No. 24-336

IN THE
SUPREME COURT OF THE UNITED STATES

BINANCE, ET AL.,

Petitioners,

v.

JD ANDERSON, ET AL.,

Respondents.

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

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BRIEF IN OPPOSITION

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QUESTION PRESENTED

Respondents, retail investors who purchased unregistered securities on the crypto-asset exchange Binance, brought claims against Binance and its former CEO under the Securities Act of 1933, the Securities Exchange Act of 1934, and state securities laws. Faithfully applying this Court's holding in *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), the Second Circuit held that Respondents plausibly alleged "domestic transactions" sufficient to plead liability under the federal securities laws. That conclusion rested on the Second Circuit's determination that Respondents properly pled that irrevocable liability for their transactions was incurred in the United States when (1) Respondents' exchange-based transactions were matched on servers located in the United States, and, alternatively, (2) Respondents entered into Terms of Use with Binance, placed purchase orders, and sent payment for their transactions, in each case within the United States.

The question presented is whether the Second Circuit correctly determined that Respondents' particular factual allegations adequately pled that their purchases were domestic transactions under *Morrison*.

CORPORATE DISCLOSURE STATEMENT

Respondent Token Fund I LLC does not have a corporate parent and there is no publicly held corporation that owns 10 percent or more of its stock.

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INTRODUCTION

The petition does not warrant this Court's review. Petitioners Binance and Changpeng Zhao ("Petitioners") ask this Court to grant certiorari to correct what they claim are erroneous factual inferences that the Second Circuit drew in favor of Respondents when it determined that their complaint was adequately pled. It is undisputed that the Second Circuit applied the correct legal standard, and any assigned error (and there was no error) does not merit this Court's review.

The court below faithfully applied *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), correctly assessing whether securities transactions in the factual circumstances alleged here are "domestic" and thus within the reach of the federal securities laws. Petitioners expressly agree that (1) a transaction is "domestic" under *Morrison* if irrevocable liability for the transaction is incurred in the United States, and (2) in the context of exchange transactions, irrevocable liability attaches in the location where buy and sell orders are matched. Petitioners also do not contest that the Second Circuit evaluated the sufficiency of Respondents' factual allegations under the controlling standard set forth by this Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and determined that Respondents pled that their orders were matched on servers located in the United States. This straightforward application of *Morrison* did not involve any "multi-factor test" or any departure from this Court's precedent. Petitioners' characterizations to the contrary are an effort to construct an opinion

worthy of this Court's review, but that messy product of their imagination fails to grapple with the far simpler reality.

The errors asserted by Petitioners boil down to their view that, in applying these undisputed legal standards, the Second Circuit incorrectly concluded that Respondents' factual allegations sufficiently pled that their buy and sell orders were matched on servers located in the United States. That request for error correction provides no good reason for this Court's review. Review of the Second Circuit's conclusion is especially unwarranted given that Petitioners, in the court below, "agree[d] that 'the complaint's allegations and the documents it incorporates by reference establish that matching occurred on the Binance exchange,'" and "conceded that the location of Binance's servers may be relevant to determining where matching occurs on the Binance platform." Pet. App. 14a.

The alternative ground for the Second Circuit's ruling—that Respondents plausibly alleged domestic transactions based on allegations that they entered into Terms of Use with Binance, placed their purchase orders, and sent payments, in each case from the United States—was unnecessary to the outcome below; any disagreement with this alternative ground therefore provides no sound basis for this Court's review. In any event, contrary to Petitioners' incorrect suggestion that the court below adopted a new legal standard in weighing these factual allegations, the Second Circuit's alternative ground is consistent with

this Court's precedent and does not conflict with any other circuit's law.

Finally, this case would be a poor vehicle for addressing Petitioners' broad policy concerns about the Second Circuit's application of *Morrison* and its progeny to the facts of this case. Far from presenting "a matter of global importance," Pet. 26–29, the decision below applied well-established (and, in this case, undisputed) legal principles to the bespoke factual allegations of this case—involving an unregistered exchange with no stated location but with a substantial presence in the United States—and will have no important effects beyond the instant case.

Moreover, after the Second Circuit's decision below, Petitioners moved to compel arbitration in the district court while their petition is pending. Petitioners' motion for arbitration remains undecided, meaning that if this Court were to grant certiorari, the matter may later become moot. The petition neglects to mention Petitioners' pending motion to compel arbitration.

Respondents respectfully request that the Court deny the petition.

