No. 24-

IN THE

Supreme Court of the United States

LAURA SMITH, as Duly Appointed Representative of the Estate of Andrea Manfredi, et al.,

Petitioners,

v.

THE BOEING CO., et al.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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February 5, 2025

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QUESTION PRESENTED

This wrongful-death case, arising out of the tragic Boeing 737 MAX crash into the Java Sea, raises a fundamental question of admiralty jurisdiction.

The estate and family of Andrea Manfredi, who died in the crash, brought *in personam* wrongful-death claims against Boeing and others under the Death on the High Seas Act (DOHSA), 46 U.S.C. §§ 30301–30308. These claims can be heard in admiralty, but they also satisfy the requirements for diversity and multiparty, multiforum jurisdiction. "If a claim for relief is within the admiralty or maritime jurisdiction and also within the court's subject-matter jurisdiction on some other ground, the pleading may"—but need not—"designate the claim as an admiralty or maritime claim." Fed. R. Civ. P. 9(h). The Manfredis did not so designate their claims.

The Seventh Circuit nevertheless held that these DOHSA claims are subject to exclusive admiralty jurisdiction in federal court, meaning no jury-trial right applies. The court so held despite recognizing that the same claims could be heard in state court, where they "are typically tried by juries." The question presented is:

Whether a federal court can have exclusive admiralty jurisdiction over a claim when a non-admiralty state court would have concurrent jurisdiction over the same claim.

PARTIES TO THE PROCEEDING

Petitioners are Laura Smith, the duly-appointed personal representative of the estate of Andrea Manfredi, and Maurizo Manfredi, Sonia Lorenzoni, and Linda Manfredi.

Respondents are The Boeing Company, Boeing International Sales Corporation, Boeing Domestic Sales Corporation, Boeing Sales Corporation, Boeing Financial Corporation, Rockwell Collins, Inc., Rosemount Aerospace, Inc., and Xtra Aerospace, LLC.

The family and representative of the estate of Liu Chandra brought a related wrongful-death action in state court, which Boeing removed to the Northern District of Illinois. The Chandra plaintiffs' appeal was consolidated with the Manfredis' appeal before the Seventh Circuit, but they have since settled their claims in principle and are not parties to this case.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the Northern District of Illinois and the Seventh Circuit:

In re Lion Air Flight JT 610 Crash, Nos. 18-cv-7686, 19-cv-1552, 19-cv-7091 (N.D. Ill.); and

In re Lion Air Flight JT 610 Crash, Nos. 23-2358, 23-2359 (7th Cir.).

No other proceedings in state or federal trial or appellate courts, or in this Court, directly relate to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The Seventh Circuit's opinion is reported at 110 F.4th 1007 and reproduced at Pet. App. 1a–17a. The District Court's opinions are reproduced at Pet. App. 18a–35a, available at 2023 WL 3653217 (May 25, 2023); at Pet. App. 36a–56a, available at 2023 WL 3653218 (May 25, 2023); and at Pet. App. 57a–76a, available at 2022 WL 17820965 (Dec. 20, 2022).

JURISDICTION

The Seventh Circuit entered judgment on August 6, 2024, and denied a timely petition for rehearing on September 10, 2024. On December 5, 2024, Justice Barrett granted an extension of time to file this petition to January 8, 2025. On January 2, 2025, Justice Barrett granted a second extension to February 5, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PERTINENT STATUTORY PROVISIONS AND RULES

The Death on the High Seas Act (DOHSA), 46 U.S.C. § 30302, provides:

> When the death of an individual is caused by wrongful act, neglect, or default occurring on the high seas beyond 3 nautical miles from the shore of the United States, the personal representative of the decedent may bring a civil action in admiralty against the person or vessel responsible. The action shall be for the

exclusive benefit of the decedent's spouse, parent, child, or dependent relative.

DOHSA further provides: "This chapter does not affect the law of a State regulating the right to recover for death." 46 U.S.C. § 30308(a).

28 U.S.C. § 1332 vests federal district courts with original jurisdiction in all civil actions between a citizen of a state and a subject of a foreign state if the amount in controversy exceeds $75,000.

28 U.S.C. § 1333(1) provides: "The district courts shall have original jurisdiction, exclusive of the courts of the States, of: . . . Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

28 U.S.C. § 1369 vests federal district courts with original jurisdiction in civil actions arising from a single accident where at least 75 persons die and minimal diversity exists between the parties.

