No. 10-55515, 10-55587, 10-55516

In the United States Court of Appeals
for the Ninth Circuit

LUIS ALBERTO GALVIS MUJICA, et al., Plaintiffs-Appellants

vs.

OCCIDENTAL PETROLEUM CORP. et al., Defendants-Appellees

On Appeal from a Judgment of the United States District Court for the Central District of California, No. 2:03-cv-2860-GW-JWJ
The Honorable William J. Rea, United States District Judge
The Honorable George Wu, United States District Judge

BRIEF OF AMICUS CURIAE EARTHRIGHTS INTERNATIONAL IN SUPPORT OF PLAINTIFFS-APPELLANTS' PETITION FOR REHEARING AND REHEARING EN BANC (FILED WITH THE CONSENT OF ALL PARTIES)

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CORPORATE DISCLOSURE STATEMENT

Amicus curiae EarthRights International (ERI) is a nonprofit corporation, which has no parent corporation nor stock held by any publicly held corporation.

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STATEMENTS PURSUANT TO RULE 29

All parties have consented to the filing of this brief.

No party or counsel thereof authored this brief in whole or part; no person other than *amicus* contributed money intended to fund preparing or submitting this brief.

STATEMENT OF INTEREST OF AMICUS CURIAE

EarthRights International (ERI) is a human rights organization based in Washington, D.C., that litigates on behalf of victims of abuses. ERI has served as counsel in several transnational lawsuits asserting state-law claims that arise partly out of conduct overseas. *E.g. Doe v. Unocal Corp.*, No. 00-56603 (9th Cir.) and No. BC 237980 (Los Angeles Superior Court) (alleging California corporation was liable for its complicity in abuses by Burmese soldiers); *Bowoto v. Chevron Corp.*, No. 09-15641 (9th Cir.) (alleging California corporation was liable for its complicity in abuses by Nigerian security forces); *Maynas Carijano v. Occidental Petroleum Corp.*, Nos. 08-56187 & 08-56270 (9th Cir.) (alleging California corporations are liable for polluting indigenous communities in Peru).

ERI therefore has an interest in ensuring that state-law claims for abuses committed abroad are not improperly dismissed. ERI has previously filed *amicus* briefs to this Court in this proceeding.

STATEMENT OF THE ISSUE ADDRESSED BY AMICUS CURIAE

Federal courts may abstain from exercising jurisdiction on grounds of international adjudicatory comity only if there is a pending foreign proceeding and exceptional circumstances warrant dismissal. The panel dismissed without finding these threshold requirements to be met. Rehearing should be granted because the panel's decision creates a vague new comity doctrine that would vastly expand the circumstances in which courts may decline jurisdiction, in conflict with controlling Supreme Court and Ninth Circuit precedent and the decisions of other circuits.

SUMMARY OF ARGUMENT

Federal courts have a "virtually unflagging obligation" to exercise the jurisdiction Congress has created. *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976);

Neuchatel Swiss General Ins. Co. v. Lufthansa Airlines, 925 F.2d 1193, 1194 (9th Cir. 1991). Only rarely may they abdicate that jurisdiction in deference to the laws or interests of a foreign country, and only in "exceptional circumstances." *Colorado River*, 424 U.S. at 813; *Neuchatel*, 925 F.2d at 1194. The panel failed to heed this first principle.

The panel held that Colombia is entitled to exclusive jurisdiction over claims against two U.S. companies. According to the panel, by not declining its own jurisdiction in deference to a prior Colombian administrative case against the Colombian government for the Santo Domingo bombing, the district court abused its discretion.

Petitioners emphasize that the panel improperly dispensed with comity's "true conflict" requirement. Petition at 15. But whether or not that is so, the panel's central holding – that dismissal is required based solely on a balancing of the United States' and Colombia's interests – improperly enlarges comity abstention.

Colorado River and its progeny strictly limit comity dismissal. To dismiss in deference to parallel proceedings, there must be a pending proceeding that addresses the claims between the parties. But the

Colombian case is over, and these defendants were not parties to it. Comity is afforded to an existing judgment through ordinary recognition standards and a determination of whether the foreign judgment has preclusive effect, not through outright dismissal.

The panel's balancing test also skipped *Colorado River*'s requirement that there be exceptional circumstances. Even if such circumstances existed here, rehearing would be required because the panel's decision tells district courts they can ignore this essential requirement.