STATEMENT OF THE CASE

Binance represents itself as the world's largest online exchange for trading crypto-assets, including certain crypto-assets known as "digital tokens." *See* Pet. App. 4a–5a. Binance promoted, offered, and sold billions of dollars' worth of digital tokens, including the tokens at issue in this case, which trade under the

symbols ELF, EOS, FUN, ICX, OMG, QSP, and TRX (the "Tokens"). *Id.* 5a, 7a. Each of the Tokens is a security but is not registered as such with the U.S. Securities and Exchange Commission. *Id.* 3a.

Although Binance "has a substantial presence [in the United States], with servers, employees, and customers throughout the country," Binance has "never registered as a securities exchange or a broker-dealer of securities in the United States." *Id.* 5a. In fact, "Binance expressly disclaims having any physical location, foreign or otherwise," *id.* 18a, and "notoriously denies the applicability of any other country's securities regulation regime," *id.* 17a; *see also id.* 16a. "[N]o other sovereign appears to believe that Binance's exchange is within its jurisdiction." *Id.* 17a.

"[O]nline crypto-asset exchanges such as Binance serve a similar function as 'traditional exchanges in that they provide a convenient marketplace to match buyers and sellers of virtual currencies,' such as the Tokens purchased by Plaintiffs." *Id.* 14a (quoting C.A. App. 175 ¶ 46). Respondents "allege that 'Binance is hosted on computer servers and data centers provided by Amazon Web Services (AWS), a cloud computing company that is located in the United States'; 'a significant portion, if not all, of the AWS servers and [associated data centers and support services] that host Binance are located in California'; and '[u]pon information and belief, most or all of Binance's digital data is stored on servers located in Santa Clara County, California.'" *Id.* 15a (quoting C.A. App. 170–71 ¶ 24).

Respondents are retail investors residing in the United States who signed up for Binance, and from the United States agreed to Binance's Terms of Use, placed purchase orders for Tokens, and sent payments for those orders. *Id.* 7a. Respondents suffered substantial losses from their purchases of Tokens, which lost much of their market value after Respondents' purchases. *Id.* 8a.

In April 2020, the initial complaint in this action was filed against Binance and its then-CEO Zhao on behalf of a putative class of individuals who purchased Tokens on Binance's exchange. *Id.* 3a, 5a. Respondents assert claims arising from the offer and sale of unregistered securities in violation of Section 12(a)(1) of the Securities Act of 1933, 15 U.S.C. § 77*l*(a)(1), claims for failure to register as a securities exchange and as a broker or dealer in violation of Section 29(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78cc(b), analogous claims under state securities laws, and control person claims. Pet. App. 3a, 8a.

The United States District Court for the Southern District of New York granted Petitioners' motion to dismiss, ruling in relevant part that Respondents failed to adequately allege that their purchases of digital assets on Binance were domestic transactions subject to the federal securities laws under the standard set forth in this Court's decision in *Morrison*. *Id.* 3a, 9a. Respondents appealed.

In March 2024, a unanimous panel of the United States Court of Appeals for the Second Circuit

reversed. As relevant to the Petition, the Second Circuit ruled that Respondents sufficiently alleged domestic transactions under *Morrison* because irrevocable liability was incurred in the United States, for two independently sufficient reasons.

The Second Circuit began by examining the governing standards set forth in *Morrison* and its progeny, *id.* 10a, which require that "to sufficiently allege the existence of a 'domestic transaction …,' plaintiffs must allege facts indicating that irrevocable liability was incurred or that title was transferred within the United States," *id.* 11a (quoting *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60, 62 (2d Cir. 2012)). As applied to this case, involving trading of alleged securities on an electronic exchange, the court recognized that "the parties here agree that at least one time at which irrevocable liability attaches is at the time when transactions are 'matched,'" but that the parties disagreed on the location where matching occurred for Respondents' transactions. *Id.* 14a.

