No. 24-986

In The
Supreme Court of the United States

MENDOCINO RAILWAY, A CALIFORNIA CORP.,
Petitioner,

v.

JACK AINSWORTH, EXECUTIVE DIRECTOR,
CALIFORNIA COASTAL COMMISSION, ET AL.,
Respondents.

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

REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

Respondents all but admit the very split that warrants review. They acknowledge "differences in how circuits apply the *Colorado River* doctrine," but dismiss those differences as "minor." BIO 9. They are anything but.

Doctrinal divergences over which factors to consider, and how to weigh them, have produced wildly different results. Respondents themselves concede that the Ninth Circuit's eight-factor approach "*routinely* provide[s] grounds for *Colorado River* dismissal." BIO 10 (emphasis added). That is borne out in practice: In the Ninth Circuit, federal-question cases invoking *Colorado River* were stayed or dismissed nearly half the time in the last five years. By contrast, the Second Circuit—adhering to this Court's original six factors and a strong presumption against abstention—abstained in fewer than 8% of such cases over the same period. These are not "minor" variations; they are outcome-determinative differences.

Respondents mention in passing, in their final sentence, that *Younger* could have been an alternative ground for dismissal. But both courts below rejected that theory, likely because the state action here is neither criminal nor quasi-criminal. The dismissal here rested solely on *Colorado River*. Had *Younger* been viable—as Respondents insisted in their briefing—the lower courts would have used it.

This case also illustrates the depth of the circuit conflict. Other circuits treat neutral factors as

favoring retention of jurisdiction and disregard allegations of forum-shopping. *See Woodford v. Cmty. Action Agency*, 239 F.3d 517, 523 (2d Cir. 2001); *Riggi v. Charlie Rose Inc.*, 2025 U.S. Dist. LEXIS 67742, *22 (S.D.N.Y. Apr. 9, 2025). They limit the "piecemealing" factor to cases involving a "strong" and "clear federal policy" favoring state-court adjudication. *Ryan v. Johnson*, 115 F.3d 193, 197–199 (3d Cir. 1997); *Ambrosia Coal & Constr. Co. v. Morales*, 368 F.3d 1320, 1333 (11th Cir. 2004). The Ninth Circuit did none of these things. Instead, it treated neutral factors as irrelevant, credited forum-shopping allegations,[1] and invoked piecemealing based on the generic risk of duplicative effort and inconsistent outcomes—a risk in every *Colorado River* case.

Nearly 50 years of experience with *Colorado River* have exposed a doctrine that is unworkable, unpredictable, and in dire need of clarification. Today, the circuit in which a case is filed may be the factor most likely to determine whether a federal court will surrender its jurisdiction. That cannot be. The Court should grant the petition.

ARGUMENTS

I. A Consequential Split Exists

1. **The Number of Factors, Forum-Shopping, and "Sufficient Parallelism."** Respondents argue that *Colorado River* abstention does not turn on "a

[1] If any party forum-shopped, it was Respondent California Coastal Commission, which tactically intervened in the state action with its limited federal-preemption claim months after Petitioner had filed its broader federal-preemption claim.

mechanical checklist," so that differences in the number of factors weighed across circuits shouldn't surprise. BIO 8 (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983)). But at most,[2] that point merely explains *why* the lower courts have developed divergent tests with anywhere from six to 10 factors. It doesn't refute the underlying divisions, or the doctrine's unworkability and unpredictability.

Contrary to Respondents' argument, increasing the number of factors gives courts more pathways to rationalize *Colorado River* abstention. In the Ninth Circuit's case, it weighs two factors in addition to the traditional six.[3] One is forum-shopping—which, in that court's view, "strongly favor[ed] dismissal" in this case.[4] By contrast, the Fifth Circuit adheres to the

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[2] Disagreements have arisen even over whether the six factors articulated in *Colorado River* and *Moses H. Cone* are exhaustive. *Compare Federated Rural Elec. Ins. Corp. v. Arkansas Elec. Coops., Inc.*, 48 F.3d 294, 298 n.4 (8th Cir. 1995) (non-exhaustive) *with Village of Westfield v. Welch's*, 170 F.3d 116, 121 (2d 1999) ("[A] district court is required to weigh six factors."); *Riggi*, 2025 U.S. Dist. LEXIS 67742, *22 ("The Court is skeptical that such considerations" outside the six factors "fit within the narrow and specific limits prescribed by the *Colorado River* abstention doctrine.").