Federal Rule of Civil Procedure 9(h) provides:

(h) Admiralty or Maritime Claim.

(1) *How Designated*. If a claim for relief is within the admiralty or maritime jurisdiction and also within the court's subject-matter jurisdiction on some other ground, the pleading may designate the claim as an admiralty or maritime claim for purposes of Rules 14(c), 38(e), and 82 and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.

(2) *Designation of Appeal*. A case that includes an admiralty or maritime claim within this

subdivision (h) is an admiralty case within 28 U.S.C. § 1292(a)(3).

INTRODUCTION

Admiralty jurisdiction is either exclusive—meaning it precludes non-admiralty courts from hearing claims within its scope—or it is not. This is a basic maritime law principle, applied by courts across the country. But the Seventh Circuit has broken rank and invented a novel form of quasi-exclusive jurisdiction, where the same claim between the same parties is sometimes subject to exclusive admiralty jurisdiction and sometimes subject to concurrent jurisdiction. This conflict must be resolved. At stake is whether crash victims like petitioners here enjoy the right to have their claim decided by a jury, just as all other crash victims do.

Since the founding, the law has historically provided for concurrent jurisdiction in admiralty and non-admiralty courts over *in personam* maritime claims. That concept is now reflected in Federal Rule of Civil Procedure 9(h), which provides that a plaintiff asserting claims "within the admiralty or maritime jurisdiction and also within the court's subject-matter jurisdiction on some other ground" "may"—but need not—"designate the claim as an admiralty or maritime claim" subject to federal admiralty jurisdiction. So if a claim has another, *non*-admiralty basis for federal jurisdiction, the plaintiff may proceed on the "law side" of federal court or may invoke the court's admiralty jurisdiction. This concurrent-jurisdiction scheme governs all maritime claims except for *in rem* claims and a select few statutory claims, which may be brought *only* in admiralty. For those few claims, no other court is available; they must be brought in federal court, and they must proceed in admiralty. Exclusive means exclusive—except in the Seventh Circuit.

The Seventh Circuit acknowledged that it has created an "anomaly" that departs from other lower courts on this basic issue. Pet. App. 17a. The court correctly recognized that DOHSA claims can be heard in state court (where they typically are tried to juries) or in federal court. *Id.*; *id.* at 6a–7a. Yet the court below held that anytime a DOHSA claim is brought in federal court or removed there from state court, the claim is subject to "exclusive" admiralty jurisdiction, meaning there is no jury-trial right. *Id.* at 10a–17a. That is so, the court held, even if the claim meets the requirements for a non-admiralty source of jurisdiction. In other words, the Seventh Circuit held that admiralty jurisdiction over DOHSA claims can be concurrent (with state courts) *and* exclusive (within federal courts).

No other court has adopted such a rule. Rather, other circuits and state courts rightly hold that federal admiralty jurisdiction must either be exclusive or concurrent. It cannot be both. That approach follows this Court's precedent, holding that "the consequence of exclusive federal jurisdiction" in "admiralty" is that "state courts 'may not provide a remedy.'" *Am. Dredging Co.* v. *Miller*, 510 U.S. 443, 446 (1994). But if jurisdiction is "concurrent," then a claim is "clearly within the competence of state courts"—or the law side of a federal court—"to adjudicate." See *Offshore Logistics, Inc.* v. *Tallentire*, 477 U.S. 207, 232 (1986).

This issue is important. It cuts across every *in personam* maritime claim and implicates the constitutional right to a jury. The Seventh Circuit's "anomaly" extinguishes the parties' jury-trial rights anytime their claims end up in federal court—even if the plaintiff filed in state court and the defendant removed the case. The decision below thus invites manipulation and unfairness.

This question is also likely to recur. DOHSA provides the only remedy for most people whose loved ones are tortiously killed in international waters. For example, the 737 MAX air crash at issue produced 87 wrongful death actions. DOHSA claims can also arise from the deaths of offshore oil and gas workers, cruise ship accidents, and deaths caused by pirates or terrorists. The parties in all those cases should have the same jury-trial rights as in wrongful-death cases arising on dry land.

STATEMENT OF THE CASE

A. Factual background.

On October 29, 2018, a Boeing 737 MAX 8, operating as Lion Air Flight 610, took off from Jakarta, Indonesia. Almost immediately, serious problems arose. Pet. App. 36a–37a. Because of bad input data, a faulty automatic flight control system overrode the pilots and repeatedly tried to force the plane into a nosedive. *Id.* Twelve minutes into the flight, the plane crashed into the Java Sea, roughly 18 nautical miles off the coast of Indonesia. All 189 people on board died, including Andrea Manfredi. *Id.* at 1a.