Applying those undisputed legal standards to this case, the Second Circuit first ruled that Respondents "plausibly alleged facts … giving rise to an inference of irrevocable liability occurr[ing] in the United States" because "the transactions at issue were matched, and therefore became irrevocable, on servers located in the United States." *Id.* 12a. Petitioners "agree[d] that 'the complaint's allegations and the documents it incorporates by reference establish that matching occurred on the Binance exchange.'" *Id.* 14a. Petitioners "also conceded that the location of

Binance's servers may be relevant to determining where matching occurs on the Binance platform." *Id.* 15a. Against that backdrop, the court below "conclude[d] that the complaint plausibly alleges that matching occurred on 'the infrastructure Binance relies on to operate its exchange,'" much of which Respondents alleged "is located in the United States." *Id*. 15a (quoting C.A. App. 253 ¶ 327). "Specifically, [Respondents] allege that 'Binance is hosted on computer servers and data centers provided by Amazon Web Services (AWS), a cloud computing company that is located in the United States'; 'a significant portion, if not all, of the AWS servers and [associated data centers and support services] that host Binance are located in California'; and '[u]pon information and belief, most or all of Binance's digital data is stored on servers located in Santa Clara County, California.'" *Id.* (quoting C.A. App. 170–71 ¶ 24) (alterations in original).

The Second Circuit also concluded that Respondents' allegations "that the fact that their purchase orders were submitted from locations in the United States renders it more plausible that the trades at issue were matched over Binance's servers located in the United States, as opposed to Binance's servers located elsewhere," noting that at the pleading stage, Respondents "need merely plead 'a plausible claim for relief.'" *Id.* 15a–16a (quoting *Iqbal*, 556 U.S. at 679). Accordingly, "[c]onstruing Plaintiffs' allegations regarding the servers in the light most favorable to them," the court below "conclude[d] that they have

alleged facts that make it plausible that their trade orders were matched in the United States." *Id.* 16a.

The Second Circuit emphasized the limited, fact-specific basis of its ruling, concluding that "[w]hile it may not always be appropriate to determine where matching occurred solely based on the location of the servers the exchange runs on, it is appropriate to do so here given that Binance has not registered in any country, purports to have no physical or official location whatsoever, and the authorities in Malta, where its nominal headquarters are located, disclaim responsibility for regulating Binance." *Id.* 16a. Put simply, "[e]ven if the Binance exchange lacks a physical location, the answer to where [transaction] matching occurs cannot be 'nowhere.'" *Id.* 15a. Accordingly, the court held that "under these circumstances, the location of the servers on which trades are matched by Binance is deemed to be a location of the transaction," and Respondents therefore "adequately alleged domestic transactions based on their allegations that matching occurred on Binance's servers located in the United States." *Id.* 17a.

As an alternative ground for its decision, the Second Circuit held that Respondents "plausibly alleged that the transactions at issue are domestic" for an additional, independently sufficient reason: "Plaintiffs have plausibly alleged that irrevocable liability attached when they entered into the Terms of Use with Binance, placed their purchase orders, and sent payments from the United States." *Id.* After canvassing Second Circuit precedent applying this

Court's *Morrison* standard to various factual situations, *id.* 17a–19a, the court below observed that while "the 'mere placement of a buy order in the United States for the purchase of foreign securities on a foreign exchange' [i]s not, 'standing alone,' sufficient to allege that a purchaser incurred irrevocable liability in the United States," "here, Binance's Terms of Use, which remove the trader's ability to unilaterally revoke the trade prior to execution, plus the additional actions Plaintiffs took, including making domestic payments, provide more." *Id.* 19a–20a (quoting *City of Pontiac Policemen's & Firemen's Retirement Sys. v. UBS AG*, 752 F.3d 173, 181 (2d Cir. 2014)). The Second Circuit accordingly held that "at this stage in the litigation, Plaintiffs have plausibly alleged that they engaged in domestic transactions in unlisted securities." *Id.* 20a.

REASONS FOR DENYING THE PETITION

I. Because The Second Circuit's Decision Rested On Its Application Of An Undisputed Legal Standard, There Is No Good Basis For This Court's Review

Petitioners expressly agree that the Second Circuit applied the correct legal standards under *Morrison* in holding that (1) a transaction is domestic if "irrevocable liability" is incurred in the United States, and (2) for exchange transactions, irrevocable liability attaches at the location where buy and sell orders are matched. And Petitioners do not claim that the Second Circuit erred in evaluating the sufficiency of Respondents' factual allegations under the pleading standard set

forth in *Iqbal*. The petition merely argues that the Second Circuit misapplied those properly stated standards when it weighed Respondents' factual allegations and concluded they sufficiently pled that Respondents' transactions were matched on servers located in the United States. That provides no sound basis for this Court's review, particularly given that Petitioners conceded below "that the complaint's allegations and the documents it incorporates by reference establish that matching occurred on the Binance exchange," and "that the location of Binance's servers may be relevant to determining where matching occurs on the Binance platform." Pet. App. 14a (internal quotation marks omitted).