In fact, there are no exceptional circumstances in this case that justify withholding federal jurisdiction. The panel abstained in favor of a Colombian forum based on statements made nearly a decade ago – and that are likely obsolete – by the Colombian and U.S. governments. Although Colombia stated that a decision might affect U.S.-Colombia relations, it did not ask for dismissal. Even if Colombia wanted to bar federal court jurisdiction, that is not an "interest" to which federal courts may defer. This Court has expressly rejected the notion that federal jurisdiction may hinge on the preference of another nation.

Indeed, courts do not merely ignore efforts by foreign governments to limit congressionally-created jurisdiction – they actively oppose them.

The United States cannot make a foreign nation's desire for exclusive jurisdiction cognizable simply by agreeing with it. The Executive lacks veto power over federal jurisdiction. Any contrary suggestion conflicts with the rule of law and Supreme Court separation-of-powers caselaw. And the panel's holding that exercising jurisdiction was an abuse of discretion means that district courts presumably *must* decline jurisdiction in like circumstances even though comity is discretionary.

No other Circuit permits comity dismissal based on a balancing analysis where there are neither parallel proceedings nor a finding of exceptional circumstances. The panel purported to apply an Eleventh Circuit case, but the Eleventh Circuit has since clarified that the sort of "prospective" comity dismissal it created requires extraordinary diplomatic circumstances.

An assessment of which forum has a greater interest in hearing the case is not a doctrine unto itself. Such balancing may be *part* of a comity abstention analysis, if the other requirements are met. But a

greater foreign interest is not a basis for dismissal on its own, and the Supreme Court has explicitly rejected the idea that courts may create new foreign policy abstention doctrines.

There was no need to create a broad new doctrine of international comity abstention in this case. The principle of international comity is already reflected in well-established doctrines that courts apply every day: *forum non conveniens*, recognition of foreign judgments and choice of law. Those doctrines may or may not require dismissal here. But they have never been thought inadequate. The panel's newly-minted comity doctrine cannot be squared with existing Supreme Court and Ninth Circuit precedent and conflicts with the decisions of the other Circuits to have addressed the issue. It therefore warrants *en banc* review.

ARGUMENT

Federal courts have a "virtually unflagging obligation" to exercise their jurisdiction. *Colorado River*, 424 U.S. at 817-18. This obligation exists even where the controversy may potentially implicate foreign affairs. *W.S. Kirkpatrick & Co., Inc. v. Environmental Tectronics Corp., Int'l.*, 493 U.S. 400, 409 (1990). But the panel erroneously dismissed

plaintiffs' tort claims, despite diversity jurisdiction, on the grounds of adjudicatory comity.

The Supreme Court has explicitly rejected the sort of freewheeling comity abstention that the panel adopted. In *Kirkpatrick*, Petitioner and the United States argued that even if a case does not call into question an official act of a foreign state, the "policies underlying [the Court's] act of state cases – international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of embarrassment to the Executive Branch in its conduct of foreign relations" may justify abstention. *Id.* at 408. The Court, per Justice Scalia, unanimously rejected that claim, holding that the policies underlying the act of state doctrine – including international comity – are not "a doctrine unto themselves." *Id*. at 409. Thus, it refused to "expand[] judicial incapacities" – whether under the act of state doctrine or "related principles of abstention" – where acts of state are not involved, even if a case may impact U.S. foreign affairs or embarrass a foreign government. *Id*. at 409.

Thus, courts may not expand comity beyond its recognized boundaries. Yet that is exactly what the panel did here.

I. The panel's dismissal conflicts with *Colorado River* and its progeny.

In the *Colorado River* line of cases, the Supreme Court and this Court held that, given their obligation to exercise jurisdiction, courts may decline jurisdiction in deference to adjudication in another forum, such as state court, only in "exceptional circumstances." *Colorado River*, 424 U.S. at 817, 813. The Supreme Court has subsequently questioned whether abstention by dismissal would *ever* be appropriate unless the plaintiffs had requested discretionary relief. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996).

This Circuit has recognized the possibility of *Colorado River* abstention to parallel foreign proceedings. *See Neuchatel*, 925 F.2d at 1194. But abstention is appropriate only if a foreign proceeding is pending, and then only in "exceptional circumstances." *Id.* at 1194. "The fact that the parallel proceedings are pending in a foreign jurisdiction rather than in a state court is immaterial. We reject the notion that a federal court owes greater deference to foreign courts than to our own state courts." *Id.* at 1195. Other circuits have similarly imposed the threshold requirements of a parallel foreign proceeding and exceptional

circumstances before a federal court may consider abstention. Section II, *infra*.