Mr. Manfredi's parents, Maurizio Manfredi and Sonia Lorenzoni; his dependent twin sister, Linda Manfredi; and Laura Smith, the duly appointed representative and independent administrator of Mr. Manfredi's estate, brought a wrongful-death action in the Northern District of Illinois against Boeing and various manufacturers responsible for servicing components of the aircraft and developing the computer and software code for the aircraft system responsible for the crash.

B. Admiralty jurisdiction background.

1. Maritime law's tradition of concurrent jurisdiction stretches back before the Founding. Colonial plaintiffs could choose to bring maritime claims either in vice admiralty courts or in the local colonial courts. Steven L. Snell, *Courts of Admiralty and the Common Law: Origins in the American Experiment in Concurrent Jurisdiction* 204–05 (2007). The vice admiralty courts often came with greater expertise, but no jury trials. Jury trials on maritime claims, however, were an option in the local colonial courts. *Id.* at 182, 205; Pet. App. 9a. These courts had concurrent jurisdiction.

Upon ratification, the Constitution "vest[ed] federal courts with jurisdiction over all cases of admiralty and maritime jurisdiction." *Lewis* v. *Lewis & Clark Marine, Inc.*, 531 U.S. 438, 443 (2001). But the tradition of concurrent admiralty jurisdiction continued. The First Judiciary Act of 1789 codified the federal courts' jurisdiction over "all civil causes of admiralty and maritime jurisdiction," while carving out an exception called the "saving-to-suitors" clause. Ch. 20, 1 Stat 73, 77 § 9. That clause "sav[ed] to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." *Id.* Though Congress has since revised this language, its import is the same. *Lewis*, 531 U.S. at 443–44. It now reads: "The district courts shall have original jurisdiction, exclusive of the courts of the States, of [a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. § 1333(1).

After the First Judiciary Act, then, litigants had admiralty and non-admiralty options. *In rem* claims were subject to exclusive admiralty jurisdiction in federal court. But parties could "waive [maritime] lien[s]"—which had to proceed *in rem* in admiralty—

and instead "proceed *in personam*." In this latter scenario, litigants could "resort to their common-law remedy in the State courts, or in the [federal] Circuit Court, if" there was diversity of citizenship. See *Norton* v. *Switzer*, 93 U.S. 355, 356 (1876). This scheme reflected "[t]he intention of the drafters of the Judiciary Act," which "was to make clear that admiralty 'suitors' would not be second-class litigants in the United States" and that admiralty suitors would "have full access to common law remedies if they so choose." Thomas J. Schoenbaum, *Admiralty & Maritime Law* § 4.2, at 257 (6th ed. 2018). And "[i]n all cases at common law, the trial must be by jury." *The Sarah*, 21 U.S. (8 Wheat.) 391, 394 (1823).

2. Before 1966, federal courts were viewed as having an "'admiralty side' and a 'civil' or 'law side,'" with a separate "set of procedural rules" for each. David W. Robertson, *Admiralty Procedure and Jurisdiction After the 1966 Unification*, 74 Mich. L. Rev. 1627, 1630 (1976). The Federal Rules of Civil Procedure were amended in 1966 "to effect unification of the civil and admiralty procedure." Fed. R. Civ. P. 1. Now the Federal Rules govern all civil actions, including in admiralty, Fed. R. Civ. P. 1 advisory committee's note to 1966 amendment, but certain "specialized admiralty procedures" still apply in admiralty cases. Robertson, *supra*, at 1631.

This change did not, however, affect maritime plaintiffs' forum options. When § 1333(1)'s saving-to-suitors clause applies, plaintiffs can choose to bring their claims in any of three places: (1) on the admiralty side of federal district court, as an admiralty claim, see Fed. R. Civ. P. 9(h); (2) on the law side of federal district court, if there is a non-admiralty ground for jurisdiction, see *id.*; or (3) in a state court, just like any other civil claim within the court's authority. See

generally 14A Wright & Miller, *Federal Practice and Procedure—Jurisdiction* § 3672 (4th ed. June 2024); *Buccina* v. *Grimsby*, 889 F.3d 256, 260–61 (6th Cir. 2018) (Sutton, J.).

