No. ____

IN THE

Supreme Court of the United States

PAUL STEELMAN, INDIVIDUALLY AND AS TRUSTEE OF THE STEELMAN ASSET PROTECTION TRUST, ET AL.,

Petitioners,

v.

ERNEST BOCK LLC,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a stay of federal proceedings under *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), is permissible only when a pending state court case will necessarily resolve the federal proceedings however it is decided (as the Ninth Circuit held below), or whether a stay is permissible when one of the potential outcomes in state court can completely resolve the case, even if a second potential outcome would leave further issues for federal litigation (as the Seventh Circuit has held).

PARTIES TO THE PROCEEDING

Petitioners in this Court and appellees in the court of appeals are Paul Steelman, Maryann Steelman, Paul Steelman as the trustee of the Steelman Asset Protection Trust, Maryann Steelman as the trustee of the Steelman Asset Protection Trust, Paul Steelman as the trustee of the Paul C. Steelman and Maryann T. Steelman Revocable Living Trust, Maryann Steelman as the trustee of the Paul C. Steelman and Maryann T. Steelman Revocable Living Trust, Paul Steelman as the trustee of the Paul Steelman Gaming Asset Protection Trust, Stephen Steelman, Suzanne Steelman Taylor, Jim Main as trustee of the Steelman Asset Protection Trust; Christiania, LLC, Christiania, LLC, Series A-Z, Competition Interactive, LLC, Keepsake, Inc., Paul Steelman Design Group, Inc., Paul Steelman, Ltd., SAPT Holdings, LLC, Series B, SMMR, LLC, SMMR, LLC, Series A-Z, SSSSS, LLC, SSSSS, LLC, Series B, Steelman Partners, LLP; Aaron Squires and Matthew Mahaney.

Respondent in this Court and appellant in the court of appeals is Ernest Bock LLC.

DIRECTLY RELATED PROCEEDINGS

United States District Court

Ernest Bock, LLC v. *Paul Steelman, et al.*, 2022 WL 612615 (D. Nev. Mar. 2, 2022)

United States Court of Appeals

Ernest Bock, LLC v. *Paul Steelman, et al.*, 76 F.4th 827 (9th Cir. 2023)

New Jersey State Courts

Ernest Bock, LLC v. *Paul Steelman*, 2021 WL 4771306 (N.J. Super. App. Div. October 13, 2021) (per curiam) (unpub.), *cert. denied*, 250 N.J. 174 (2022)

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is reported at 76 F.4th 827 and reprinted in the Appendix to the Petition at App., *infra,* 1a-28a. The opinion of the district court is unpublished, but is reported at 2022 WL 612615 and reprinted at App. 29a-36a.

JURISDICTION

The court of appeals entered its judgment on August 3, 2023. App. 1a-2a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

INTRODUCTION

Parallel litigation in state and federal courts can threaten the fair and efficient resolution of disputes. When the same core issues are pending in two separate cases—one in state court and the other in federal court—wasteful piecemeal litigation, conflicting outcomes, and gamesmanship are the predictable result. All of this comes at the expense of orderly adjudication of cases in the federal system and the primary responsibility of state courts to resolve state law disputes.

Given the strong interest in preserving the scarce resources of the federal judicial system for disputes that uniquely implicate that system's purposes, and the potential unfairness to parties forced to litigate in two forums simultaneously, federal courts need a flexible tool to address these risks. Fortunately, a tool exists. Under *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), federal courts can in exceptional cases stay the federal proceeding to avoid wasteful piecemeal litigation when a parallel state law case raises the same issue.

Yet the courts of appeals are in square conflict over how *Colorado River* works. A threshold question under *Colorado River* is whether "the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 28 (1983). The courts of appeals have starkly conflicting views about what this threshold condition means. According to the Ninth Circuit, *Colorado River* does not authorize a stay "[w]hen one possible outcome of parallel state court

proceedings is continued federal litigation." App. 24a. But the Ninth Circuit acknowledged "conflicting authority on the question" of how to analyze *Colorado River*'s "threshold requirement" of "parallelism." *Id.* at 4a, 16a. As the court of appeals recognized, *id.* at 23a, the Seventh Circuit has held that *Colorado River*'s parallelism requirement *is* met when the state court litigation will completely resolve the federal litigation if the state court rules one (but not the other) way. *See, e.g.*, *Loughran v. Wells Fargo Bank, N.A.*, 2 F.4th 640, 647 (7th Cir. 2021) (granting *Colorado River* relief). And more generally, the courts of appeals have taken disparate approaches to *Colorado River*'s parallelism test: some courts correctly recognize its intended flexibility, while others impose narrow and unjustified constraints on its operation. It is no surprise that these different approaches yield starkly disparate results in comparable cases across the circuits.

This Court's intervention is warranted to restore uniformity to this significant and recurring question of federal law. Given the prevalence of parallel proceedings, federal courts regularly confront the question of when *Colorado River* can justify a stay pending resolution of related state litigation. And the circuit conflict over the parallelism issue presented here means that federal courts in the Ninth Circuit have been stripped of a vital device to preserve judicial economy and fairness that other courts enjoy. No reason exists to give district courts in Illinois a tool to preserve scarce judicial resources that district courts in Nevada unjustifiably lack.