The panel failed even to mention the limits imposed by *Colorado River* and this Circuit's controlling precedent in *Neuchatel*. And its decision to dismiss far exceeds those limits in at least three respects. Here there is no pending foreign proceeding; there never was a proceeding that addressed the claims between the parties, since the Colombian action involved different defendants; and the panel did not purport to find any circumstance to be "exceptional." Slip Op. at 48.

In short, the panel created a broad new comity doctrine at odds with existing precedent.

A. The panel's decision conflicts with precedent because there is no parallel case pending in Colombia.

Under *Colorado River*, abstention requires a pending, parallel proceeding in another forum. *See Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 13 (1983); *Neuchatel*, 925 F.2d at 1194 (limiting *Colorado River* abstention to "parallel proceedings in another jurisdiction"). Here, there are no proceedings pending in Colombia. That case is over and a judgment has been reached against

the government. Petition at 3. The lack of a parallel foreign proceeding precludes abstention.

But the district court will still extend comity towards the Colombian proceedings. International comity is the "recognition" one nation gives to the legislative, executive or judicial acts of another. Slip Op. at 36 (quoting *In re Simon*, 153 F.3d 991, 998 (9th Cir. 1998). As the dissent noted, adjudicative comity "arises in two contexts"; in addition to considering whether to stay or dismiss in favor of a parallel foreign proceeding, courts also "determin[e] the preclusive effect or enforceability of a foreign ruling or judgment." Slip Op. at 84.

California law "recognizes" foreign money judgments unless a valid basis for non-recognition exists. Uniform Foreign-Country Money Judgments Recognition Act, Cal. Code Civ. Pro. §1716. If the judgment here provides some basis for dismissal, defendants are free to raise it as a defense in this action. *Id.* §1718. The district court would then consider whether this litigation is barred by *res judicata* or otherwise precluded by the foreign judgment.

Courts also traditionally account for the foreign jurisdiction's interests through choice of law. Here, the district court will have to

apply California's choice of law rules and determine whether Colombia law applies rather than California law. California's choice of law rules adopt the governmental interest approach and thus ensure that the foreign jurisdiction's interests are considered. *Kearney v. Salomon Smith Barney, Inc.*, 39 Cal. 4th 95, 100 (2006).[1]

Since comity concerns are addressed through ordinary *res judicata* and choice of law analyses, there was no reason for the panel to expand comity abstention beyond established bounds. Moreover, as the panel recognized, *forum non conveniens* shares certain considerations with comity. Slip Op. at 37. That doctrine gives the district courts the ability to dismiss claims that properly belong elsewhere.

By abstaining in favor of proceedings that have concluded, the panel upset the well-established distinction between abstention and recognition, and would permit abstention in all kinds of cases in which it is barred by Supreme Court and previous Ninth Circuit authority. This warrants further review.

[1] For example, any argument that Colombia has a single-recovery rule that bars these claims, *see* Slip Op. at 70, would be addressed by applying ordinary recognition, preclusion and choice of law principles.

B. The panel's decision conflicts with precedent because defendants were not parties to the Colombian litigation.

Under *Colorado River*, if there is "substantial doubt" as to whether the parallel litigation is "an adequate vehicle for the complete and prompt resolution of the issues between the parties," it "would be a serious abuse of discretion" to dismiss. *Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 28 (1983); *Intel Corp. v. Advanced Micro Devices, Inc.*, 12 F.3d 908, 913 (9th Cir. 1993). Other Circuits have held that foreign proceedings are not parallel unless the parties and issues are the same or substantially the same. *See Royal & Sun Alliance Ins. Co. of Canada v. Century Int'l Arms, Inc.*, 466 F.3d 88, 92 (2d Cir. 2006).

But here, the defendants were not parties to the Colombian proceedings. Because those proceedings did not address the claims against these defendants, dismissal was improper under Supreme Court and Ninth Circuit authority.

C. The panel's decision conflicts with precedent because the panel did not identify any exceptional circumstance.

In perhaps its most serious lapse, the panel ignored the requirement that there be some exceptional circumstance. *Colorado*

River emphasized that declining federal jurisdiction in favor of a state proceeding is only warranted based on "exceptional circumstances." 424 U.S. at 817. And this Court explicitly required exceptional circumstances before abstaining in deference to a foreign action. *Neuchatel*, 925 F.2d at 1194. So have other circuits. Section II, *infra*. The panel's failure to require an exceptional circumstance clearly conflicts with that authority.