In federal court, if both admiralty and non-admiralty jurisdictional grounds exist, the law side is the default. Thus, when there are multiple "ground[s] for federal jurisdiction, the plaintiff must identify the claim as one in admiralty to make it plain that he wishes to invoke that jurisdictional basis rather than some other." *Baris* v. *Sulpicio Lines, Inc.*, 932 F.2d 1540, 1547 (5th Cir. 1991) (emphasis omitted). That identification is the Rule 9(h) declaration. As the Advisory Committee noted, "[m]any claims . . . are cognizable by the district courts whether asserted in admiralty or in a civil action, assuming the existence of a nonmaritime ground of jurisdiction." Fed. R. Civ. P. 9 advisory committee's note to 1966 amendment (citing the "classic privilege given by the saving-to-suitors clause" in such cases).

3. This concurrent-jurisdiction scheme has certain well-established exceptions. An *in rem* suit, for example, is subject to exclusive admiralty jurisdiction. See *Am. Dredging Co.*, 510 U.S. at 446–47. And claims under four specific statutes have been identified as falling within federal courts' exclusive admiralty jurisdiction: (1) certain claims under the Limitation Act, 46 U.S.C. §§ 30501–30530; (2) the Suits in Admiralty Act, 46 U.S.C. §§ 30901–30918; (3) the Public Vessels Act, 46 U.S.C. §§ 31101–31113; and (4) certain claims under the Ship Mortgage Act, 46 U.S.C. §§ 31301–31343. See generally Schoenbaum, *supra*, § 4.2, at 259. Claims in these exceptional categories must be brought in federal court, as admiralty claims.

C. DOHSA background.

Before 1920, there was no federal "remedy for death on the high seas caused by breach of one of the duties imposed by federal maritime law." See *Moragne* v. *States Marine Lines, Inc.*, 398 U.S. 375, 393 (1970). Other laws, however, did allow for wrongful-death and other recoveries for accidents on the high seas. And federal courts adjudicated such claims.

State laws, for example, allowed for wrongful-death recoveries. This Court permitted such state-law claims for deaths on the high seas to be "applied in . . . admiralty." *Old Dominion S.S. Co.* v. *Gilmore* ("*The Hamilton*"), 207 U.S. 398, 405–06 (1907). In *The Hamilton*, this Court held that a Delaware wrongful-death claim could proceed in federal court in admiralty, even where the death occurred seven miles off the coast of Virginia. The Court explained that, in those circumstances, "all claims to which the admiralty does not deny existence must be recognized." *Id.* at 406; see also *Delisions* v. *La Compagnie Generale Transatlantique*, 210 U.S. 95, 139–41 (1908) (applying French law to an accident between French and British ships where the collision occurred on the high seas).

DOSHA was enacted in 1920 to fill this gap in federal law. "When the death of an individual is caused by wrongful act, neglect, or default occurring on the high seas beyond 3 nautical miles from the shore of the United States, the personal representative of the decedent may bring a civil action in admiralty against the person or vessel responsible." 46 U.S.C. § 30302. DOHSA "does not affect the law of a State regulating the right to recover for death." *Id.* § 30308(a). This Court has interpreted § 30308(a)'s language as a jurisdictional saving clause, holding that it "bears a marked similarity to the 'saving to suitors clause'" in 28 U.S.C. § 1333, which (as explained above) permits

state courts to exercise "concurrent jurisdiction" with federal admiralty courts over admiralty claims. See *Tallentire*, 477 U.S. at 222–23, 230–32. DOHSA plaintiffs are thus "able to choose the forum in which they prefer to proceed," state or federal. *Id.* at 232.

D. Procedural history.

1. The Lion Air 610 crash produced 87 individual actions asserting wrongful death and other claims against Boeing and other defendants. All actions were either filed in, removed to, or eventually transferred to the Northern District of Illinois. Pet. App. 58a. The district court consolidated the actions under a master docket. All but two claims ultimately settled. The remaining actions were the Manfredis' and an action brought by the family and representative of the estate of Liu Chandra. *Id.*

The Manfredis brought this case in the district court. They invoked diversity jurisdiction and multiparty, multiforum jurisdiction on the district court's "law side." See 28 U.S.C. §§ 1332, 1369; Pet. App. 3a. They could have invoked admiralty jurisdiction under § 1333, but they chose not to. They declined to make a Rule 9(h) declaration; their complaint did not cite § 1333 or even mention the term "admiralty"; and they "demand[ed] a trial by jury on all issues so triable." See Compl. 83, No. 1:19-cv-7091 (N.D. Ill. Oct. 28, 2019), ECF No. 1.