A. Petitioners Concede The Second Circuit Applied The Correct Legal Standard Under *Morrison*

The federal securities laws are applicable to "purchases and sales of securities in the United States," not to extraterritorial transactions. *Morrison*, 561 U.S. at 266. Following this Court's decision in *Morrison*, the Second Circuit has held for more than a decade that, to survive a motion to dismiss on extraterritoriality grounds, "plaintiffs must allege facts indicating that irrevocable liability [for a transaction] was incurred or that title [for a security] was transferred within the United States." *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60, 62 (2d Cir. 2012). Irrevocable liability attaches "when the parties become bound to effectuate the transaction." *Id.* at 67; *accord In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223, 265 (2d Cir. 2016).

"To determine whether a transaction is domestic, courts must therefore consider both when and where the transaction became irrevocable." Pet. App. 11a. As the Second Circuit recognized, "this task is particularly difficult when a transaction takes place over an exchange that claims to have no physical location in any geographic jurisdiction and not be subject to the oversight of any country's regulatory authority." *Id.* Second Circuit precedent under *Morrison*, however, provided the court below with a clear standard governing its analysis: "in the context of securities traded over an electronic intermediary exchange, like the securities at issue in this litigation," the Second Circuit has ruled that plaintiffs incur irrevocable liability, and thus their "transactions [a]re domestic," where their "trade offers were matched with offers from counterparties on [a United States]-based platform." *Id.* 12a–13a (quoting *Myun-Uk Choi v. Tower Rsch. Cap. LLC*, 890 F.3d 60, 67 (2d Cir. 2018)). The Second Circuit's ruling in this case applied that standard to Respondents' factual allegations, and held "[Respondents] have adequately alleged domestic transactions based on their allegations that matching occurred on Binance's servers located in the United States." *Id.* 17a.

Petitioners have repeatedly conceded that this is the correct legal standard. In the court below, Petitioners "agree[d] that at least one time at which irrevocable liability attaches is at the time when transactions are matched." *Id.* 14a (internal quotation marks omitted). Likewise, in the petition, Petitioners (as they must) continue to "agree that the place of

matching buy/sell orders is the location where buyers and sellers incur irrevocable liability and thus, of the transaction." Pet. 19; *see also id.* 21.[1]

Petitioners' admissions thus make clear that the petition raises no genuine dispute regarding whether the Second Circuit applied the proper standard under *Morrison* to the facts of this case.

B. Petitioners Do Not Contest The Pleading Standard Applied Below, And Their Request For Error Correction Provides No Good Reason For This Court's Review

Having conceded that the Second Circuit applied the correct legal standard under *Morrison*, Petitioners request review of the Second Circuit's application of that standard to the facts of this case. Pet. 13–24. But Petitioners identify no errors regarding the Second Circuit's evaluation of Respondents' factual allegations that merit this Court's review.

As an initial matter, Petitioners assert that the Second Circuit adopted an "[o]verly [g]enerous [v]iew [o]f [t]he [p]leading [s]tandard," and "credit[ed] threadbare allegations" rather than "requiring concrete allegations at the pleading stage suggesting

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[1] Because the parties do not dispute that transactions are domestic under *Morrison* if they are matched in the United States, this case presents no opportunity to address the objections of *amicus curiae* The Crypto Council for Innovation to that undisputed standard. *See* Brief for The Crypto Council for Innovation as *Amicus Curiae* Supporting Petitioners ("Crypto Council Br.") at 1–2 (Oct. 25, 2024).

that the relevant transactions actually occurred in the United States or that the defendant was otherwise subject to U.S. securities law." *Id.* 19–22. But Petitioners do not argue that the Second Circuit evaluated Respondents' allegations under an incorrect legal standard when it held that, at the pleading stage, Respondents "need merely plead 'a plausible claim for relief,'" with allegations construed "in the light most favorable to" Respondents. Pet. App. 16a (quoting *Iqbal*, 556 U.S. at 679). Instead, the errors asserted in the petition represent, at most, nothing more than Petitioners' belief that the Second Circuit incorrectly assessed the sufficiency of Respondents' factual allegations regarding the domestic location of the relevant Binance servers. *E.g.*, Pet. 19–20. That provides no sound basis for this Court's review.