As detailed below, none of the factors the panel pointed to are exceptional circumstances. But even if they were, rehearing would be warranted because, by laying out a comity doctrine under which no exceptional circumstances showing is necessary, the panel rewrote comity law.

1. Federal courts may not abdicate their jurisdiction in deference to a foreign government's desire to divest our courts of jurisdiction.

Colombia never stated what national interest it believed was implicated by this litigation, and never asked for the case to be dismissed. Slip Op. at 63-64. The panel speculated that "Colombia has a strong interest in preventing this Court's jurisdiction over the instant case." Slip Op. at 63. But that is precisely the kind of "interest" courts

usually ignore, because it *conflicts* with comity. Rehearing should be granted because the panel's deference to Colombia's alleged desire for exclusive jurisdiction contravenes Supreme Court and Ninth Circuit authority.

"Federal judges cannot dismiss a case because a foreign government finds it irksome." *Patrickson v. Dole Food Co., Inc.*, 251 F.3d 795, 803 (9th Cir. 2001), *aff'd on other grounds*, *Dole Food Co., Inc. v. Patrickson*, 538 U.S. 468 (2003).

Nonetheless, the panel held that this case "stands in clear contrast to other cases where a foreign state did not express an interest in having its courts serve as a forum for relevant litigation," citing, *inter alia*, *Pacheco de Perez v. AT&T Co.*, 139 F.3d 1368, 1378 (11th Cir. 1998). Slip Op. at 64-65. But this Court has rejected such reasoning: "We are particularly troubled by the suggestion in *Pacheco de Perez* . . . that federal jurisdiction will hinge on whether a foreign government has taken a position in support or in opposition to the litigation." *Patrickson*, 251 F.3d at 804 n.9.

Courts in two nations routinely exercise concurrent jurisdiction even over the same claim. *China Trade & Dev. Corp. v. M.V. Choong*

Yong, 837 F.2d 33, 35-36 (2d Cir. 1987) (collecting cases). Parallel proceedings are consistent with comity and are "ordinarily [] allowed to proceed simultaneously, at least until a judgment is reached in one which can be pled as *res judicata* in the other." *Laker Airways, Ltd. v. Sabena, Belgian World Airways*, 731 F.2d 909, 926-27 (D.C. Cir. 1984).

Attempts by one nation to obtain exclusive jurisdiction *undermine* comity, *see E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 995 (9th Cir. 2006), and would usurp U.S. judicial functions. *Laker Airways*. 731 F.2d at 939. Thus, the Supreme Court refused to defer to a French law prohibiting participation in U.S. discovery, since it represented an "extraordinary exercise" of jurisdiction over a U.S. court. *Societe Nationale Industrielle Aerospatiale v. U.S. District Court*, 482 U.S. 522, 544-45, n.29 (1987). A nation cannot designate its own courts as the exclusive fora if another nation has an interest, such as citizenship. *Allendale Mut. Ins. Co. v. Bull Data Sys., Inc.*, 10 F.3d 425, 432 (7th Cir. 1993). As the seminal *Laker Airways* decision held, foreign governments' efforts to terminate U.S. litigation "are not entitled to comity." 731 F.2d at 938.

Far from requiring deference, such efforts may trigger U.S. courts' "duty to protect their legitimately conferred jurisdiction, " *E. & J. Gallo Winery*, 446 F.3d at 995, and thus are among the limited circumstances in which a U.S. court may enjoin action before a foreign tribunal. *Laker Airways*, 731 F.2d at 916. "[O]ur law has not departed so far from common sense" that courts must "capitulate" to foreign efforts "to prevent the court from resolving legitimate claims placed before it." *Id.* at 939.

2. Statements by the U.S. and Colombian governments roughly ten years ago do not demonstrate "exceptional circumstances."

The panel erred in dismissing these claims in part because of statements by the U.S. government and the Colombian government nearly ten years ago. Even assuming Colombia's interest in exclusive jurisdiction is cognizable, the panel's holding in reliance on these statements was far too broad.

International comity abstention is a matter of discretion. *See Neuchatel*, 925 F.2d at 1194 n.2. Since the panel reversed the district court's refusal to dismiss on an abuse of discretion standard, Slip Op. at 47, its opinion essentially means district courts *must* dismiss any time a

foreign government and/or the United States objects. The panel dismissed despite the fact that Colombia did not explain its interest or ask for dismissal and the U.S. government merely "surmised" what Colombia's interest might be. Slip Op. at 63-64. And the statements are obsolete. When they were issued, the proceedings in Colombia were pending. Now, they are over. Nothing suggests that the U.S. and Colombian governments maintain their original views after so much time has passed and circumstances have changed.