Boeing also demanded a jury trial. Pet. App. 75a. Later, however, it changed course and moved for a bench trial. It argued that DOHSA was the exclusive source of law and that the plaintiffs had no jury-trial rights under the statute. *Id.* at 36a.

The district court agreed, concluding that DOHSA's "clear terms [ ] limit[ ] the claims to this Court's admiralty jurisdiction." Pet. App. 54a. The court then

certified for interlocutory appeal the question "whether a plaintiff in federal court is entitled to a jury trial under the Seventh Amendment when the plaintiff's sole claim arises under DOHSA, and the plaintiff has a concurrent basis for common law jurisdiction (such as diversity)." *Id.* at 55a. Both the Manfredis and the Chandras appealed. The Seventh Circuit consolidated the appeals, but only the Manfredis are a party to this petition, as the Chandras have since settled their claims in principle.

2. The Seventh Circuit affirmed. First, it highlighted DOHSA's language providing that a plaintiff "*may* bring a civil action in *admiralty*" and noted that the statute "has never expressly stated that plaintiffs with DOHSA claims can maintain a suit at law or with the right to a jury trial." Pet. App. 13a–14a (first emphasis added). According to the Seventh Circuit, "[t]he most natural inference to draw from the combination of the express reference to a suit in admiralty and the absence of a reference to a suit at law or with a jury trial is that the cause of action created by DOHSA is to be brought in admiralty." *Id.* at 14a.

The court dismissed this Court's reasoning in *Tallentire* in a footnote. Despite recognizing that "[a] different provision in DOHSA . . . allows plaintiffs to bring DOHSA claims in state court," Pet. App. 14a n.4 (citing *Tallentire*, 477 U.S. at 232), the Seventh Circuit concluded that DOHSA's saving clause "does not address whether DOHSA claims that are in federal court must be brought in admiralty." *Id.*

The Seventh Circuit next observed that "courts have construed language similar to DOHSA's 'may bring a civil action in admiralty' language to require cases to be brought in admiralty." Pet. App. 14a. The court cited both the Ship Mortgage Act, which allows mortgagees in certain cases to bring "a civil action *in*

personam in admiralty," and the Public Vessels Act, which provides that "[a] civil action in personam in admiralty may be brought . . . against the United States for damages caused by a public vessel of the United States." *Id.* (citing 46 U.S.C. §§ 31325(b)(2)(A), 31102(a)). Overlooking the fact that claims under these statutes may be brought only in admiralty—so not in state court—the Seventh Circuit reasoned that "the same language in" these separate "statutes carries a consistent meaning," and thus held that DOHSA created exclusive admiralty jurisdiction with no jury-trial right.[1] *Id.* at 15a.

Finally, citing two pre-*Tallentire* circuit decisions and a few district court opinions whose reasoning harkened back to that era, the Seventh Circuit concluded that "other courts have for a long time agreed . . . that, if a case involving only DOHSA claims is in federal court, it must proceed in admiralty, without a jury trial." Pet. App. 15a (collecting cases). It observed that Congress "has not made any material changes to DOHSA's first section" since the 1950s. *Id.* at 16a. In the Seventh Circuit's view, then, Congress "can be deemed to have acquiesced in or ratified" those decisions. *Id.*

The Seventh Circuit "recognize[d] the potential anomaly in allowing defendants to effectively extinguish a plaintiff's jury trial right by removing a case to federal court." Pet. App. 17a (collecting cases). After all, "DOHSA claims, like other wrongful-death tort claims, are typically tried by juries when they are in state court." *Id.* But because the court believed "Congress has spoken on the issue of the availability of a

[1] Litigation under the Ship Mortgage Act proceeds *in rem*, and the Public Vessels Act's immunity waiver extends only to suits in admiralty. In other words, neither remedy was saved to suitors. *See infra* pp. 13–14.

jury trial on DOHSA claims in federal court," it brushed past that problem. *Id.* And despite explaining the Judiciary Act's saving-to-suitors clause before conducting its analysis, *id.* at 10a, the court made no other mention of *Tallentire* or this Court's holding that DOHSA's saving clause "bears a marked similarity to the 'saving to suitors clause'" in 28 U.S.C. § 1333. 477 U.S. at 232.

The Seventh Circuit then denied the Manfredis' timely rehearing petition. Pet. App. 78a.