This case is the ideal vehicle for the Court to address that pure issue of law. The district court in this case granted a stay of federal litigation under *Colorado River* to allow New Jersey state courts to resolve the core underlying contract dispute. All agree that unless respondent wins a favorable judgment on that state contract issue in state court, it has no federal claim. So a state court ruling for petitioners would end the basis for the federal suit. Yet the Ninth Circuit reversed, based solely on its narrow reading of *Colorado River*'s parallelism requirement. The court of appeals observed that the New Jersey proceedings would not *necessarily* resolve the federal case; further federal proceedings would be required if respondent were to prevail on its contract claim in state court. It then leaped to the conclusion that the district court's stay was impermissible. The upshot is that, now, two parallel litigations turn on exactly the same question. The *Colorado River* doctrine was created to avoid just such wasteful federal litigation. And, as the Ninth Circuit recognized below, its resolution of the question presented conflicts with the rule in the Seventh Circuit—if the federal action here had been brought in Illinois rather than Nevada, a *Colorado River* stay would have been granted.

This Court should grant review to resolve the circuit conflict and to clarify that *Colorado River* affords district courts discretion to stay their proceeding in a case like this. A stay under *Colorado River* is of course an "extraordinary" step. 424 U.S. at 813. But the overburdened federal courts need this authority in appropriate cases. And as it stands, some federal courts possess such authority while others lack it in

identical circumstances. Only this Court can elaborate the scope of its own judge-made doctrine and provide a consistent nationwide framework. The petition should be granted, and the decision below reversed.

STATEMENT

A. Legal Background

While federal courts have a "virtually unflagging" duty to exercise their jurisdiction and not to yield to parallel proceedings in state courts as a routine matter, *see Mata v. Lynch*, 576 U.S. 143, 150 (2015) (quoting *Colorado River*, 424 U.S. at 817), abstention from federal review is an established practice in a variety of circumstances. *E.g.*, *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941) (federal constitutional issue may be mooted by a state court determination of state law); *Burford v. Sun Oil Co.,* 319 U.S. 315 (1943) (federal review would disrupt a comprehensive state scheme in a matter of significant public policy); *Younger v. Harris*, 401 U.S. 37 (1971) (federal jurisdiction invoked to restrain state criminal proceedings).

Beyond the categories of cases permitting abstention, however, federal courts have additional authority to address "the contemporaneous exercise of concurrent jurisdictions, either by federal courts or by state and federal courts." *Colorado River*, 424 U.S. at 817. The principles that govern this context turn on "[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Id.* (internal quotation marks omitted). And while the circumstances warranting a stay or dismissal of federal litigation because of "a

concurrent state proceeding" are "limited," such "exceptional" circumstances "do nevertheless exist." *Id.* at 818.

Colorado River found one such circumstance based on a "number of factors." *Id.* at 819. There, the Court confronted parallel federal and state proceedings to adjudicate water rights in a state water district. Although the Court held that none of the traditional abstention doctrines applied, *id.* at 813-17, it nonetheless concluded that the strong federal policy in "unified proceedings" to adjudicate water rights through a "comprehensive state system[]," the limited progress in the United States' federal suit which had not moved beyond the filing of the complaint, the breadth of state water rights at issue for 1,000 defendants, and the remoteness of the federal court from the geographic seat of the dispute all justified the district court's dismissal of the United States' federal action seeking a partial water-rights resolution when a comprehensive state proceeding was underway, *id.* at 819-20.

In *Moses H. Cone*, this Court returned to the power of a court to stay a federal action pending decision in a concurrent state court action. *See generally* 460 U.S. at 1. There, a hospital and a construction contractor agreed that either party could seek arbitration of disputes under certain circumstances. *Id.* at 4-5. When a dispute arose, the hospital filed a state court action contending that it owed the contractor nothing and seeking a declaration that no right to arbitrate existed, while the contractor responded with a federal diversity action to compel arbitration under Section 4 of the Federal Arbitration Act (Act), 9 U.S.C. § 4. *Id.*

at 7. The district court stayed the federal proceedings "because the two suits involved the identical issue of the arbitrability of [the contractor's] claims," but the court of appeals reversed and ordered the district court to enter an order to arbitrate. *Id.* at 7-8.

This Court affirmed. On the propriety of the stay, the Court noted that *Colorado River* does not turn on a "mechanical checklist" of factors, but requires a "careful balancing of the important factors as they apply in a given case." *Id.* at 16. There, the Court found "no showing of the requisite exceptional circumstances to justify" a stay. *Id.* at 19. Canvasing the factors cited in *Colorado River*, the Court concluded that absent was the "consideration that was paramount in *Colorado River* itself—the danger of piecemeal litigation." *Id.* Likewise, the timing factor of which suit was filed first "is to be applied in a pragmatic, flexible manner"—not by rote examination of filing dates. *Id.* at 21-22. More significant, the Court noted, was that the arbitrability issue was a matter of federal, not state, law. *Id.* at 24-25.

Above all, the Court emphasized that a factor counseling against a stay was "the probable inadequacy of the state court proceeding to protect [the contractor's] rights." *Id.* at 26. That was because "substantial room for doubt" existed that the state court could actually grant full relief under the Act. While a state court could grant a *stay* of litigation in deference to arbitration, Act § 3, it was not clear that it could *compel* arbitration, Act § 4. *Id.* at 26-27. "If the state court stayed litigation pending arbitration but declined to compel the Hospital to arbitrate, [the contractor] would have no sure way to proceed with its

claim except to return to federal court to obtain a § 4 order—a pointless and wasteful burden on the supposedly summary and speedy procedures prescribed by the Arbitration Act." *Id.* at 27.

