NO. 20-1765

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MÁXIMA ACUÑA-ATALAYA, DANIEL CHAUPE-ACUÑA, JILDA CHAUPE-ACUÑA, CARLOS CHAUPE-ACUÑA, YSIDORA CHAUPE-ACUÑA, ELIAS CHAVEZ-RODRIGUEZ, MARIBEL HIL-BRIONES,
Plaintiffs/Appellants,

v.

NEWMONT MINING CORPORATION, NEWMONT SECOND CAPITAL CORPORATION, NEWMONT USA LIMITED, AND NEWMONT PERU LIMITED,
Defendants/Appellees.

On Appeal from the United States District Court for
the District of Delaware
Civil Action No. 17-1315
(Honorable Gerald Austin McHugh, District Judge)

PLAINTIFFS-APPELLANTS' PETITION FOR PANEL REHEARING AND REHEARING EN BANC

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January 25, 2020

RULE 35 STATEMENT

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to decisions of the United States Court of Appeals for the Third Circuit and the Supreme Court of the United States, and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this court. These decisions include:

1. *Lacey v. Cessna Aircraft Co.*, 932 F.2d 170 (3d Cir. 1991).

2. Bhatnagar by Bhatnagar v. Surrendra Overseas Ltd., 52 F.3d 1220 (3d Cir. 1995).

3. *Daimler AG v. Bauman*, 571 U.S. 117 (2014).

4. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

I further express a belief, based on a reasoned and studied professional judgment, that this appeal involves a question of exceptional importance:

> What standard of proof must Defendants meet to demonstrate that a foreign forum is adequate when Plaintiffs have presented "significant evidence" of corruption "so severe as to call the adequacy of the forum into doubt?" Panel Opinion ("PO") at 4 (quoting *Acuña-Atalaya v. Newmont Mining Corp.*, 765 F. App'x 811, 815 (3d Cir. 2019) (quoting *Leon v. Millon Air, Inc.*, 251 F.3d 1304, 1312 (11th Cir. 2001))?

Dated: January 25, 2020

/s/ *Wyatt Gjullin*
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INTRODUCTION

The Panel Opinion affirmed *forum non conveniens* (FNC) dismissal, finding that despite a widespread and ongoing judicial corruption crisis, Defendants met their burden to show the foreign forum is adequate. Panel rehearing is necessary for two reasons. First, the panel overlooked a coup in the foreign forum intended to roll-back corruption reforms, which undermines a central basis of both the panel's and the district court's decisions—that there are ongoing corruption reforms in a politically stable climate. Second, the panel relied on the assertion that corruption has not reached Cajamarca or involved claims similar to Plaintiffs', overlooking contrary evidence. When the overlooked evidence is considered, Defendants cannot meet their burden to prove Plaintiffs will get a fair hearing.

Panel, or *en banc* review, is also necessary to secure uniformity and much needed clarity in this Circuit. The Panel Opinion conflicts with both the Third Circuit's fundamental requirement that defendants *establish* the adequacy of the foreign forum, and the precedent from other Circuits that the panel applied. Moreover, the Opinion did not apply a standard of proof to Defendants' burden. This approach would lead to divergent results in like cases and hollow out Defendants' burden to demonstrate adequacy. It is also at odds with Supreme Court jurisprudence on

personal jurisdiction, which contemplates a corporation's home forum as the one clear place a Plaintiff is assured a fair day in court.

Given the increasing frequency of *forum non conveniens* cases, this case presents an ideal opportunity to clarify and reinforce Circuit precedent on a question of exceptional importance: how certain must a district court be that a plaintiff will receive a fair hearing in a fair court before dismissing based on *forum non conveniens*? This Court should clearly establish a standard that is consistent with Circuit precedent to ensure that a plaintiffs' day in a fair court is not compromised because it is more convenient to litigate in a corrupt one.

BACKGROUND

Plaintiffs, members of the Chaupe family, are subsistence farmers in Cajamarca, Peru, whose small plot sits atop a gold deposit Defendants, four Delaware mining corporations, covet. Plaintiffs' Opening Brief (POB), SOF, A. For the past eight years, Defendants have intimidated and physically attacked Plaintiffs and destroyed their property, to force them from their land and pave the way for a massive open pit mine. *Id.* Plaintiffs sued Defendants in Delaware, their home forum. Asserting that it would inconvenience them to litigate at home, Defendants sought dismissal to Peru, D. Ct. Dkt. No. 14, whose courts are in the throes of the worst judicial corruption crisis in recent Latin American history and where Defendants have improperly influenced

courts, including in cases against Plaintiffs. POB, SOF, B-F.