REASONS FOR GRANTING THE PETITION

I. The "anomal[ous]" decision below creates a split on the meaning of exclusive admiralty jurisdiction.

Only the Seventh Circuit holds that a claim "in federal court can only proceed 'in admiralty,' without a jury trial," even when it has "non-admiralty sources of jurisdiction." Pet. App. 13a. On this view, DOHSA claims "must proceed in admiralty" in federal court (meaning admiralty jurisdiction is exclusive) even though DOHSA claims are within the jurisdiction of "state court[s]" (meaning admiralty jurisdiction is concurrent). *Id.* at 14a–15a. Other circuits and state courts, by contrast, hold that admiralty jurisdiction is either fully exclusive or fully concurrent—not a unique hybrid.

1. At least five circuits hold that if a claim is subject to exclusive admiralty jurisdiction, other courts lack jurisdiction. State courts agree. And the Federal Circuit has applied the same logic to hold that it lacked jurisdiction over an original claim that was exclusively within a federal district court's admiralty jurisdiction.

a. The Ninth Circuit has held that, because claims under the Suits in Admiralty Act and Public Vessels

Act were subject to "exclusive" admiralty jurisdiction, a "state court lacked subject matter jurisdiction." *Guidry* v. *Durkin*, 834 F.2d 1465, 1473–74 (9th Cir. 1987). "Implicit" in this analysis, the court reasoned, was that "the 'saving to suitors' clause" did "not [ ] apply to actions under" these statutes. *Id.* at 1473 n.10. The question of jurisdiction thus "hinge[d] on whether a statutory remedy . . . could be pursued within the exclusive or concurrent admiralty jurisdiction of the federal courts." *Id.* at 1474 n.11. Because the answer was the former, the district court also lacked "subject matter jurisdiction over those claims upon removal" (based on the now-repealed doctrine of derivative jurisdiction). *Id.* at 1474.

So too for *in rem* Ship Mortgage Act claims, which "lie within the exclusive jurisdiction of the federal courts." *Coast Engine & Equip. Corp.* v. *Sea Harvester, Inc.*, 641 F.2d 723, 728 (9th Cir. 1981). Thus, in *Coast Engine*, "state procedures ha[d] no effect" on an *in rem* proceeding to foreclose a preferred ship mortgage. *Id.*; see also *Beluga Holding, Ltd.* v. *Com. Cap. Corp.*, 212 F.3d 1199, 1202–03 (11th Cir. 2000) ("The Ship's Mortgage Act allows a mortgagee to bring a cause of action *in rem* for the foreclosure of a preferred ship's mortgage and gives federal district courts exclusive original jurisdiction to hear that cause of action").

And in *Higa* v. *Transocean Airlines*, the Ninth Circuit held that DOHSA claims could "be asserted solely in the federal courts in admiralty." 230 F.2d 780, 783 (9th Cir. 1955); accord *Boudreau* v. *Boat Andrea G. Corp.*, 350 Mass. 473, 474–76 (Mass. 1966). This Court has since abrogated *Higa*'s DOHSA-specific holding by ruling that state courts have concurrent jurisdiction over DOHSA claims, *Tallentire*, 477 U.S. at 232, but

not *Higa*'s conception of what exclusive admiralty jurisdiction means when it exists.

The Second Circuit has also made clear that a "consequence of exclusive federal admiralty jurisdiction is that state courts 'may not provide a remedy *in rem* for any cause of action within the admiralty jurisdiction.'" *Aurora Mar. Co.* v. *Abdullah Mohamed Fahem & Co.*, 85 F.3d 44, 47 (2d Cir. 1996). For *in personam* cases, however, state courts can exercise jurisdiction and "adopt such remedies" as they "see[ ] fit so long as" the state courts do "not attempt to make changes in the substantive maritime law." *Id.*

The Third Circuit has likewise recognized that "federal courts have exclusive jurisdiction over" "admiralty *in rem* action[s]." *Sindia Expedition, Inc.* v. *Wrecked & Abandoned Vessel, Known as The Sindia*, 895 F.2d 116, 122–23 (3d Cir. 1990). The result of that exclusive admiralty jurisdiction: the plaintiff did "not have an alternative forum to pursue its action." *Id.* at 123.

Similarly, the Sixth Circuit has held that that actions under the Limitation Act, 46 U.S.C. §§ 30501–30530, are subject to "exclusive admiralty jurisdiction." *In re Muer*, 146 F.3d 410, 417 (6th Cir. 1998).