Finally, the Court concluded that *Colorado River* analysis applied equally to the stay or dismissal of the action. *Id.* at 27-28. That is because "[w]hen a district court decides to dismiss or stay a case under *Colorado River*, it presumably concludes that the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties." *Id.* at 28. "If there is any substantial doubt as to this, it would be a serious abuse of discretion to grant the stay or dismissal at all." *Id.* "Thus, the decision to invoke *Colorado River* necessarily contemplates that the federal court will have nothing further to do in resolving any substantive part of the case, whether it stays or dismisses." *Id.*

Moses H. Cone represents the Court's last significant word on *Colorado River*. And its language explaining why the doctrine covers stays as well as dismissals has sparked significant controversy. The Court's statements directly produced the circuit conflict at issue in this case: whether a *Colorado River* stay can be granted when a state court's decision will fully resolve the federal case if decided one way, but not if it is resolved in a different potential way.

B. Factual and Procedural Background

1. a. This federal dispute arises from a state-court breach of contract action. Respondent was ap-

proached by the Catanoso family (a non-party) seeking a loan to finance an Atlantic City construction project. App. 4a. To increase the likelihood of the proposed project's success, the Catanosos engaged petitioner Paul Steelman, a renowned Las Vegas architect, to join the project. *Id.* They formed a company called Steel Pier Associates, LLC (SPA), to which respondent agreed to make loans through two commercial mortgage notes, each of which was personally guaranteed by Steelman and his wife, Maryann. *Id.* at 4a-5a.

Ultimately, SPA defaulted on the loans, and respondent filed suit only against the Steelmans in New Jersey state court alleging breach of contract on the loan guarantee. *Id.* at 5a. The Steelmans responded that respondent had breached its duty of good faith and fair dealing by encouraging SPA to take on overly risky projects, thus vitiating the validity of the guarantee. *Id.* at 5a-6a. The New Jersey trial court initially sided with respondent, granted respondent summary judgment, and entered an $11 million judgment against the Steelmans. *Id.* at 6a. The Steelmans appealed. *Id.*

b. A judgment creditor at the time, respondent filed this suit in federal district court in the District of Nevada against Steelman and other entities and individuals (*i.e.*, petitioners), alleging that they violated federal and state law by attempting unlawfully to shield their funds by dispersing their assets among various trusts and other entities. *Id.* It is undisputed that an underlying predicate for each of respondent's claims is that the Steelmans breached their contractual guarantee and thus owed respondent $11 million

under that agreement—a question that the New Jersey trial court had at the time resolved in respondent's favor. *Id.* at 6a-7a.

But while this action was pending, a New Jersey appellate court reversed the trial court's summary judgment and remanded for further discovery and potentially trial. *Id.* Thus, respondent is no longer a judgment creditor. And if respondent ultimately loses in state court, the federal suit will be over. Thus, "both cases turn on the same threshold question of New Jersey state law: whether the Steelmans' guarantees are enforceable." *Id.* at 7a.

2. At petitioners' request, the district court accordingly entered a stay of the federal suit under *Colorado River*. The district court recognized that whether to abstain under *Colorado River* turned on a weighing of eight factors:

> (1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether state court proceedings will resolve all issues before the federal court.

App. 31a (quoting *R.R. Street & Co. v. Transp. Ins. Co.*, 656 F.3d 966, 978–79 (9th Cir. 2011)). The court found that most of these factors were neutral,

whereas the forum-shopping factor weighed "slightly in favor of retaining federal jurisdiction." *Id.* at 33a. But the court found that three of the factors weighed decisively in favor of a stay. Initially, the court noted that "[t]he New Jersey case was instituted first—indeed, without it, this case could not exist." *Id.* (footnote omitted). Next, "the threat of piecemeal litigation looms large over such a complicated case," especially because respondent's "state case has progressed far beyond its federal case and involves similar issues and claims." *Id.* at 33a-34a (alterations, internal quotation marks, and footnote omitted).

But most important here, the court concluded that the state court and federal proceedings are "parallel"—*i.e.*, a substantial likelihood exists that the state proceedings will resolve this federal action. "Should the New Jersey action result in the solidification of the status quo, with [plaintiff] lacking a state-court judgment upon which to base its federal claims, any progress made in this litigation in the interim will have been for naught." *Id.* at 34a (internal quotation marks omitted). "Given that possibility, the state-court proceedings could completely moot this case. Thus, it would be highly inefficient to allow the federal litigation to proceed." *Id.* (internal quotation marks omitted).

In sum, the district court explained that the New Jersey court action will resolve this case if respondent loses, while if respondent wins, "this court will have jurisdiction to decide the remaining disputes." *Id.* at 35a. "Thus, holding these claims in abeyance pending state-court adjudication serves efficient and just judicial administration." *Id.* The court thus held that the

Colorado River doctrine applied, and it stayed the federal litigation. *Id.*

3. The Ninth Circuit reversed, based solely on its legal interpretation of *Colorado River*'s parallelism test. In the court of appeals' view, this threshold requirement for a stay could not be satisfied here because the New Jersey litigation *might* not fully resolve the federal case. In so holding, the court of appeals explicitly broke with the Seventh Circuit's contrary interpretation of *Colorado River*.

a. The court of appeals agreed with the district court that "the piecemeal litigation and order of jurisdiction factors support a stay." App. 14a.

As to piecemeal litigation, "[a]llowing both the New Jersey state action and Nevada federal suit to proceed simultaneously will duplicate judicial efforts to resolve the common question of whether the Steelmans' personal guarantees are enforceable. And there is a risk that the courts will reach different results." *Id.* at 14a-15a. Thus, "parallel proceedings could waste judicial resources and cause confusion in the continuing disputes between the parties." *Id.* at 15a.