[3] Contrary to Respondents' claims, and as the Ninth Circuit has acknowledged as to forum-shopping, the Court in *Colorado River* and *Moses H. Cone* expressly did not adopt forum-shopping or "sufficient parallelism" as factors. Pet. 24 n.6; *Am. Int'l Underwriters, Inc. v. Cont'l Ins. Co.*, 843 F.2d 1253, 1259 (9th Cir. 1988).

[4] Respondents paint a misleading picture of the state-court proceedings. They claim that Petitioner reactively filed its federal case, "seeking to press the same argument [i.e., federal preemption] that the state courts had already rejected" and after attempting to disqualify the superior court judge. BIO i

traditional "six factors" and hasn't indulged allegations of forum-shopping as an "exceptional circumstance[]" justifying *Colorado River* abstention in any of its decisions. *See, e.g.*, *Liberty Mut. Fire Ins. Co. v. Strassel*, 2002 U.S. App. LEXIS 30178, *2 n.2 (5th Cir. Dec. 27, 2002). Further, except for a 1985 outlier, the Second Circuit has consistently weighed only the traditional six factors, with no decision of that circuit invoking a forum-shopping factor. *LeChase Constr. Servs., LLC v. Argonaut Ins. Co.*, 63 F.4th 160, 173 (2d Cir. 2023); *Riggi*, 2025 U.S. Dist. LEXIS 67742, *22 ("[M]any courts, including the Second Circuit in at least four cases concerning *Colorado River* abstention, have not raised the issue."). Respondents themselves concede that not all circuits have identified forum-shopping as a factor. BIO 16.

The other factor added by the Ninth Circuit is whether the parallel actions are "sufficiently similar." App. 17a. If so, the court treats the factor as "not preclud[ing] dismissal"—phraseology evincing the

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(rewritten QP), 2, 7. But no state court has decided the merits of Petitioner's federal-preemption defense. In its demurrer ruling, the superior court merely concluded that "the issue was not appropriate to decide on demurrer given the fact-bound nature of the preemption inquiry." App. 4a. Further, the state court of appeal proceeding concerned Petitioner's argument that the superior court lacked subject matter jurisdiction to disturb Petitioner's "public utility" status (Cal. Pub. Util. § 1759); it had nothing to do with federal preemption. *See* https://bit.ly/3U5iW20. Finally, Petitioner objected to the superior court judge *after* it had filed its federal lawsuit and discovered that the judge had a land-use permit application pending within the jurisdiction of Respondent California—a party before the judge. *Fort Bragg v. Mendocino Railway*, Mendocino County Superior Court, Case No. 21CV00850 (9/13/22 objection).

perspective of someone searching for reasons to *dismiss*. App. 19a. Conversely, the Second and Fifth Circuits view parallelism as a *threshold* requirement to be satisfied before a court weighs the *Colorado River* factors; without parallelism, *Colorado River* doesn't apply. *Mochary v. Bergstein*, 42 F.4th 80, 86 (2d Cir. 2022); *African Methodist Episcopal Church v. Lucien*, 756 F.3d 788, 797 & n.36 (5th Cir. 2014). Once *Colorado River* is invoked, those circuits don't then examine—as an independent factor—whether the cases are *sufficiently* parallel. *Id.*

The empirical evidence suggests that the greater the number of factors, the greater the likelihood a court will find reasons to abstain. Petitioner surveyed *Colorado River* decisions from the Ninth and Second Circuits over the last five years.[5] In federal-question cases, where the courts applied *Colorado River*, district courts in the Second Circuit abstained in just two of 27 cases; one of the two was reversed on appeal. In stark contrast, district courts in the Ninth Circuit abstained in 25 of 54 federal-question cases; of those 25, the Ninth Circuit upheld one (in this case) and reversed one. *See* Appendix of Survey.