There is no support for Petitioners' assertion that the Second Circuit's evaluation of the sufficiency of Respondents' factual allegations was "infected" by improper "policy considerations." Pet. 19–20; *see also id.* 13–16. True, the Second Circuit considered that Binance "claims to have no physical location in any geographic jurisdiction and not be subject to the oversight of any country's regulatory authority." Pet. App. 11a; *see also id.* 14a. That context, the Second Circuit held, distinguishes this case from "cases involving traditional exchanges, [where] there is often no dispute over where the exchange is located, and therefore where matching takes place." *Id.* 16a.

But, concerns about Binance's attempts to evade regulatory scrutiny aside, the Second Circuit nonetheless simply applied the undisputed legal

standard under *Morrison*, noting that "[e]ven if the Binance exchange lacks a physical location, the answer to where that matching occurs cannot be 'nowhere,'" *id.* 15a, concluding that in the unusual factual circumstance of an exchange that "has not registered in any country [and] purports to have no physical or official location whatsoever," *id.* 16a (thus obviating *Morrison*'s comity concerns), it was "appropriate" "to determine where matching occurred solely based on the location of the servers the exchange runs on." *Id.* 16a. Again, the location of the servers is a factor Petitioners expressly conceded is relevant to the *Morrison* inquiry. *Id.* 14a–15a. And the weight ascribed by the Second Circuit to that fact was consistent with Second Circuit precedent recognizing that the nominal location of an exchange is not dispositive—instead, irrevocable liability for exchange transactions is incurred at the location of the electronic platform where buy and sell orders are matched, even if those transactions are later cleared and settled elsewhere. *Choi*, 890 F.3d at 67–68.

Accordingly, the court below ruled that "the complaint plausibly alleges that matching occurred on 'the infrastructure Binance relies on to operate its exchange,'" and that such infrastructure "is located in the United States," crediting (as it must at the pleading stage) Respondents' factual allegations regarding the U.S. location of computer servers and data centers hosting the Binance exchange. Pet. App. 15a–16a. The Second Circuit thus did exactly what Petitioners say it should have: it "focuse[d] on the

location of transactions, and whether they occurred in United States territory." Pet. 14 (citations omitted).[2]

Petitioners also express their disagreement with the Second Circuit's conclusion that, on the facts of this case, application of the federal securities laws to Respondents' transactions does not implicate international comity concerns and therefore is "consistent with the test articulated in *Morrison* and with the principles underlying *Morrison*." Pet. App. 17a. But the Second Circuit's discussion of international comity simply reinforced its holding that in the fact-specific context of this case, it was appropriate to conclude at the pleading stage that Respondents' transactions were matched at the domestic location of servers hosting the Binance exchange. *Id.* 16a–17a. While the Second Circuit hypothesized that in a different case involving "a foreign-registered exchange," it may be appropriate to weigh the factual allegations differently, *id.*, that was not the factual situation faced by the court below. Instead, because Binance is not a "foreign-registered

[2] Petitioners inaccurately suggest that the Second Circuit's ruling erroneously "focused not on [Binance's] alleged conduct, but on that of an unrelated third party, AWS." Pet. 20–21. Not so: the court's discussion of Respondents' allegations concerning computer servers and data centers provided by AWS was in support of its conclusion that Respondents sufficiently alleged that ***Binance*** is hosted on computer infrastructure in the United States, and therefore that Respondents' transactions on the Binance exchange were matched in the United States. Pet. App. 15a–16a. In any case, Petitioners' reliance on such parsing of allegations underscores how this is at best a case about pleading standards, not an issue that merits this Court's review.

exchange," the court recognized that this case presents no occasion to consider departing from the rule that "the location of the servers on which trades are matched … is deemed to be a location of the transaction." *Id.* 17a. This nuanced analysis also belies Petitioners' claims that the Second Circuit's decision will have broad effects on international markets.

Petitioners' argument is therefore simply another request for error correction that provides no good reason for this Court's review. Pet. 14–15. Indeed, Petitioners' argument on this point rests on its factual assertions that contradict the allegations in Respondents' complaint (including its irrelevant assertion in the petition that "[Binance Holdings Limited] is organized in the Cayman Islands"), *id.* 15, which is undisputedly improper at the pleading stage. *See, e.g.*, Pet. App. 16a (at the pleading stage, Respondents "need merely plead 'a plausible claim for relief,'" with allegations construed "in the light most favorable to" Respondents (quoting *Iqbal*, 556 U.S. at 679)).