Despite Defendants' "heavy" burden to show that their proposed forum is adequate, *Lony v. E.I. Du Pont de Nemours & Co.*, 935 F.2d 604, 613 (3d Cir. 1991), and the district court's concern about Plaintiffs' ability to get a fair hearing given rampant corruption there, the court found Peru to be an adequate forum and dismissed Plaintiffs' claims. *Acuna-Atalaya v. Newmont Mining Corp.*, 308 F. Supp. 3d 812, 821-26 (D. Del. 2018).

On appeal, Peru's "White Collars of the Port" scandal broke. This ongoing judicial corruption crisis was initially fueled by audio recordings that revealed multiple corruption networks operating at every level of the judiciary. POB, SOF, B-C. This Court vacated the first dismissal with instructions to consider Peru's unfolding crisis and resulting judicial states of emergency. *Acuna-Atalaya v. Newmont Mining Corp.*, 765 F. App'x. 811, 813-14 (3d Cir. 2019).

On remand, Plaintiffs produced '"significant evidence"' of judicial corruption '"so severe as to call the adequacy of the forum into doubt,"' as the district court acknowledged. JA7, 14-16 (quoting *Leon v. Millon Air, Inc.*, 251 F.3d 1305, 1312 (11th Cir. 2001). But it nonetheless dismissed, ruling that Peru is an adequate forum, relying on its findings that there are ongoing judicial reforms, "the political instability resulting from the [judicial corruption] scandals seems to have calmed," and the White

Collars of the Port case did not involve Cajamarca or the types of claims raised by Plaintiffs. JA16-20. Plaintiffs refuted those conclusions before this Court on appeal. POB 7-16, 37-43, 50-52.

Plaintiffs also informed the Court of events subsequent to the district court's ruling. The Peruvian government, through its Anti-Corruption Prosecutor, concluded "without a doubt" that reforms announced by the government are "insufficient to recover and ensure the guarantees of a correct administration of justice at a national level." Plaintiffs-Appellants' 1st Motion for Judicial Notice (Pls' 1st MJN), Ex. 1 at 133. And in November, 2020, Peru's Congress ousted President Martín Vizcarra – a leading anti-corruption reformer. Plaintiff-Appellants 2nd Motion for Judicial Notice (Pls' 2nd MJN) at 4-6. Vizcarra's removal was widely seen as a coup intended to halt anti-corruption and political reform. *Id.* Indeed, Congress ousted the President to undermine the Prosecutor's Office's anti-corruption efforts and to neutralize any obstacle to Congress' anti-reform agenda. *Id.* at 5-6.

Vizcarra's replacement resigned days after assuming the presidency following massive, deadly protests, leaving Peru without a president. *Id.* at 5. Congress selected an interim president, its third in a week, to lead a caretaker government until after elections scheduled for April 2021. *Id.*

Despite extraordinary evidence of systemic corruption at emergency levels, including in Cajamarca, Defendants' track record of corruption, and political chaos undermining hope of meaningful reform, the panel affirmed the district court's dismissal. PO at 5-7. It ruled that 1) an adequate alternative forum need not be established conclusively, suggesting a "justifiable belief" is sufficient; 2) and the record supports the district court's adequacy finding, citing political stability, corruption reforms, and dissimilarities between the corruption crisis and Plaintiffs' claims. PO at 4-8. The panel did not address the recent coup and acknowledged that ongoing investigations have "not yet" reformed Peru's judiciary. PO at 8.

ARGUMENT

I. Panel review is warranted because the Opinion overlooked the recent coup to halt corruption reforms, the judicial corruption in Cajamarca, and similarities between corruption exposed by the ongoing corruption crisis and Defendants' corrupt acts in proceedings against Plaintiffs.

A. Standard of Review

Panel rehearing is warranted when the panel overlooked or misapprehended a point of law or fact. Fed. R. App. P. 40(a)(2). A panel may reverse the district court when granting a panel rehearing without further briefing. Fed. R. App. P. 40(a)(4)(A).

B. The Panel Opinion overlooked the recent coup that created political chaos and threatens any attempt to root out pervasive judicial corruption.