2. **Neutral Factors.** The Petition explains that, while other circuits weigh neutral factors against *Colorado River* abstention, the Ninth Circuit either strips such factors of all weight or treats them as not posing obstacles to dismissal. Pet. 20-21. Respondents don't dispute Petitioner's citations to the decisions of

[5] Petitioner shepardized *Colorado River*, with the following parameters: Second and Ninth Circuit decisions from January 1, 2025, to the present, that "analyzed" or "discused" the doctrine.

those other circuits, but insist that those same circuits have "sometimes" refused to weigh neutral facts against abstention. BIO 10.

With a doctrine as freewheeling as *Colorado River*, it comes as no surprise that the problem of inter-circuit divisions is compounded by *intra*-circuit inconsistencies, too. For instance, in an early *Colorado River* decision, the Second Circuit hadn't yet formulated its rule that neutral factors weigh against abstention. BIO 10 (citing *Arkwright-Boston Mfrs. Mut. Ins. Co. v. City of New York*, 762 F.2d 205 (2nd Cir. 1985)). But, at least for the last 25 years, that has been the circuit's rule. *LeChase*, 63 F.4th at 173 ("[F]acially neutral[ity]" is "a basis for retaining jurisdiction, not for yielding it"); *Woodford*, 239 F.3d at 522 (same). For the Seventh Circuit, Respondents cite *Loughran v. Wells Fargo Bank, N.A.*, 2 F.4th 640 (7th Cir. 2021), but fail to note that the circuit has, since then, reaffirmed the rule expressed in its earlier decision (*Huon v. Johnson &* Bell, Ltd.*, 657 F.3d 641, 648 (7th Cir. 2011)) that "irrelevant" factors "weigh against abstention." *Gelab Cosmetics LLC v. Zhuhai Aobo Cosmetics Co.*, 99 F.4th 424, 431 (7th Cir. 2024). Finally, Respondents cite the Fifth Circuit's decision in *Bank One, N.A. v. Boyd*, 288 F.3d 181 (5th Cir. 2002). But Respondents again fail to note that the Fifth Circuit has, more recently, reaffirmed its view that at least the first two factors—when neutral—must weigh against abstention. *Nat'l Cas. Co. v. Gonzalez*, 637 Fed. Appx. 812, 815-16 (5th Cir. 2016).

Lastly, if the Ninth Circuit had treated all four neutral factors in this case as reasons to *retain* jurisdiction, five of the court's eight factors would

have counted in Petitioner's favor—versus only one factor (the rule of decision being federal law) that the court weighed in Petitioner's favor. The difference is outcome-determinative.

3. **Piecemealing.** Respondents admit that, in the Ninth Circuit, piecemealing is about the risk of duplication of judicial effort and inconsistent outcomes. BIO 11-12. And they don't dispute that other circuits *reject* that interpretation. Pet. 21. Prominent among them is the Third Circuit, where piecemealing exists "only when there is evidence of a strong federal policy that all claims should be tried in the state courts." *Ryan*, 115 F.3d at 197-98. Also differing from the Ninth Circuit is the Second Circuit, where piecemealing must involve "a risk of inconsistent outcomes" that is "not preventable by principles of res judicata and collateral estoppel." *Woodford*, 239 F.3d at 524.

Respondents insist that the Ninth Circuit applied "established circuit precedent" (BIO 11) when it found piecemealing on the ground that the state and federal courts had to resolve the same "ICCTA preemption issue." BIO 11; App. 11a. But regardless of whether the Ninth Circuit applied its own precedent, its approach to the "piecemealing" factor is contrary to that of other circuits where "[d]ismissal is not warranted simply because . . . two courts otherwise would be deciding the same issues." *Villa Marina Yacht Sales, Inc. v. Hatteras Yachts*, 915 F.2d 7, 16 (1st Cir. 1990); *see also Gannett Co. v. Clark Constr. Group, Inc.*, 286 F.3d 737, 744 (4th Cir. 2002) (same).