II. The Alternative Ground For The Second Circuit's Ruling Was Unnecessary To The Outcome Below And Does Not Merit This Court's Review

Petitioners additionally take issue with the alternative ground for the Second Circuit's holding that Respondents sufficiently alleged domestic transactions based on Respondents' allegations "that irrevocable liability attached when they entered into

the Terms of Use with Binance, placed their purchase orders, and sent payments from the United States." Pet. App. 17a; *see* Pet. 16–19.

First, this alternative ground was unnecessary to the Second Circuit's decision that the requirements of *Morrison* were met. As discussed above, *supra* Section I.A–B, the Second Circuit's ruling was independently supported by its application of the undisputed legal standard that "the place of matching buy/sell orders is the location where buyers and sellers incur irrevocable liability and thus, of the transaction." Pet. 19; *see also id.* 21. The alternative ground therefore presents no sound basis for this Court's review, nor should the Court be misled by the petition's muddling of the Second Circuit's independent ground for its decision in an effort to conjure an illusory basis for this Court's review.

In addition, review of the alternative ground is unwarranted because it is fully consistent with this Court's decisions and reflects a fact-specific application of longstanding appellate precedent applying *Morrison*'s standards. While Petitioners wrongly characterize the Second Circuit's alternative reasoning as effectively "replac[ing] the bright-line test required by Morrison with a hodge-podge of factors" or a "gestalt analysis," Pet. 13, all circuits applying *Morrison* engage in context-specific weighing of factual allegations relevant to whether irrevocable liability was incurred in the United States, as the Second Circuit did here. The First, Second, Third, and Ninth Circuits have long held that, depending on the factual circumstances, irrevocable liability can attach

where a trader manifests assent to a transaction or sends payment. *Absolute Activist*, 677 F.3d at 70 (facts demonstrating irrevocable liability "includ[e], but [are] not limited to, facts concerning the formation of the contracts, the placement of purchase orders, the passing of title, or the exchange of money"); *United States v. Georgiou*, 777 F.3d 125, 136 (3d Cir. 2015) (same); *Stoyas v. Toshiba Corp.*, 896 F.3d 933, 949 (9th Cir. 2018) (same); *SEC v. Morrone*, 997 F.3d 52, 59–60 (1st Cir. 2021) (finding domestic transactions because irrevocable liability was incurred when subscription agreements were executed in the United States); *United States v. Vilar*, 729 F.3d 62, 77, 76–78 (2d Cir. 2013) (finding domestic transactions based on "facts concerning the formation of the contracts and the exchange of money" (internal quotation marks omitted)); *Fed. Housing Fin. Agency v. Nomura Holding Am., Inc.* ("*FHFA*"), 873 F.3d 85, 156–58 (2d Cir. 2017) (irrevocable liability attached where purchasers' employees worked and received offering materials); *Giunta v. Dingman*, 893 F.3d 73, 76–77, 79–80 (2d Cir. 2018) (irrevocable liability attached where transaction terms were negotiated and funds were transferred).

The Second Circuit did not treat "[t]he location of a single party's residence or trading machinery" as independently "determinative of where two parties become committed to transact with one another," Pet. 16. Instead, in line with the consistent approach of appellate courts, it determined that Respondents' allegations, viewed in the light most favorable to Respondents, supported a plausible inference that irrevocable liability for Respondents' transactions

"was incurred when [Respondents] entered into the Terms of Use with Binance, placed their trade orders, and sent payments, all of which they claim occurred from their home states within the United States." Pet. App. 19a (citing *Vilar*, 729 F.3d at 77; *Giunta*, 893 F.3d at 81). The Second Circuit noted the fact-bound nature of its alternative reasoning: "[w]hile [the Second Circuit] ha[s] placed more emphasis" on "facts concerning the formation of the contracts, the placement of purchase orders, … or the exchange of money" when "dealing with transactions that did not occur on an official exchange," it concluded there is "reason here to consider where [Respondents'] trades originated given that Binance expressly disclaims having any physical location, foreign or otherwise." Pet. App. 18a.

Petitioners additionally suggest, Pet. 22–24, that the court below erred by reaffirming its prior precedents holding that under *Morrison* and its progeny, "irrevocable liability may attach in more than one location, and at more than one time, because there is always more than one side to any given transaction." Pet. App. 12a (internal quotation marks and citations omitted) (citing *Choi*, 890 F.3d at 68; *FHFA*, 873 F.3d at 156); *id.* 17a–18a. That, too, was unnecessary to the outcome below and presents no good reason for review, because the Second Circuit's ruling was independently supported by its application of the undisputed legal standard that exchange transactions are domestic under *Morrison* if they are matched in the United States. Pet. App. 17a.