If a court is to take the unusual step of abdicating its jurisdiction in favor of a foreign nation's, it must have a firm basis for doing so. Speculation by the court or the Executive ought not suffice. Surely the "exceptional circumstances" requirement demands more than conjecture and assumption. If dismissal was *required* here, it is hard to see what discretion district courts retain.

Foreign governments have no veto power over U.S. litigation. Section I.C.1 *supra*. And neither does the Executive. Indeed, the President himself lacks the power to unilaterally displace state law, even in a case raising "plainly compelling" federal foreign policy interests. *Medellin v. Texas*, 552 U.S. 491, 498-99, 523-32 (2008).

Foreign countries and our government might prefer that all kinds of cases are litigated abroad. Indeed, the panel relied on the United States' statement that "foreign courts generally should resolve disputes arising in foreign countries" and that hearing this case could suggest to Colombia that the U.S. "does not recognize the legitimacy of Colombian judicial institutions." Slip. Op. at 60. But those statements ignore the fact that concurrent jurisdiction ordinarily accords with comity. Section I.C.1 *supra*. And they apply to all manner of litigation; they certainly are not "exceptional circumstances." *See Royal & Sun Alliance*, 466 F.3d at 95 ("[C]ircumstances that routinely exist in connection with parallel litigation cannot reasonably be considered exceptional."). They thus do not overcome courts' obligation to decide a properly presented case, even if the controversy might implicate foreign affairs. *See Kirkpatrick*, 493 U.S. at 409.

3. There are no other "exceptional circumstances."

This Court has held that exceptional circumstances require a showing that concurrent jurisdiction is likely to "cause piecemeal litigation, waste of judicial resources, inconvenience to the parties, and conflicting results," and even then, such consequences must outweigh

courts' "unflagging obligation" to exercise their jurisdiction. *Tovar v. Billmeyer,* 609 F.2d 1291, 1293 (9th Cir.1979) (quoting *Colorado River*, 424 U.S. at 816-17); *accord Royal & Sun Alliance*, 466 F.3d at 95 (holding typical parallel litigation circumstances are not exceptional).

There is no risk of "piecemeal litigation" because the defendants in the Colombian proceedings and this case are completely different. Adjudicating the responsibility of the Colombian government in Colombian administrative court and the responsibility of the defendants in the district court require different legal and factual analyses. Any decision regarding these defendants' liability is unlikely to conflict with the results in the Colombian proceedings, which focused on *state* accountability. Indeed, this *precludes* dismissal, which requires that adjudication in the United States must somehow be at odds with a Colombian governmental interest or act.

Colombia's courts have found the Santo Domingo bombing to be illegal – exactly what plaintiffs claim. Petition at 3. Thus, as the district court found, this case requires no inconsistencies with the conclusions reached by Colombia's judiciary. *Mujica v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1134, 1158 (C.D. Cal. 2005). And, as noted above, the

district court may recognize the Colombian judgment. Thus, nothing in this case suggests "disrespect" for "the legitimacy of Colombian judicial institutions." *See* Slip Op. at 64.

While defendants might contest the Colombian court's findings, any comity analysis must presume that the Colombian court was correct. Otherwise, this Court would be *denigrating* the Colombian legal system: the opposite of comity.

Regardless, even if the district court eventually did come to a different conclusion, that would not offend comity. In *Societe Nationale*, the Supreme Court held that an American court's grant of discovery that a foreign court had refused would not offend comity. 482 U.S. at 542-44. Just as foreign tribunals understand that U.S. courts may reach their own conclusions about evidence, *id.*, they also understand that a court may reach its own conclusion when it hears a case involving the same events but different defendants and different legal issues.

II. The panel's newly-minted doctrine conflicts with the law of every circuit.

Rather than following *Colorado River* and *Neuchatel*, the panel adopted a broad interpretation of an Eleventh Circuit case, *Ungaro-*

Benages v. Dresdner Bank AG, 379 F.3d 1227 (11th Cir. 2004), that no circuit follows, not even the Eleventh. That interpretation was the source of the panel's balancing test, which, as detailed above, conflicts with *Colorado River* and *Neuchatel*, because it does not require either parallel proceedings or exceptional circumstances.