Respondents also suggest that even the circuits identified by Petitioner as differing from the Ninth Circuit weigh the risk of duplicative effort and inconsistent outcomes. BIO 12. But the decisions Respondents cite don't support that argument. In *African*, 756 F.3d 788, the Fifth Circuit weighed piecemealing in favor of abstention because of the "danger of inconsistent rulings *with respect to a piece of property*." *Id.* at 800 (emphasis added). The Fifth Circuit's use of the "piecemealing" factor to abstain is limited to those situations where two courts have "assumed jurisdiction over a disputed res," which is very different from the boundless approach adopted by the Ninth Circuit. *Black Sea Inv., Ltd. v. United Heritage Corp.*, 204 F.3d 647, 650-51 (5th Cir. 2000). Respondents' other citations fare no better. *Gannett Co. v. Clark Constr. Group, Inc.*, 286 F.3d 737, 744-45 (4th Cir. 2002) (for piecemealing, "retention of jurisdiction must create the possibility of inefficiencies and inconsistent results beyond those inherent in parallel litigation, or the litigation must be particularly ill-suited for resolution in duplicate forum," as when a "clear federal policy" requires state-court adjudication); *Step-Saver Data Systems, Inc. v. Wyse Technology*, 912 F.2d 643, 654 n.14 (3d Cir. 1990) (noting in dicta, in non-*Colorado River* case, the district court's concerns about piecemealing, but "intimat[ing] no view on the subject").

4. **Order in Which Courts Gained Jurisdiction.** Respondents deny a split over how to assess this factor based on their misunderstanding of the Fourth and Sixth Circuit opinions cited by Petitioner. BIO 13. The Ninth Circuit compared the relative filing dates and progress of the state and

federal "actions," without considering each action's claim or central issue to ensure it was comparing apples to apples. App. 12a. Because the state action came before the federal action, the Ninth Circuit concluded that this factor favored dismissal. App. 12a-13a.

If the Ninth Circuit had focused instead on the filing date and progress of each action's relevant *claim* or central *issue*—as the Fourth and Sixth Circuits do—it may well have weighed this factor against dismissal. *Preferred Care of Del., Inc. v. Vanarsdale*, 676 Fed. Appx. 388, 395 (6th Cir. 2017) (focusing on relative timing and progress of "issues central to both" actions); *Chase Brexton Health Servs. v. Md.*, 411 F.3d 457, 466 (4th Cir. 2005) (referring to the timing of the "federal claim" vis-à-vis parallel administrative appeals). When Petitioner filed its federal complaint, the state action contained only Respondent Fort Bragg's state-law claim for a declaration that Petitioner is not a California "public utility." ER-31 (City Complaint, Prayer, ¶ 1). Though Petitioner had raised a federal-preemption defense to the City's request for injunction, Petitioner's "public utility" status remained the central issue. The state action gained a federal-preemption claim only after Respondent Commission intervened in the state case—*after* Petitioner filed its federal case. ER-42 (Commission Complaint). That's when the two actions began sharing an "issue central to both." *Preferred Care*, 676 Fed. Appx. at 395.

5. **Rule of Decision.** The weight given to this factor by the Ninth Circuit, when the rule of decision is federal law, is "not substantial[]" if "the state court

has concurrent jurisdiction to adjudicate" the claim. App. 20a. But generally, "state courts enjoy concurrent jurisdiction over federal claims." *Lutostanski v. Brown*, 88 F.4th 582, 588 (5th Cir. 2023). Thus, in the Ninth Circuit, this factor rarely carries any significant weight favoring jurisdiction.