In any event, there was no error in the Second Circuit's reasoning. As the Second Circuit has

explained, the place where irrevocable liability attaches "may be more than one location" because buyers and sellers need not be in the same place when they transact. *FHFA*, 873 F.3d at 156. In addition, transactions may involve a centralized counterparty or other intermediary between traders, in which event irrevocable liability logically occurs where the buyer and where the seller becomes bound to transact with the intermediary. *See Choi*, 890 F.3d at 68. That principle is not "in tension" with decisions of the First or Third Circuits. *Contra* Pet. 24. Those circuits, like the Second Circuit, recognize that irrevocable liability occurs both where a seller commits to a transaction and where a buyer commits to the same transaction, which may be different places. *See Morrone*, 997 F.3d at 59 ("[P]arties to a transaction incur irrevocable liability if [1] the purchaser incurred irrevocable liability within the United States to take and pay for a security, ***or*** [2] the seller incurred irrevocable liability within the United States to deliver a security." (alterations omitted, emphasis added)); *Georgiou*, 777 F.3d at 136 ("[T]erritoriality under *Morrison* turns on where, physically, the [1] purchaser ***or*** [2] seller committed him or herself to pay for or deliver a security." (alterations omitted, emphasis added)). Accordingly, even if the outcome below rested on the premise that irrevocable liability attached in multiple places (which it did not), that reasoning would not present a circuit split that could justify review by this Court.

III. Petitioners Identify No Circuit Split Or Lower Court "Confusion" On Any Issue Presented In This Case

Petitioners assert that there is "lower-court confusion over *Morrison*," Pet. 24, but they do not, and could not, argue that there is any conflict among the courts of appeals on any issue raised in this case. Nor do they identify any actual confusion among lower courts on any issue relevant to this case.

There is broad consensus among the courts of appeals that a securities transaction is domestic under the standard set forth by this Court in *Morrison* when the parties incur irrevocable liability within the United States. *See, e.g.*, *Absolute Activist*, 677 F.3d at 68 ("[T]o sufficiently allege a domestic securities transaction in securities not listed on a domestic exchange, we hold that a plaintiff must allege facts suggesting that irrevocable liability was incurred … within the United States."); *Georgiou*, 777 F.3d at 135–37 ("We now hold that irrevocable liability establishes the location of a securities transaction."); *Stoyas*, 896 F.3d at 949 ("We are persuaded by the Second and Third Circuits' analysis and therefore adopt the irrevocable liability test to determine whether the securities were the subject of a domestic transaction."); *Morrone*, 997 F.3d at 59–60 ("We agree with the reasoning of the Second, Third, and Ninth Circuits and hold that a transaction is domestic under *Morrison* if irrevocable liability occurs in the United States."). No circuit has disagreed with the Second Circuit's "irrevocable liability" test for identifying domestic transactions under *Morrison*, which the Second

Circuit applied in this case and Petitioners agree is the correct standard. *E.g.*, Pet. 19.

Petitioners observe that certain circuits disagree with the Second Circuit's holding in *Parkcentral Global Hub Limited v. Porsche Automobile Holdings SE*, 763 F.3d 198, 215–16 (2d Cir. 2014), that U.S. securities laws are inapplicable to "predominantly foreign" conduct notwithstanding the existence of a domestic transaction. Pet. 24–25. But that provides no basis for this Court's review of *this* case, which does not present that issue (and Petitioners do not assert otherwise). In fact, none of the parties has asserted that *Parkcentral* has any bearing on the *Morrison* analysis in this case, nor did the Second Circuit cite *Parkcentral* or apply the *Parkcentral* reasoning in this case.

While Petitioners vaguely reference "lower courts' general confusion concerning how to apply *Morrison*," they identify no confusion on any issue relevant to this case. *See* Pet. 25–26. Instead, Petitioners merely cite a single district court case that referenced the Second Circuit's decision below and determined that the different facts of that case concerning a different defendant's foreign ties counseled in favor of a different result than supported by the facts here. *Id.* 25. That does not reflect any "confusion" on a legal standard relevant to this case, let alone a conflict that could conceivably justify this Court's review. Far from a circuit split, the district court decision Petitioners

cite reflects lower courts' developing approach to applying *Morrison* to crypto-asset exchanges, demonstrating that even if there were an issue presented in this case appropriate for this Court's review (which there is not), it would be premature for the Court to weigh in before the issue is sufficiently well developed by courts below.