As to the order-of-jurisdiction factor, the court explained that it was "not simply to compare filing dates, but to analyze the progress made in each case." *Id.* at 16a (internal quotation marks omitted). "Here, New Jersey courts have issued not one, but two (differing) reasoned opinions on the common issue of the enforceability of the Steelmans' guarantees." *Id.* "By contrast, the federal district court has not yet even

entertained a summary judgment motion on the issue. Thus, the New Jersey courts have made more progress on resolving the common legal issue in this case." *Id.*

b. The court of appeals nevertheless reversed because it concluded that the district court applied the wrong legal standard in determining that the state and federal actions here are "sufficiently parallel." *Id.* "Parallelism," the court stated, "is a threshold requirement" under *Colorado River*, *id.*, and the court of appeals held that it was lacking here as a matter of law.

The court did not dispute that a state court ruling against respondent would end the federal litigation: "[I]f the Steelmans' guarantees are *not* enforceable, then the federal claims are completely barred, as there would be no New Jersey judgment for [respondent], and thus no fraudulent transfer of assets to avoid that non-existent judgment." *Id.* at 17a. But the court observed that "if the guarantees *are* enforceable, the federal court must proceed to determine whether [petitioners] fraudulently transferred assets to avoid paying Bock on the valid guarantees." *Id.* at 17a-18a. The legal question was therefore "whether state and federal proceedings are sufficiently parallel when the state court proceedings will fully resolve the federal case *only if* the state court rules in one of two ways." *Id.* at 17a.

The court of appeals answered that question "no." The court acknowledged that "[o]ther circuits have . . . adopted disparate approaches." *Id.* at 22a. In particular, the Court recognized that in a series of cases, the

Seventh Circuit has expressly held that the parallelism requirement is satisfied even when a "plaintiff in concurrent state and federal actions raised claims in the federal court that would have been fully resolved if the state court ruled one way, but only partially addressed if the state court ruled in the other direction." *Id.* at 23a (quoting *Loughran*, 2 F.4th at 649). Thus, the court of appeals observed, the Seventh Circuit is "more permissive" in analyzing the parallelism requirement. *Id.*

But the court believed that the Seventh Circuit's approach deviates from this Court's "instruction in *Moses* [*H.*] *Cone* that 'it would be a serious abuse of discretion to grant [a *Colorado River*] stay' if there is 'any substantial doubt' as to whether 'parallel state-court litigation will be an adequate vehicle for the *complete* and prompt resolution of the issues between the parties.'" *Id.* at 24a (quoting *Moses H. Cone*, 460 U.S. at 28 (emphasis added by court of appeals)). Accordingly, the court of appeals held, because one potential outcome of the New Jersey litigation could require further federal proceedings, this "precludes the granting of a stay under *Colorado River*." *Id.* at 24a-25a (internal quotation marks omitted).

The court of appeals was "sympathetic to the prudential concerns that the district court weighed in favor of a stay." *Id.* at 25a. But based on its analysis of the parallelism requirement, the court reversed the district court's order staying the federal proceedings. *Id.*

REASONS FOR GRANTING THE PETITION

The courts of appeals are openly and squarely divided over the question presented: whether a *Colorado River* stay is permissible when concurrent state court proceedings would resolve the federal case if decided one way, but would leave open issues for federal determination if decided differently. This question goes to the heart of how federal courts can address parallel litigation initiated in both state and federal court. A finding of "parallel" litigation is the threshold requirement for courts to consider the remaining *Colorado River* factors. Unless that test is satisfied, district courts cannot exercise their discretion to serve judicial-economy and fairness interests raised when concurrent proceedings are pending in state and federal court.

The Ninth Circuit's rigid approach cuts off at the pass the nuanced exercise of district court discretion. The court of appeals has imposed an arbitrary limit on the *Colorado River* doctrine that necessitates wasteful, duplicative litigation in state and federal courts even when a sound exercise of discretion would counsel a stay. The Seventh Circuit disagrees with the Ninth Circuit and follows a more permissive approach, as the opinion below acknowledges. And stepping back from that specific circuit split, the courts of appeals operate with different parallelism paradigms, producing disparate results in addressing *Colorado River* motions. This Court's guidance is needed.

This Court should resolve the conflict now to ensure the uniform interpretation of an important doctrine concerning the relationship between federal and state courts. And the stakes for the federal district

courts are high. Federal courts must and should exercise jurisdiction in appropriate cases. But that axiom does not dictate that overworked federal judges must proceed through discovery, motions, and trial when parallel cases in state courts are addressing identical issues. The *Colorado River* doctrine exists to avoid that pointless duplication of effort. And the interest in providing district courts discretion to stay their proceedings is at its zenith when *state* courts are already at work resolving the same issue of *state* law and federal proceedings have barely begun—raising federalism along with efficiency concerns.

This case is the ideal vehicle for addressing this recurring issue. The petition cleanly presents the parallelism question on undisputed facts. And the decision below is wrong: *Moses H. Cone* does not impose a rigid rule that the state court proceeding must always fully resolve the federal case before a stay is warranted; a resolution in state court that could end the federal case is enough to make the cases parallel, even if another resolution would leave work for the federal court to do. The Ninth Circuit's misinterpretation of this Court's decisions calls out for this Court's review: only this Court can authoritatively define the metes and bounds of the *Colorado River* doctrine. For those reasons, the petition should be granted.

A. The Courts Of Appeals Are Openly Divided Over The Scope Of The Parallelism Precondition For Applying *Colorado River*

As the court of appeals recognized, its decision creates a conflict with a line of Seventh Circuit decisions. And the debate over the meaning of *Colorado River* is

not confined to those circuits. More broadly, the circuits take disparate approaches to the availability of *Colorado River* to alleviate wasteful duplicative litigation. Only this Court can restore uniformity to this area of law.[1]

1. The requirement that concurrent state and federal litigations are "parallel" is a threshold prerequisite to applying the *Colorado River* doctrine. This reflects the purpose of the *Colorado River* doctrine: to permit a "wise" exercise of "judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Colorado River*, 424 U.S. at 817 (internal quotation marks omitted). To serve this purpose, a stay or dismissal must be capable of avoiding wasteful duplication of effort and the risk of disparate results. If the cases are not parallel, these benefits cannot be reaped. Thus, "[w]hen a district court decides to dismiss or stay under *Colorado River*, it presumably concludes that the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties." *Moses H. Cone*, 460 U.S. at 28.