And the Eleventh Circuit has held that the Suits in Admiralty Act's provision of "exclusive federal [admiralty] jurisdiction absolutely precluded the state court's exercise of jurisdiction." *Armstrong* v. *Ala. Power Co.*, 667 F.2d 1385, 1387–88 (11th Cir. 1982). Again, "exclusive" meant that the claim could only be brought in "federal district court" on the admiralty side. *Id.* at 1388 n.4.

State courts agree. For example, in *Cove Shipping, Inc.* v. *Doss*, a Florida appellate court held that a state trial court "lacked subject matter jurisdiction" over a Suits in Admiralty Act and Public Vessels Act case

"because only an admiralty proceeding in federal court may be maintained" for such claims. 485 So. 2d 1326, 1328 (Fla. Ct. App. 1986); see also *Cairl* v. *Boeing Co.*, 113 Cal. Rptr. 925, 926 (Cal. Ct. App. 1974) (holding, before *Tallentire*, that "state courts are not granted jurisdiction over" DOHSA claims, and "since the suit must be brought in admiralty, United States courts have exclusive jurisdiction"), *abrogated by Tallentire*, 477 U.S. at 232.

b. The same logic applies when the issue is whether a claim must be brought in federal admiralty court or can also be brought in a non-admiralty federal court.

For example, the Federal Circuit has held that suits concerning maritime contracts that must be brought under the Suits in Admiralty Act are subject to federal "district courts' exclusive jurisdiction" in "admiralty," which in turn precluded the Federal Circuit itself from exercising jurisdiction. *Sw. Marine of S.F., Inc.* v. *United States*, 896 F.2d 532, 534–35 (Fed. Cir. 1990) (ordering the case be transferred to a district court). *Southwest Marine* involved a government contract, and another statute (28 U.S.C. § 1295(a)) gave the Federal Circuit jurisdiction over such cases. Even so, the Federal Circuit reasoned that § 1295(a) did not "create[ ] an exception to the district courts' exclusive jurisdiction over maritime contracts" in the Suits in Admiralty Act context. *Id.* at 534. Because admiralty jurisdiction is truly exclusive, the Federal Circuit could not exercise concurrent jurisdiction.

2. Conversely, if jurisdiction is concurrent, courts hold that "some nonadmiralty court has jurisdiction and accords jury trials." *Curcuru* v. *Rose's Oil Serv., Inc.,* 802 N.E.2d 1032, 1038 (Mass. 2004). Massachusetts's highest court, for example, has held that DOHSA claims specifically could be tried to a jury. *Id.* at 1039. *Curcuru* explained that "it has long been

recognized that various forms of 'admiralty' claims," including under DOHSA, "may be tried to a jury if the Federal court's jurisdiction has been invoked on the basis of diversity of citizenship." *Id.* at 1038.

As the Ninth Circuit has similarly held, "the proper focus is on . . . whether the court ha[s] an independent basis for jurisdiction and whether this was the type of claim that historically could be brought in state court or on the law side of district court." *Ghotra ex rel. Ghotra* v. *Bandila Shipping, Inc.*, 113 F.3d 1050, 1055–58 (9th Cir. 1997). *Ghotra* held that claims under the Longshore and Harbor Workers Compensation Act could be "brought 'at common law,'" and thus on the law side of federal court, with a right to a jury—specifically noting that "common law courts traditionally exercised concurrent jurisdiction over maritime cases." *Id.* at 1055.

The Fourth Circuit has also held that, for a breach of contract claim regarding insurance coverage for a ship damaged at sea, the district court's admiralty side and the law side both had "concurrent jurisdiction." *In re Lockheed Martin Corp.*, 503 F.3d 351, 359 (4th Cir. 2007). Accordingly, the ship owner was entitled to a jury trial for the breach of contract claim under the Seventh Amendment. *Id.* at 359–60. The ship owner was entitled to a jury because "maritime *in personam* claims [can] be pursued in federal court as maritime (and thus non-jury) claims, in state court as legal claims, or in federal court as legal claims (for which a jury trial is available) if an independent basis for federal court jurisdiction exists." *Id.* at 356.