Panel rehearing should be granted because the panel overlooked a coup that undermined the central basis of the district court's decision. In affirming the district court's determination that Peru is an adequate forum, the Panel Opinion relied on the outdated and incorrect factual assertion that "political instability has calmed" in Peru, PO at 6, echoing the district court's own erroneous finding. JA18. But a coup – the worst political unrest Peru has seen in decades – occurred just one month earlier and eight months after the district court ruled. Pls.' 2nd MJN at 3-9. Because the Opinion did not address the coup, it did not apprehend grave threats to the corruption "reforms" that formed the central basis of the district court's judgment. PO at 3, 5-6; JA16-19.

Specifically, the panel relied on the reconstitution of the National Magistrates Council and the ongoing prosecution of "many wrongdoers" as "reforms" that supported the district court's decision, PO at 6; JA16-19, but overlooked the import of the coup for such corruption "reforms." The vast majority of the *current* Congress successfully ousted President Vizcarra to *halt* corruption reforms. Pls.' 2nd MJN at 3-9. The ouster is part of the Peruvian Congress's efforts to roll-back reform and stop anti-corruption prosecutions, including in the White Collars of the Port case. Pls.' 2nd MJN at 3-9. These developments endanger the nascent reform efforts and anti-corruption prosecutions the Opinion relied on. PO at 6; Pls.' 2nd MJN at 3-9. The

purported efficacy of reforms in a politically stable climate was the central basis for the district court's determination that Peru is an adequate forum. That determination cannot stand in light of the coup. Even without the coup, reforms are insufficient, would take years to work, and as the Panel recognized, have "not yet." POB at 12-14. They do not ensure a fair hearing *now*.

Since the panel did not consider the coup, it should grant rehearing and reverse. Alternatively, it should remand so the district court can consider the coup and its implications for adequacy.

C. The Panel Opinion's conclusion that Peru's corruption crisis has not reached Cajamarca and was associated with claims far different from those brought by Plaintiffs overlooked contrary evidence.

Panel rehearing is also warranted because the panel overlooked additional, critical evidence refuting the district court's adequacy finding. First, the Opinion stated that "the White Collars of the Port case did not involve the judiciary in Cajamarca," PO at 6, echoing the district court. JA19-20. But the Panel overlooked alarming levels of judicial corruption in Cajamarca. The recent Anti-Corruption Prosecutor's Office report documents eight cases implicating prosecutors and judges in the Cajamarca region—four convictions and four under investigation, Pls.' 1st MJN, Ex. 1 at 47, 71-74, a sky-high rate with a district of only around 100 judges. JA1326 (Defs.' Expert Declaration); *see also* Plaintiffs' Reply Brief at 16-17. Similarly,

authorities issued nine judge dismissal requests for Cajamarca based on "evidence" of "serious offenses" including corruption, and four suspensions, for misconduct during the pendency of the crisis. POB at 11. Given the slow pace of prosecution and the high number of unrecorded crimes, Pls.' 1st MJN Ex. 1 at 35, 134, 136, these cases likely reflect only a fraction of the total corruption.

Second, the Panel Opinion stated that corruption related to the White Collars of the Port case "was associated with claims far different from Plaintiffs', including bribery related to criminal prosecutions." PO at 6. But appellate courts in Peru hear both civil and criminal proceedings, so corruption in criminal courts means corruption in civil courts. *See* JA164-206, 1954.

Further, Defendants' corrupt behavior in proceedings involving Plaintiffs is of the same type the Opinion noted: "bribery related to criminal prosecutions." PO at 6. The judge in the criminal trespass complaint Defendants initiated against Plaintiffs stated that Defendants had given an "economic benefit" to the prosecutor to bring the case. JA0334-35 ¶¶ 7-8 (Ysidora Chaupe Decl). And, judicial corruption convictions in Cajamarca reported by Anti-Corruption Prosecutors all involved bribery, exactly the misconduct in which Defendants have engaged. *See* Pls.' 2nd MJN, Ex. 1 at 71. Indeed, 57% of known judicial corruption cases nationally involve accepting bribes. Pls.' 1st MJN Ex. 1 at 48.

The evidence the Opinion overlooked undermines the conclusion that Defendants have shown Plaintiffs will get a fair hearing.

II. *En banc* review is necessary to ensure a uniform Circuit rule that defendants bear the burden to establish the alternative forum is adequate.