Ungaro-Benages arose out of highly specific circumstances, not a mere preference by the U.S. or a foreign nation that claims be heard abroad. There, the President had signed an executive agreement with Germany to establish a foundation to hear claims by victims of the Nazis, and the United States agreed to request that U.S. courts respect the Foundation as the exclusive forum. 379 F.3d at 1231-32. As an executive agreement with legal force, the Foundation Agreement had the power to preempt state law. *Id.* at 1233 (citing *Am. Ins. Ass'n v. Garamendi,* 539 U.S. 396 (2003). There are no executive agreements here.

The Eleventh Circuit in *Ungaro* controversially recognized a new species of adjudicatory comity abstention, which it dubbed "prospective" comity. Under that doctrine, courts may dismiss in the absence of a parallel foreign proceeding, based solely on a balancing of the interests

of the U.S. government, the foreign government and the international community, and whether the alternate forum is adequate. *Id.*

Here, the panel adopted the *Ungaro-Benages*' prospective comity test, and did not require either a parallel proceeding or exceptional circumstances. Slip Op. at 48. Every other circuit to have addressed these issues requires a parallel foreign proceeding and a showing of exceptional circumstances warranting abstention. *See Answers in Genesis of Kentucky, Inc. v. Creation Ministries Int'l, Ltd.*, 556 F.3d 459, 467 (6th Cir. 2009); *AAR International, Inc. v. Nimelias Enters. S.A.*, 250 F.3d 510, 518 (7th Cir. 2001); *Al-Abood ex rel v. El Shamari*, 217 F.3d 225, 232 (4th Cir. 2000); *Gross v. German Foundation Indus. Initiative*, 456 F.3d 363, 393 (3d Cir. 2006) (rejecting comity abstention in the absence of a pending foreign proceeding and expressing skepticism over the Eleventh Circuit's "broad" prospective comity doctrine); *accord* Slip Op. at 85 (Zilly, J., dissenting) (rejecting prospective comity).

Indeed, although *Ungaro* relied exclusively on Second Circuit cases, 379 F.3d at 1238, the Second Circuit requires parallel

proceedings and exceptional circumstances. *Royal & Sun Alliance*, 466 F.3d at 92, 95.

Even the Eleventh Circuit has clarified that its "prospective" comity doctrine is "reserved for exceptional diplomatic circumstances." *GDG Acquisitions, LLC v. Gov't of Belize*, 749 F.3d 1024, 1026 (11th Cir. 2014). The panel ignored the Eleventh Circuit's own limitation on its own doctrine.

The fact that the panel's decision is at odds with the law of every other circuit, including the circuit the panel purported to follow, further demonstrates that rehearing should be granted.

III. The panel's holding poses the serious risk of other unwarranted dismissals.

By dismissing without adhering to the strict limits of the comity doctrine, the panel has opened the possibility of unwarranted future dismissals whenever a foreign government and/or the U.S. government prefer that a foreign court exercise exclusive jurisdiction. While the panel has created this new abstention doctrine in a tort case, it is not so limited. All manner of cases – contracts, antitrust, patents, commercial

disputes – involving parties from or events in more than one nation are equally susceptible to dismissal.

The breadth of this doctrine cannot be squared with the federal courts' obligation to exercise their jurisdiction and warrants review.

CONCLUSION

For the foregoing reasons, *amicus* urges that plaintiffs' petition for rehearing or rehearing en banc be granted.

Dated: January 20, 2015

Respectfully submitted,

/s/ Marco Simons

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CERTIFICATE OF COMPLIANCE PURSUANT TO CIRCUIT RULE 32(a)(7)

Pursuant to Ninth Circuit Rule 32(a)(7), I certify that Brief of *Amicus Curiae* EarthRights International in Support of Plaintiffs-Appellants' Petition for Rehearing and Rehearing *En Banc* complies with the typeface and type style requirements of Fed. R. App. P. 32(a) because it is proportionately spaced and has a typeface of 14 points in Century Schoolbook font. The brief complies with the type-volume limitation of Ninth Circuit Rule 29-2(c)(2) because it contains 4199 words.

Dated: January 20, 2015

Respectfully submitted,

/s/ Marco Simons
Marco Simons

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2015, a true and correct copy of the foregoing document was served on all interested parties via the Court's CM/ECF system.

Dated: January 20, 2015

Respectfully submitted,

/s/ Marco Simons
Marco Simons