In keeping with this reasoning, courts have recognized that "[b]efore the *Colorado River* doctrine can be applied, the district court must first determine that the concurrent state and federal actions are actually

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[1] Many courts of appeals refer to *Colorado River* as an "abstention" doctrine. While abstention can be a useful shorthand, *Colorado River* itself distinguished its judicial-administration holding from the recognized abstention doctrines. 424 U.S. at 817. Accordingly, this petition adheres to the Court's approach except when quoting opinions that use the abstention formulation.

parallel." *Romine v. Compuserve Corp.*, 160 F.3d 337, 339 (6th Cir. 1998); *accord*, *e.g.*, *Gold-Fogel v. Fogel*, 16 F.4th 790, 800 (11th Cir. 2021) (noting that in the "two-step" *Colorado River* analysis, "[a]t the first step—the threshold—the court must satisfy itself that the federal and state litigation are parallel."); *African Methodist Episcopal Church v. Lucien*, 756 F.3d 788, 797 (5th Cir. 2014) (addressing "[a]s an initial step prior to application of the *Colorado River* factors" whether the state and federal actions "are sufficiently parallel to make consideration of abstention proper"). But as the decision below recognized, the courts of appeals have reached conflicting conclusions about the requirement of parallelism. In particular, the Ninth Circuit parted ways with the Seventh Circuit on the pivotal question "whether state and federal proceedings are sufficiently parallel when the state court proceedings will fully resolve the federal case *only if* the state court rules in one of two ways." App. 17a.

The Seventh Circuit's answer to the parallelism question directly conflicts with the holding below. The Seventh Circuit's recent decision in *Loughran v. Wells Fargo Bank, N.A.*, 2 F.4th 640 (7th Cir. 2021)—authored by Judge Wood and joined by Judges Easterbrook and Hamilton—involved parallel state and federal litigation in materially the same posture as the litigation in this case: the federal suit would "disappear" if a preexisting state lawsuit were resolved one way, but if the state suit were resolved the other way, "then there may be more work for the federal court to do to resolve [the] claim." *Id.* at 649. The Seventh Circuit concluded that "this one-sidedness is neither unusual nor fatal to a finding that the two cases are

parallel." *Id.* The court explained that in this circumstance, "the federal- and state-court claims [are] interdependent," and because a resolution of the predicate issues in state court was necessary before the federal case could be decided, "it was rational for the district court to determine that the state court litigation will be an adequate vehicle for the complete and prompt resolution of the larger dispute." *Id.* (internal quotation marks omitted). *Loughran* made clear that the court's result aligned with several prior Seventh Circuit decisions that upheld a *Colorado River* stay in an identical procedural posture. *See id.* (citing *Freed v. J.P. Morgan Chase Bank, N.A.*, 756 F.3d 1013 (7th Cir. 2014), and *Lumen Constr., Inc. v. Brant Constr.* Co., 780 F.2d 691 (7th Cir. 1985)).

The Ninth Circuit expressly acknowledged the "conflicting authority on the question" presented. App. 4a. It also admitted that the parallelism requirement would be satisfied—and a *Colorado River* stay would thus be permissible—under Seventh Circuit precedent. *Id.* at 23a. Yet the Ninth Circuit expressly rejected the Seventh Circuit's rule, holding that "[w]hen one possible outcome of parallel state court proceedings is continued federal litigation, we find a 'substantial doubt' that the state court action will provide a 'complete and prompt resolution of the issues,'" and thus that the parallelism requirement of *Colorado River* is not satisfied. *Id.* at 24a (quoting *Moses H. Cone*, 460 U.S. at 28).

The Ninth Circuit believed that the Third Circuit's "approach" supported its holding that *Colorado River*'s threshold test is not met where one possible outcome of the state court proceedings will completely

resolve the federal case, but another will leave issues for further federal litigation. App. 22a-24a. That reading of Third Circuit precedent is wrong. The first case that the court of appeals cited, *Marcus v. Abington*, 38 F.3d 1367, 1371-72 (3d Cir. 1994), addressed solely whether a *Colorado River* stay was an immediately appealable order and quoted the "nothing further to do" language from *Moses H. Cone* only to support its view that a *Colorado River* stay is ordinarily a final order. 38 F.3d at 1371 (quoting *Moses H. Cone*, 460 U.S. at 28). *Marcus* did not address the specific parallelism issue presented here.

The second case, *Ingersoll-Rand Financial Corp. v. Callison*, 844 F.2d 133, 134 (3d Cir. 1988), supports *petitioners*. After quoting the same *Moses H. Cone* language, the Third Circuit *affirmed* a *Colorado River* deferral of federal proceedings in favor of the state court action even though the "state proceeding . . . is not strictly parallel" and "some matters arguably will remain for resolution after the state proceedings are concluded." 844 F.3d at 138. The court therefore instructed the district court "to stay the federal action rather than dismissing it." *Id.* That approach aligns with petitioners' rule—*i.e.*, a *Colorado River* stay is permissible when one state court outcome will end the federal case even if others will not—rather than the Ninth Circuit's wooden approach. The Ninth Circuit thus stands alone and in conflict with the Seventh Circuit on the threshold test for applying *Colorado River*.