A. Standard of Review

An *en banc* rehearing may be granted when a "panel decision conflicts with a decision . . . of th[is] [C]ourt . . . and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions," Fed. R. App. P. 35(b)(1)(A), or if the proceeding involves a question of exceptional importance. Fed. R. App. P. 35(b)(1)(B).

B. The Panel Opinion conflicts with precedent; at a minimum the lack of clear guidance regarding the standard of proof applicable to Defendants' burden of persuasion has created confusion.

The Panel Opinion, if not corrected by the panel, merits *en banc* review for several reasons.

First, the Panel Opinion conflicts with Supreme Court and Circuit precedent. Because dismissal is a "harsh result," *Atl. Marine Constr. Co. v. United States Dist. Court*, 571 U.S. 49, 66 n.8 (2013) (internal quotations omitted), defendants "ordinarily bear[] a heavy burden in opposing the plaintiff's chosen forum." *Sinochem Int'l Co. v. Malaysia Int'l Shipping Co.*, 549 U.S. 422, 430 (2007); *accord Lony*, 935 F.2d at 613. Defendants

therefore must "counter effectively the [Plaintiffs'] affidavits," *Bhatnagar by Bhatnagar v. Surrendra Overseas*, 52 F.3d 1220, 1229 (3d Cir. 1995) and "establish … that an adequate alternative forum exists." *Lacey v. Cessna Aircraft Co.*, 932 F.2d 170, 180 (3d Cir. 1991). This Court has also approved the formulation that "defendants must establish a strong preponderance in favor of dismissal." *Id.* at 179; *accord Tech. Dev. Co. v. Onischenko*, 536 F. Supp. 2d 511, 517 (D.N.J. 2007). These are the "applicable standards" within which the district court's "[d]iscretion must be exercised." *Reyno v. Piper Aircraft Co.*, 630 F.2d 149, 160 (3d Cir. 1980), *rev'd on other grounds*, 454 U.S. 235 (1981).

However, the panel ruled that a defendant can meet its burden to prove its chosen forum is adequate, even if plaintiffs provide significant evidence that it is not and defendants do not rebut that evidence by conclusively proving the forum is adequate. PO at 4 (citing *Acuña-Atalaya*, 765 F. App'x at 815 (quoting *Leon*, 251 F.3d at 1312)). Instead, the panel held that a district court may dismiss if it is merely "persuade[d]" – or has a "justifiable belief" – that the forum is adequate. *Id.* at 4-5. Indeed, it so held while acknowledging that reform efforts has "not yet" fully solved the corruption problem. PO 8. That is, the panel allowed dismissal even where the alternative forum may not be adequate. That conflicts with FNC's cardinal principal that there must *actually be* an adequate alternative forum, and this Court's rule that

defendants must "*establish* that an adequate alternative forum *exists*." *Lacey,* 932 F.2d at 180 (emphasis added).

This Circuit has repeatedly reversed because the decision below left doubts as to the adequacy of the foreign forum, by, *inter alia*, relying on incorrect assumptions or insufficient evidence or analysis. *Id.* at 174; *Lony*, 886 F.2d 628 at 640; *Lacey v. Cessna Aircraft Co.*, 862 F.2d 38, 39 (3d Cir. 1988); *Tech. Dev. Co. v. Onischenko*, 174 F. App'x 117, 118–20 (3d Cir. 2006).

Second, in its search for guidance, the Panel Opinion looked to Second and Eleventh Circuit cases, but the Opinion conflicts with those cases. In *Leon*, 251 F.3d at 1312, the Eleventh Circuit endorsed the "correct approach" in *Eastman Kodak Co. v. Kavlin*, 978 F. Supp. 1078 (S.D. Fla. 1997); *accord* JA0041 (district court noting *Eastman Kodak* is the "model case for evaluating [corruption] allegations"). In *Eastman Kodak*, plaintiffs provided evidence of judicial corruption sufficient to shift the burden to the defendant, and the court held that if "the Court cannot draw a conclusive judgment" that the forum is fair, "defendants have not met their burden." 978 F. Supp. at 1086-87. This is precisely the standard the Panel Opinion *rejected.*

The "conclusive judgment" standard approximates the clear and convincing evidence standard applied in civil cases under similar, though less consequential, circumstances, such as venue transfers, where a fair trial is not at stake, and is

appropriate here. *E.g., Headrick v. Atchison, T. & S.F.R. Co.*, 182 F.2d 305, 310 (10th Cir. 1950); *Vassallo v. Niedermeyer*, 495 F. Supp. 757, 759 (S.D.N.Y. 1980). This standard aligns with this Court's previous decisions that defendants must "counter effectively" Plaintiffs' evidence and must "establish a strong preponderance in favor of dismissal," and that an adequate forum "exists." The Panel Opinion's standard does not.

