a citizen of Texas, California, and China “isn’t a U.S. citizen” within the meaning of that paragraph. App. 10a. That is incorrect.

A. Section 1332(a)(3) Supports Jurisdiction Here

Diversity is not destroyed by a foreign member of an unincorporated entity when there is complete diversity between the entity’s members who are citizens of U.S. States and the U.S. citizens aligned against the entity.

By 1948, when Congress enacted paragraph (a)(3), the language it used—“citizens of different States”—had been in the jurisdictional statute for almost 75 years. See Jurisdiction and Removal Act of 1875, ch. 137, § 1, 18 Stat. 470, 470. This Court had interpreted that phrase to mean “that no defendant shall be a citizen of the same state with the plaintiff, but otherwise there is no limitation upon such jurisdiction.” *Greeley v. Lowe*, 155 U.S. 58, 72 (1894).

Resource Centers, Inc. v. Platkin, No. 24-781 (cert. granted June 16, 2025) (2-1); *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, No. 24-345 (cert. granted June 30, 2025) (2-1).

That construction had been consistently applied during the decades leading up to enactment. See *City of Indianapolis v. Chase Nat'l Bank of City of N.Y.*, 314 U.S. 63, 69 (1941); *Camp v. Gress*, 250 U.S. 308, 311 (1919); *Sweeney v. Carter Oil Co.*, 199 U.S. 252, 259 (1905).

When, as here, Congress “borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word.” *United States v. Hansen*, 599 U.S. 762, 774 (2023) (quoting *Morissette v. United States*, 342 U.S. 246, 263 (1952)). There was no suggestion in the 140 years of practice predating the 1948 enactment of paragraph (a)(3) that the statutory phrase “citizens of different states” should be read in the manner the Fourth Circuit adopted, in which all an entity’s citizenships must be domestic for the entity to qualify as a “U.S. citizen.”

The statute’s historical context and structure support jurisdiction here. The 1948 revision unequivocally expanded diversity jurisdiction by permitting aliens to appear on both sides of a suit without defeating jurisdiction, provided diverse state citizens anchored both sides, as the courts of appeals have unanimously held.⁵ The Fourth Circuit held that an unincorporated entity with members who are citizens of U.S. States and of foreign states is deemed to be a citizen *only* of a *foreign* state for purposes of the first clause of paragraph (a)(3). Yet Congress has specifically and repeatedly amended section 1332 to provide that different kinds of parties are

⁵ *U.S. Motors v. Gen. Motors Eur.*, 551 F.3d 420, 423 n.5 (6th Cir. 2008); *Dresser Indus., Inc. v. Underwriters at Lloyd’s of London*, 106 F.3d 494, 499 & n.2 (3d Cir. 1997); *Tango Music*, 348 F.3d at 245-246; *Iraola & CIA, S.A. v. Kimberly-Clark Corp.*, 232 F.3d 854, 860-861 (11th Cir. 2000); *Transure, Inc. v. Marsh & McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985); *Goar v. Compania Peruana de Vapores*, 688 F.2d 417, 420 n.6 (5th Cir. 1982).

“deemed to be” citizens of specified States. It did so in 1958,⁶ in 1964,⁷ in 1988,⁸ and in 2005.⁹ In 2011, it amended section 1332 to provide an exception to jurisdiction in specified cases involving aliens.¹⁰ In a statute with numerous express deemer clauses and exceptions, the courts should not imply additional deemer clauses or exceptions. See *United States v. Smith*, 499 U.S. 160, 167 (1991); *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-617 (1980).

As discussed above, disqualifying an entity with both State and foreign members from U.S. citizenship would be manifestly contrary to the statutory purpose, which recognizes the value of providing a federal forum in such instances. See pp. 6-8, *supra*.

It is also contrary to this Court’s precedents. As first articulated by this Court, the complete diversity rule was that “each of the plaintiffs must be capable of suing each of the defendants in the courts of the United States.” *Commercial & R.R. Bank of Vicksburg v. Slocumb*, 39 U.S. (14 Pet.) 60, 64 (1840) (citing *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, 267 (1806)); see *Letson*, 43 U.S. (2 How.) at 554-555 (same); *Hooe v. Jamieson*, 166 U.S. 395, 397 (1897) (same).

When it came to juridical entities, this rule cashed out by allowing suits in the entity’s name where the *members* could have brought suit: “where the members ... are aliens, or citizens of a different state from the opposite

⁶ Pub. L. No. 85-554, 72 Stat. 415 (codified as amended in § 1332(c)(1)).

⁷ Pub. L. No. 88-439, 78 Stat. 445 (codified as amended in § 1332(c)(1)(A)).

⁸ Pub. L. No. 100-702, § 202, 102 Stat. 4646 (codified as amended in § 1332(c)(2)).

⁹ Pub. L. No. 109-2, § 4, 119 Stat. 11 (codified in § 1332(d)(10)).

¹⁰ Pub. L. No. 112-63, § 101, 125 Stat. 758 (codified in § 1332(a)(2)).

party,” they “come within the spirit and terms” of the jurisdictional grant. *Bank of United States v. Deveaux*, 9 U.S. (5 Cranch) 61, 87-88, 91 (1809) (Marshall, C.J.), *overruled on other grounds*, *Letson*, 43 U.S. (2 How.) at 559.

This method of determining citizenship persists for unincorporated entities. “[U]nincorporated associations remain mere collections of individuals,” and “they are the parties whose citizenship determines the diversity jurisdiction of a federal court.” *Navarro Sav. Ass’n v. Lee*, 446 U.S. 458, 461 (1980). Thus, “diversity jurisdiction in a suit by or against [an unincorporated] entity depends on the citizenship of *all* its members.” *Americold*, 577 U.S. at 381 (emphasis added) (cleaned up).

These precedents do not countenance a rule that requires treating an entity that includes members who are citizens of Texas and California as if it were not a citizen of Texas and California.

B. The Fourth Circuit’s Reasoning Is Mistaken

The Fourth Circuit focused on a footnote in this Court’s decision in *Grupo Dataflux* emphasizing that a “limited partnership [is] an ‘entity,’ rather than an ‘aggregation [composed of its members],’ for purposes of diversity jurisdiction,” so that the withdrawal of a member does not equate to the withdrawal of a *party*. 541 U.S. at 579 n.8 (citation omitted).

The lower court overread that footnote. *Grupo*—a case that nowhere considers paragraph (a)(3)—was not about *how* to test diversity, but rather about whether a party’s citizenship can be *re-tested* after a change in citizenship during the course of the case. The holding of *Grupo Dataflux* is that such re-testing is not allowed in the absence of the withdrawal or addition of a *party*, and that a withdrawal of a limited partnership’s *member* (which causes a change in citizenship but not a change of

a party) is not the same as the withdrawal of a *party*. *Id.* at 574-577. The Court did not hold that an unincorporated entity's foreign citizenship destroys diversity in a case where the entity's state-citizen members are completely diverse from the citizens on the other side of the case.

To be sure, *Grupo Dataflux* contained the general language on which the lower court relied, 541 U.S. at 579 n.8, but this general language was not addressing the meaning of paragraph (a)(3). This Court “has often admonished that general language in judicial opinions should be read as referring in context to circumstances similar to the circumstances then before the Court and not referring to quite different circumstances that the Court was not then considering.” *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 278 (2023) (internal quotation marks omitted).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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