Respondents assert that this follows from *Moses H. Cone*, where the Court observed that this factor was "less significant" than in a prior decision because of the state's concurrent jurisdiction. But Respondents fail to note that the Court hastened to add that "the presence of federal-law issues must always be a *major consideration* weighing against surrender." *Moses H. Cone*, 460 U.S. at 26 (emphasis added). Giving insubstantial weight to the "rule of decision" factor when federal law predominates is thus at odds with the Court's mandate.

The Ninth Circuit's approach also departs from the views of the Seventh and Eighth Circuits. Pet. 23 (citing *Spectra Communs. Group, LLC v. City of Cameron*, 806 F.3d 1113 (8th Cir. 2015) and *Illinois Bell Tel. Co. v. Illinois Commerce Com.*, 740 F.2d 566 (7th Cir. 1984)). Respondents attempt to distinguish those cases by arguing that the "rule of decision" factor—though given full weight—was not dispositive. But Petitioner's point is not that this factor must be dispositive in any given case, but that a split exists over what weight to give the factor.

II. *Colorado River* Is in Tension with the Separation of Powers

Respondents' brief fails to refute Petitioner's arguments that *Colorado River* is in tension with the separation of powers. Their brief merely notes that there is scholarly debate around that tension. BIO 20. Instead, Respondents raise the concern that, if *Colorado River* is constitutionally vulnerable, so too are the other abstention doctrines. Not so.

"Because the policy underlying *Colorado River* abstention is judicial efficiency, this doctrine is substantially narrower than are the doctrines of *Pullman*, *Younger* and *Burford* abstention, which are based on 'weightier' *constitutional* concerns" with "roots in a doctrine traditionally employed by courts of equity."[6] *Federated Rural Elec. Ins. Corp. v. Arkansas Elec. Coops., Inc.*, 48 F.3d 294, 298 n.4 (8th Cir. 1995) (emphasis added); Amy Coney Barrett, *Procedural Common Law*, 94 Va. L. Rev. 813, 884 n.208 (2008). Indeed, the decisions creating the pre-*Colorado River* doctrines explicitly refer to equitable considerations when permitting courts to abstain. *Younger v. Harris*, 401 U.S. 37, 43-44 (1971); *Thibodaux*, 360 U.S. at 28; *Burford v. Sun Oil Co.*, 319 U.S. 315, 334 (1943); *R.R. Comm'n v. Pullman Co.*, 312 U.S. 496, 501 (1941).

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[6] The Court in *La. Power & Light Co. v. Thibodaux*, 360 U.S. 25, 27-29 (1959) created a fourth abstention doctrine, in the same family as *Burford*. *Colorado River*, 424 U.S. at 814 (identifying only "three general categories" of abstention, with *Burford* and *Thibodaux* being in one of them).

But with *Colorado River*, abstention slipped its traces. This last decision expanding federal courts' ability to abstain from cases otherwise within their congressionally-conferred jurisdiction was not based on the tradition and consensus underpinning the first four doctrines. In fact, *Colorado River*'s only reference to equitable considerations was to say that such considerations did not support abstention in parallel litigation: "[I]t was never a doctrine of equity that a federal court should exercise its judicial discretion to dismiss a suit merely because a State court could entertain it." *Colorado River Water Conserv. Dist. v. United States*, 424 U.S. 800, 813-814 (1976). Thus, *Colorado River* is something of an aberration. Unmoored from constitutional or equitable considerations, it attempts to dress up courts' surrender of jurisdiction with the fig leaf of "[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Colo. River*, 424 U.S. at 817. This case presents a clean vehicle to cabin the doctrine or reassess its continued viability, without putting at issue the Court's other, well-established abstention doctrines.

CONCLUSION

The petition should be granted.

DATED: July 2025 Respectfully submitted,

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APPENDIX

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Catwalk to Sidewalk v. Hurt-Watson, 2020 U.S. Dist. LEXIS 259411, 2020 WL 10509834	Declining to abstain
Teleport Mobility, Inc. v. Sywula, 2025 U.S. Dist. LEXIS 49581	Declining to abstain
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