The Panel Opinion also looked to *Bank of Credit & Commerce Int'l (Overseas) Ltd. v. State Bank of Pakistan*, 273 F.3d 241, 247-48 (2d Cir. 2001) ("*BCCI*"), but misconstrued it. The Opinion relied on *BCCI*'s "justifiable belief" language in finding that an adequate forum need not be established conclusively, but *BCCI* held a "justifiable belief" in, rather than a "definitive finding" as to, the forum's adequacy, is sufficient *only if* the court can protect plaintiffs by imposing conditions on dismissal. *Id.* Where, as here, it cannot, "the court should . . . be more sure of its finding . . . as to the adequacy of the alternative foreign forum." *Id.* at 248. Indeed, the adequacy of the foreign forum "should [not] be left uncertain." *Id.* at 247-48. Thus, in cases like this one, only a "definitive finding" as to the forum's adequacy is sufficient. *Id.*

Third, the Panel Opinion did not apply any standard of proof. Such a standard provides the required *level of certainty*. It "instruct[s] the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual

conclusions for a particular type of adjudication." *Addington v. Texas*, 441 U.S. 418, 423 (1979) (quotation marks omitted). The Opinion (incorrectly) *rejected* a standard of proof, finding that a "conclusive[]" determination that a forum is adequate forum is unnecessary. But it did not apply one.

The Opinion's ruling that defendants need only "persuade" the court that the alternative forum is adequate, PO at 4 (citations omitted), is not a standard of proof. The term "burden of persuasion" speaks to the duty to prove a fact; it does not speak to the *level of certainty* with which a party must establish that fact. *See Greenwich Collieries v. Director, Office of Workers' Compensation Programs, United States Dep't of Labor*, 990 F.2d 730, 734-35 (3d Cir. 1993) ("When one must *prove* a given fact or issue, that person carries the *burden of persuasion* on that issue."). For example, both civil plaintiffs and prosecutors bear the burden of persuasion, yet the applicable standards of proof are quite different. *See, e.g., Mullaney v. Wilbur*, 421 U.S. 684, 702 & n.30 (1975).

The failure to require any standard of proof on an issue as fundamental as the fairness of the alternative forum is alarming considering that a defendant's burden is only triggered if plaintiffs' evidence calls the forum's adequacy into doubt. PO at 4. And, it would give district courts excessive discretion to dismiss a case even where the district (and appellate) courts have doubts about the forum's adequacy. This in turn would render the *forum non conveniens* doctrine even less predictable for parties and

courts alike.

Fourth, *en banc* review is particularly important given the increasing frequency of FNC decisions in the Third Circuit. A Lexis-Nexis search indicates the phrase "*forum non conveniens*" appears in district court decisions in the 3rd Circuit 47 times in 2020 alone, and 394 times in the 2010s (accounting for 1/3 of the total).

That the Panel Opinion is not precedential matters little. This Circuit has granted *en banc* review of unpublished opinions "to assist the district courts." *United States v. Flores-Mejia*, 759 F.3d 253, 254 (3d Cir. 2014). Likewise, the Supreme Court notes that the fact that the decision is unpublished "carries no weight in [this Court's] decision to review the case." *C.I.R. v. McCoy*, 484 U.S. 3, 7 (1987). The standard of proof necessary to safeguard plaintiffs' ability to get a fair hearing is an important and recurring issue, regardless of whether it was addressed by an unpublished opinion.

Given all of this, *en banc* review is warranted to reconcile the Panel Opinion with binding precedent and to clarify this important issue. District courts and future panels need clear guidance on the applicable standard of proof defendants must meet to satisfy their burden. Without it, district courts will determine for themselves the applicable standard, resulting in inconsistent decisions.

Indeed, District courts will often have incentives to streamline their dockets, and must have clear rules about what is required to do so. And those rules must be

consistent with this Court's instruction that defendants bear a "heavy" burden. *Lony*, 935 F.2d at 613. The Panel Opinion relieved Defendants of some of the weight of their burden to prove the forum is adequate, and demonstrates the need for this Court to clearly establish a uniform approach.