2. The circuit split in this case is emblematic of a broader disagreement in the courts of appeals about how strictly to construe *Colorado River*'s parallelism

requirement. Several courts of appeals take a flexible approach to *Colorado River*'s parallelism test. These circuits emphasize that "[e]xact parallelism" is not required, and "[i]t is enough if the two proceedings are substantially similar." *Romine*, 160 F.3d at 340 (internal quotation marks omitted) (lack of identity of parties does not prevent a finding of parallelism). They caution against "a mincing insistence on precise identity of parties and issues." *African Methodist Episcopal Church*, 756 F.3d at 797 (internal quotation marks omitted); *see also Gold-Fogel*, 16 F.4th at 800-01 (proceedings are parallel if they involve "substantially the same parties and substantially the same issues," and "need not be exactly parallel as long as they are substantially similar") (alterations and internal quotation marks omitted).

In contrast, the Eighth Circuit purports to "require[] more precision" than this approach. *Fru-Con Constr. Corp. v. Controlled Air, Inc.*, 574 F.3d 527, 535 (8th Cir. 2009). That court has explained that "[t]he pendency of a state claim based on the same general facts or subject matter as a federal claim and involving the same parties is not alone sufficient." *Id.* To determine whether proceedings are parallel, judges must compare "the sources of law, required evidentiary showings, measures of damages, and treatment on appeal for each claim" and cannot rely on *Colorado River* if "any doubt exists as to the parallel nature of concurrent state and federal proceedings." *Cottrell v. Duke*, 737 F.3d 1238, 1245 (8th Cir. 2013) (internal quotation marks omitted). Similarly, the Fourth Circuit "strictly construe[s]" the parallelism requirement. *See Great American Ins. Co. v. Gross*, 468 F.3d

199, 208 (4th Cir. 2006) (finding a lack of parallelism where federal party was "not a party to any of the Alabama state court actions").

At least one circuit appears to take an even more restrictive approach to *Colorado River*'s parallelism requirement than the prevalent "substantially the same parties" and "substantially the same issues" test. *Great American*, 468 F.3d at 208 (internal quotation marks omitted). The Second Circuit requires that "the two proceedings are essentially *the same*; that is, there is an *identity* of parties, and the issues and relief sought are the same." *Nat'l Union Fire Ins. Co. v. Karp*, 108 F.3d 17, 22 (2d Cir. 1997) (emphasis added).[2]

While these cases do not separately address the issue that divided the Seventh and Ninth Circuits and that this petition presents, they reflect broader disparate approaches to the threshold parallelism test for applying the *Colorado River* factors. And that disagreement is unsurprising given that the Court has addressed this doctrine only twice, and in limited contexts. The varying interpretations of a frequently

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[2] *Karp* involved a declaratory judgment action and therefore involved the "unique breadth of . . . discretion" for a court to decline to grant declaratory relief, *see Wilton v. Seven Falls Co.*, 515 U.S. 277, 287 (1995), rather than the more cabined "exceptional circumstances" approach under *Colorado River*. 108 F.3d at 21-22. Nevertheless, *Karp* cited and relied on *Colorado River* precedent in determining whether "[f]ederal and state proceedings are 'concurrent' or 'parallel' for purposes of abstention." *Id.* at 22 (citing, *e.g.*, *Sheerbonnet, Ltd. v. American Express Bank Ltd.*, 17 F.3d 46, 49-50 (2d Cir. 1994)).

cited doctrine are a strong indication that review here is warranted.[3]

3. Review is especially warranted because these disparate articulations of *Colorado River*'s parallelism test have real, on-the-ground implications for litigants. One study focused on "decades of cases involving *Colorado River* abstention in two federal courts of appeals and two district courts" and reached a "startling conclusion": "the lower courts have taken wildly divergent approaches to *Colorado River*." Note, Owen W. Gallogly, Colorado River *Abstention: A Practical Reassessment*, 106 Va. L. Rev. 199, 199 (2020). Based on a ten-year review of two district courts, the Southern District of New York and the Northern District of Illinois over 2008-2018, and a 25-year review of the Second and Seventh Circuits' opinions over 1993-2018, the study found highly varied outcomes because of the strict approach to abstention in the Second Circuit and the permissive approach in the Seventh Circuit. In the Southern District of New York, courts abstained in less than 20% of the cases involving concurrent litigation and *Colorado River* issues, while in the Northern District of Illinois, courts abstained in nearly 60% of the cases where *Colorado River* was raised. *Id.* at 205, 218, 230. Even more striking, Northern District of Illinois district courts "abstained pursuant to *Colorado River* in nearly ninety percent

[3] Federal courts see a steady stream of *Colorado River* motions. This is reflected in the extensive discussion of the doctrine in the leading federal courts treatise, *see* Wright and Miller, *Federal Practice and Procedure*, § 4247 (3d ed.), and the more than 10,000 citations to the Court's opinion in the federal courts, including 2195 cases citing the relevant headnote (14), according to a recent Westlaw database search (September 20, 2023).

of cases after making the initial determination that the state and federal actions were parallel." *Id.* at 231.

These divergent results in New York and Chicago cannot be justified by any sound principle. Rather, the study concluded, they flow from disparate approaches to *Colorado River*—including that "the Second Circuit requires the concurrent cases to be nearly identical . . . to be considered sufficiently 'parallel' that abstention could be appropriate," while the Seventh Circuit "has adopted a broad and flexible definition to determine whether concurrent cases are 'parallel' within the meaning of *Colorado River*." *Id.* at 216, 226. And the study concluded that that "the application of *Colorado River* abstention in the lower courts is a story of confusion and unpredictability," as courts are "[s]truggling with a paucity of guidance from the Supreme Court." *Id.* at 206.