IV. This Case Is A Poor Vehicle For Addressing Any Concerns About Application Of U.S. Securities Laws To Crypto-Asset Exchanges

As the Second Circuit observed, the *Morrison* analysis in this case turns on its highly unusual facts. Although "Binance now has a substantial presence [in the United States], with servers, employees, and customers throughout the country," "Binance expressly disclaims having any physical location, foreign or otherwise," it "notoriously denies the applicability of any other country's securities regulation regime," and "no other sovereign appears to believe that Binance's exchange is within its jurisdiction." Pet. App. 5a, 17a, 18a. The Second Circuit's ruling was expressly premised on the distinct facts presented here, which separate this case from the typical case where there is "no dispute over where the exchange is located, and therefore where matching takes place." *Id.* 16a. And the Second Circuit's ruling was further informed by Binance's own concessions in this case that, in these factual circumstances, "the complaint's allegations and the documents it incorporates by reference establish that matching occurred on the Binance exchange," and "the location of Binance's servers may be relevant to determining

where matching occurs on the Binance platform." *Id.* 14a–15a. The fact-specific *Morrison* analysis performed by the Second Circuit thus provides no good opportunity for review of the various policy considerations that Petitioners assert impact the regulation of crypto-asset exchanges.

To be clear, no part of the Second Circuit's reasoning turned on the fact that Binance is an exchange for trading crypto-assets (as opposed to stocks, bonds, or any other tradable asset). Accordingly, Petitioners' desire for this Court to weigh in on "the evolving global regulatory framework for digital assets," Pet. 28, is irrelevant to this case. Similarly, the Second Circuit did not hold that irrevocable liability occurred "on every server node on the blockchain, everywhere around the world." *Contra* Crypto Council Br. at 1–2. No part of the Second Circuit's *Morrison* analysis turns on the blockchain-based infrastructure for crypto-asset transactions, and this case presents no occasion for this Court to consider any legal implications of that technology. To the extent this Court wishes to address the application of *Morrison* to cases that, unlike this one, present novel issues concerning where irrevocable liability attaches for crypto-asset transactions, it should do so after that issue has percolated further in the lower courts (particularly because this case has significant vehicle defects and comes at the pleading stage, with the full range of relevant contextual facts yet to be developed).

While Petitioners argue that this decision will "allow[] U.S. plaintiffs to drag foreign defendants into U.S. courts without tangible allegations that demonstrate a domestic transaction," Pet. 21–22, that argument merely reflect Petitioners' disagreement with the Second Circuit's application of undisputed legal standards to the facts of his case, pursuant to which the Second Circuit concluded that Respondents *had* sufficiently alleged that their transactions were domestic under *Morrison*. In addition, contrary to Petitioners' assertion, the decision below does not "allow[] plaintiffs to unilaterally subject foreign exchanges to U.S. securities laws simply by accessing the internet from the United States" to purchase securities. Pet. 16. The Second Circuit expressly acknowledged that, under its precedent, "the 'mere placement of a buy order in the United States for the purchase of foreign securities on a foreign exchange' was not, 'standing alone,' sufficient to allege that a purchaser incurred irrevocable liability in the United States." Pet. App. 19a (quoting *City of Pontiac*, 752 F.3d at 181). But as the Second Circuit ruled, that is not the factual situation here, where "Binance's Terms of Use, which remove the trader's ability to unilaterally revoke the trade prior to execution, plus the additional actions Plaintiffs took, including making domestic payments, provide more" facts demonstrating the domesticity of Respondents' transactions. *Id.* 19a–20a.

Finally, even if this case raised issues regarding the application of federal securities laws to crypto-asset exchanges that were suitable for this Court's

review (which it does not), this case is a poor vehicle for addressing such concerns as a result of Petitioners' choice after the Second Circuit's ruling to file a motion to compel arbitration in the district court while simultaneously seeking this Court's review of the Second Circuit's decision without seeking a stay of proceedings below. Respondents believe that Petitioners' motion to compel arbitration is meritless and have opposed that motion in the district court. Nevertheless, Petitioners' litigation gambit raises the possibility that if this Court grants certiorari, this case may later become moot if Petitioners prevail on their motion to compel arbitration. This case is therefore a poor vehicle for addressing Petitioners' concerns even if it were otherwise suitable for this Court's review.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition.

Respectfully submitted,

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