C. District courts should not be free to dismiss to a foreign forum about which there are doubts, where there is no question that the current forum is fair.

The Panel Opinion's approach also conflicts with binding precedent in other ways. The Opinion relied in part on past cases considering Peru's adequacy as a forum. PO at n.6. But this Court has held that past cases finding a forum to be adequate are irrelevant to whether defendants have met their burden of proof in a particular case. *Bhatnagar*, 52 F.3d at 1229; *see also Van Cauwenberghe v. Biard*, 486 U.S. 517, 529 (1988) (holding each *forum non conveniens* motion "turns on its facts.") (internal citations and quotation marks omitted).

Any fear of declaring a forum to be inadequate is unwarranted. Denying an FNC motion is not a *finding* that a foreign forum is inadequate. The question is whether defendants have *proven* plaintiffs will have an *adequate* forum based on *the record at bar*. *Bhatnagar*, 52 F.3d at 1230; *Eastman Kodak*, 978 F. Supp. at 1087; *Canadian Overseas Ores, Ltd. v. Compania de Acero del Pacifico S.A.*, 528 F. Supp. 1337, 1343 (S.D.N.Y. 1982) (denying motion because court could not conclude forum was

adequate, without "hold[ing] as a matter of fact" forum was inadequate).

Further, permitting dismissal where it is not certain that the forum is adequate results in hardship for plaintiffs, like the Chaupes – who have been sent away from their chosen forum and told to start over in another (uncertain) jurisdiction after three years of litigation – and may trigger years of follow-on litigation or a return to this forum. *See, e.g., Chavez v. Dole Food Co.*, 836 F.3d 205, 211-12 (3d Cir. 2016) (*en banc*)(reinstating case dismissed under FNC in 1995 where by the mid-2000's "it had become clear that foreign courts were . . . unwilling to hear these cases.").

Dismissal to a foreign forum whose adequacy is uncertain is particularly problematic where, as here, defendants are sued in their *home* forum and there can be no question that the forum is fair. Such dismissal is at odds with the Supreme Court's recent personal jurisdiction jurisprudence guaranteeing that Plaintiffs will have at least one unquestionably fair forum. When the *forum non conveniens* doctrine was developed, lax personal jurisdiction rules allowed general jurisdiction over corporate defendants where the convenience of suit was not assured. *See, e.g., Perkins v. Benguet Consolidated Mining Co.,* 342 U.S. 437 (1952). But *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011), and *Daimler AG v. Bauman*, 571 U.S. 117, 136-138 & n.19 (2014), narrowed general jurisdiction to largely those places where a corporation is "at home": its place of incorporation and its principal place of business. *Daimler* though still

affords Plaintiffs "recourse to at least one clear and certain forum in which a corporate defendant may be sued." 571 U.S. at 137.

The Panel's Opinion permitting dismissal to a forum whose adequacy is not certain would expand the *forum non conveniens* doctrine and conflicts with the Supreme Court's personal jurisdiction caselaw by leaving plaintiffs like the Chaupes without recourse to the one forum they were told would hear their claims.

CONCLUSION

This case involves an extraordinary record of widespread judicial corruption. The Panel Opinion overlooked key evidence showing that Defendants did not meet their burden to prove the alternative forum is adequate. The Opinion also applied an incorrect standard of proof to that burden. This Court should grant Plaintiffs' Petition for Rehearing to correct the critical factual oversights, and if necessary, to ensure that the requirement that defendants establish the existence of an adequate alternative forum remains clear and meaningful in this highly litigated area.

Dated: January 25, 2021 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This petition complies with the type-volume limitation of Fed. R. App. P. 35(b)(2) because this petition was produced using a computer and contains 3,886 words.

2. This petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this petition has been prepared in proportionally spaced typeface using Microsoft Office Word (2013) in 14-point Garamond font.

3. This petition complies with Local Appellate Rule 31.1(c) because a virus check was performed on the file of this electronic petition using VirusTotal™ and no virus was detected.

Date: January 25, 2021

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CERTIFICATE OF SERVICE

I, Wyatt Gjullin, hereby certify that on January 25, 2021, I caused the foregoing Petition for Rehearing to be filed with the Clerk of the Court for the United States Court of Appeals for the Third Circuit using the appellate CM/ECF electronic filing system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Date: January 25, 2020

/s/ Wyatt Gjullin
Wyatt Gjullin
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