4. Only this Court can restore uniformity to this important issue in judicial procedure, involving the interplay of federal and state courts. And the conflicting application of *Colorado River* based on the happenstance of the geographic circuit in which the federal suit was filed is intolerable. The orderly progress of litigation should not vary based on whether the federal suit is filed in Las Vegas rather than Chicago. And because the *Colorado River* doctrine is essentially a federal common law rule established by this Court, only this Court can definitively determine the doctrine's legal scope.

B. The Petition Presents An Important And Recurring Question, And This Is An Ideal Vehicle To Resolve It

1. Federal courts are no stranger to parallel, concurrent litigation. The abundance of cases raising *Colorado River* questions attests to the frequency of this phenomenon. As one court observed—addressing four duplicative class actions filed by the same attorneys, two in federal court, one in state court in Ohio, and one in state court in New York—the appeal "presents the recurring question of whether the district court properly exercised its discretion to abstain from exercising its jurisdiction in deference to the parallel state court proceeding in Ohio." *Romine*, 160 F.3d at 338 (answering "yes").

Not only has a recognized circuit conflict developed over the parallelism question, but numerous district courts in other circuits have been confronted with the question (and, not surprisingly, have taken the side of the Seventh Circuit, not the Ninth). *See, e.g.*, *Window World Int'l, LLC v. O'Toole*, 2020 WL 7041814, at *7 (E.D. Mo. Nov. 30, 2020) (concluding that a federal and state case were parallel where "a threshold issue" in the state case, if decided one way, would eliminate the claims in the federal case), *appeal dismissed,* 21 F.4th 1029 (8th Cir. 2022); *Healthcare Co. v. Upward Mobility, Inc.*, 2018 WL 10158859, *9-10 (E.D. Tenn. July 10, 2018) (finding parallelism existed where, if the state court ruled one way on a particular issue, that ruling would entirely dispose of the federal claims), *aff'd* 784 F. App'x 390 (6th Cir. 2019) (unpubl.); *Cass River Farms, LLC v. Hausbeck Pickle Co.*, 2016 WL 5930493, at *3 (E.D.

Mich. Oct. 12, 2016) (concluding that state and federal actions are parallel because "[t]he threshold issue is identical in both" because "both actions involve, at their core, a standard state law contract dispute," and if that state contract claim fails the plaintiff's federal claims will also necessarily fail); *CLT Logistics v. River W. Brands*, 777 F. Supp. 2d 1052, 1057-59 (E.D. Mich. 2011) (finding state and federal suits are parallel for *Colorado River* purposes where one resolution in state court "possibly disposes of the entire litigation" but that depending on state court resolution, "it may be necessary for this case to continue on its own track"); *see also One Up, Inc. v. Webcraft Techs, Inc.*, 1989 WL 118725, at *3 (N.D. Ill. Sept. 22, 1989) (finding that parallelism was present because the plaintiff's state case involved a threshold issue of patent ownership which, if resolved one way, would have entirely disposed of the plaintiff's federal patent infringement claims).

These questions can be expected to recur with frequency in the future. Many parties have an incentive to select a favorable forum for resolution of their disputes and have different incentives to seek a federal or state forum. This case involves a plaintiff who initially relied on a favorable state court ruling to file this action in federal court—only to see the basis for his federal suit vanish when his state court judgment was vacated for further proceedings. Respondent then persisted in the federal litigation, despite its duplicative nature and wastefulness if the New Jersey courts ultimately rejects his state law claim. But many cases will involve state court defendants who strike back with parallel federal suits. *See*, *e.g.*, *Gold-*

Fogel v. Fogel, 16 F.4th 790 (11th Cir. 2021) (state court defendant became federal court plaintiff); *African Methodist Episcopal Church v. Lucien*, 756 F.3d 788 (5th Cir. 2014) (same). Federal courts should not now be forced to proceed in parallel with state courts—particularly on issues of state law—because of disparate rules about when litigation is parallel and divergent incentives of parties to select one system over the other.

The drain on federal resources and the incentive to forum shop—not to mention the potential for intruding on federalism values—is apparent. And while not every parallel case will warrant a stay or dismissal under *Colorado River*, the vice of the Ninth Circuit's restrictive rule is that it forecloses consideration of the context-sensitive *Colorado River* factors. This poses a particular problem given the Ninth Circuit's size and geographic breadth. Parties seeking to evade unwanted state court proceedings have added incentive to slightly reconfigure their claims and refile in the federal courts of the Ninth Circuit. Even if those claims could be stayed or dismissed in the interest of judicial efficiency, fairness, and comity elsewhere, the Ninth Circuit's strict parallelism rule may bar district courts from going on to consider the *Colorado River* factors. Federal district courts and parties will have no choice but to engage in wasteful parallel litigations. District courts within the largest federal circuit in the nation should not be arbitrarily denied a tool for managing these issues that is widely available elsewhere.

2. This case presents an ideal vehicle to resolve this issue. The district court found that *Colorado*

River justified a stay, but the court of appeals reversed only because of its narrow legal conception of the parallelism test. The court otherwise concluded that each of the other *Colorado River* factors either unambiguously favors a stay or is "neutral or inconsequential." App. 14a n.12. And it was "sympathetic to the prudential concerns that the district court weighed in favor of a stay." *Id.* at 25a. But it concluded, based on its interpretation of *Moses H. Cone*, "that the federal and state proceedings are not sufficiently parallel to justify abdication of federal jurisdiction." *Id.* at 25a-26a. This made the district court's purported parallelism error "dispositive," *Id.* at 26a n.22. If this case had been brought in the Seventh Circuit, then, it would have come out the other way—the parallelism factor would be satisfied as a matter of law, and a weighing of the other factors would unambiguously favor a stay. A grant of certiorari and reversal of the decision below would thus be outcome determinative on the purely legal question presented, and on the ultimate question whether a *Colorado River* stay is warranted.

C. The Decision Below Is Incorrect

Review is further warranted to correct the Ninth Circuit's erroneous ruling. *Colorado River* authorized federal courts to stay their hand in deference to an existing state-court action based "on considerations of [w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." 424 U.S. at 817 (internal quotation marks omitted). The Court noted several factors that courts might consider in determining

whether a federal stay or dismissal might be warranted, including "the inconvenience of the federal forum," "the desirability of avoiding piecemeal litigation," and "the order in which jurisdiction was obtained by the concurrent forums." *Id.* at 818. But the Court explained that "[n]o one factor is necessarily determinative; a carefully considered judgment taking into account both the obligation to exercise jurisdiction and the combination of factors counselling against that exercise is required." *Id.* at 818-19. The "consideration that was paramount in *Colorado River* itself [was] the danger of piecemeal litigation." *Moses H. Cone*, 460 U.S. at 19; *see Colorado River*, 424 U.S. at 819.

As courts have explained, parallelism in the concurrent state court litigation is a threshold requirement; a stay in the interest of judicial efficiency and comprehensive adjudication would not be justified if the two cases involve significantly different parties or issues. *See supra* 15-18. But contrary to the Ninth Circuit's determination in this case, the fact that the state court litigation must be an "adequate vehicle" for the "complete" resolution of the federal action, *Moses H. Cone*, 460 U.S. at 28, does not mean that the state court action must *necessarily* completely resolve the federal action. To the contrary, a state court litigation that *could* completely resolve the federal litigation is "an adequate vehicle for the complete and prompt resolution of the issues between the parties." *Id.*

This case is a paradigmatic example. The ongoing state court litigation is capable of completely resolving this case. The New Jersey courts will resolve

whether respondent's claimed breach of contract claim under New Jersey law has merit—or whether, as petitioners maintain, respondent's conduct bars all recovery. If the state court rules against respondent, that will necessarily resolve the federal litigation against respondent as well. Respondent's entire federal case depends on prevailing on the contract claim that the New Jersey courts are poised to resolve after years of litigation. The state court litigation is thus an entirely adequate vehicle for the complete resolution of the parties' entire dispute, even if that result is not assured. *See Loughran*, 2 F.4th at 649 (when "federal- and state-court claims [are] interdependent," it is "rational for the district court to determine that the state court litigation will be an adequate vehicle for the complete and prompt resolution of the larger dispute" (internal quotation marks omitted)); *see also* App. 34a (explaining that "[s]hould the New Jersey action result in the solidification of the status quo, with [respondent] lacking a state-court judgment on which to base its federal claims, any progress made in this litigation in the interim will have been for naught.").

Moses H. Cone did not address this issue. Rather, *Moses H. Cone* addressed state court actions that could not resolve the federal litigation no matter how they are decided. There, the state court had jurisdiction to *stay* litigation under Section 3 of the Federal Arbitration Act upon a finding that the dispute pending before it was referrable to arbitration, but substantial doubt existed that it could *compel* arbitration under Section 4 of the Act. *Moses H. Cone*, 460 U.S. at 26-27; *see supra* at 6-8. Therefore, either way the

state court ruled, a dispute remained for the federal court to resolve—either the merits of the underlying action or the determination of whether to compel arbitration under Section 4. In that circumstance, the Court found "substantial room for doubt" over whether the state court could provide the relief that would obviate the need for parallel federal litigation. *Id.*

That scenario provided the context for the Court's statements that a court granting a *Colorado River* stay "presumably concludes that the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the dispute between the parties," such that "the decision to invoke *Colorado River* necessarily contemplates that the federal court will have nothing further to do in resolving any substantive part of the case." *Id.* at 28. The Court made those statements to explain why "a stay is as much a refusal to exercise federal jurisdiction as a dismissal"—not to elaborate on *when* a stay is permissible in the first place. *Id.* The Court had already addressed that issue: *Colorado River* does not apply when, regardless of how the state court rules, the parties will have to return to federal court.

That limitation on *Colorado River* is sound, but it has no application here. If further federal litigation would be required no matter how the state court rules, the problem of wasteful piecemeal litigation cannot be avoided, and the basis for a *Colorado River* stay would be gone. But in a case like this, in which the state court litigation could resolve the federal litigation completely, a *Colorado River* stay makes per-

fect sense. Here, for example, the state court litigation is much farther along than the federal suit, and allowing both lawsuits to be litigated simultaneously would necessarily result in piecemeal litigation. App. 14a-15a. And if respondent loses in the New Jersey state court, based on that court's interpretation and application of New Jersey law, the basis for the federal case disappears.

That scenario directly implicates the policies that flow from *Colorado River*—the avoidance of wasteful duplicative litigation, the potential for competing rulings, and the needless intrusion on state courts. Yet the Ninth Circuit's decision would *preclude* district courts from avoiding piecemeal, wasteful litigation by entering a stay simply because the federal court might have more work to do once the state court proceedings are complete. That rule makes scant sense. Rather, the correct interpretation of the doctrine would find the cases parallel—sending the inquiry on to *Colorado River*'s case- and context-specific factors, which both courts below have already resolved in petitioners' favor. A stay thus serves the interests that *Colorado River* is designed to protect; the Ninth Circuit's foreclosure of that outcome does not.

For those reasons, this Court should not only grant review, but should reverse the decision below.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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