And the Fifth Circuit, addressing a DOHSA claim in a case where "there [was] no diversity," has observed that "in federal court (*and absent diversity of citizenship*), a DOHSA claim can be brought only on the admiralty 'side' of the docket." *Baris*, 932 F.2d at 1547–

48 (emphasis added). The court also noted that "*where there exists an additional ground for federal jurisdiction*, the plaintiff must identify the claim as one in admiralty to make it plain that he wishes to invoke that jurisdictional basis rather than some other." *Id.* at 1547. That means when other, non-admiralty grounds for jurisdiction exist, the default is for the claim to proceed "at law" unless the plaintiff specifically invokes the court's admiralty jurisdiction—including for DOHSA claims like those brought here.

These cases reflect the principle that there are "two routes in a federal court case" where non-admiralty sources of jurisdiction exist. *Buccina*, 889 F.3d at 259 (Sutton, J.). "Route A is to invoke federal admiralty procedures"; "Route B is to invoke the traditional federal civil procedures," which includes "the guarantee of a jury trial right, as long as [the plaintiff] can show that the matter arises under the court's diversity jurisdiction as well." *Id.* at 259–60.

Not so in the Seventh Circuit. Under the decision below, only Route A is available, even if a claim satisfies the statutory requirements for another ground for federal jurisdiction, like diversity. The decision below thus breaks from other courts' approach to concurrent admiralty jurisdiction.

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The Seventh Circuit's decision below is indeed an "anomaly." Pet. App. 17a. It breaks from the uniform rule applied to maritime claims across the country. The result is a lopsided but important split.

II. The decision below is wrong.

The Seventh Circuit's decision is wrong several times over. The most basic problem is that it creates a unique quasi-exclusive jurisdiction that is unknown

to the law. As just explained, admiralty jurisdiction has always been either fully concurrent or fully exclusive. See *supra* pp. 13–18. That principle applies in every other maritime context. By itself, this departure from centuries of history and the uniform view of other courts makes clear that the decision below went awry.

The Seventh Circuit's reasoning confirms its error. As noted, the court emphasized that DOHSA's "first section" provides "that a plaintiff may bring a civil action *in admiralty*"; in the Seventh Circuit's view, this "express reference to a suit in admiralty"—combined with "the absence of a reference to a suit at law or with a jury trial"—shows that DOHSA claims must "be brought in admiralty" only. Pet. App. 14a. But this Court has already rejected that precise premise in holding that DOHSA creates concurrent jurisdiction.

In *Moragne* v. *States Marine Lines*, this Court noted that some courts had construed DOHSA § 1—which then, much like now, authorized "a suit for damages in the district courts of the United States, in admiralty"[2]—as creating "exclusive jurisdiction on the admiralty side of the federal courts." 398 U.S. at 400 n.14. But that view was "erroneous," the Court explained, because it "disregards the 'saving clause' in 28 U.S.C. § 1333, and the fact that federal maritime law is applicable to suits brought in state courts under the permission of that clause." *Id.*

Tallentire then applied and expanded on *Moragne*'s reasoning. Looking "to language of the Act as a whole, the legislative history of [DOHSA] § 7, the congressional purposes underlying the Act, and the importance of uniformity of admiralty law," *Tallentire*

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[2] In 2006, Congress recodified DOHSA, including the original § 1, without substantive change. *See* Pub. L. No. 109-304, § 6(c), 120 Stat. 1485, 1511 (2006); 46 U.S.C. § 30302.

held that DOHSA § 7 serves as a "jurisdictional saving clause, ensuring that state courts enjoyed the right to entertain causes of action and provide wrongful death remedies both for accidents arising on territorial waters and, under DOHSA, for accidents occurring more than one marine league from shore."[3] 477 U.S. at 221. Indeed, the Court recognized, "the resolution of DOHSA claims does not normally require the expertise that admiralty courts bring to bear." *Id.* at 232. DOHSA jurisdiction is thus concurrent with state courts, not exclusive. *Id.*

These precedents show that the Seventh Circuit's textual analysis is wrong: Statutory language *allowing* suits in admiralty does not *foreclose* such claims from being raised in non-admiralty forums. Indeed, this Court has long held "the grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive." *Mims* v. *Arrow Fin. Servs., LLC*, 565 U.S. 368, 380 (2012) (cleaned up). And as already explained, maritime statutes have historically provided for concurrent jurisdiction between admiralty and non-admiralty courts over *in personam* claims. See Snell, *supra*, at 204–05. DOHSA claims, which are *in personam*, must be understood against this backdrop. See *Midlantic Nat'l Bank* v. *N.J. Dep't of Env't Prot.*, 474 U.S. 494, 501 (1986) ("The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific."). Yet the Seventh Circuit felt no duty to "harmonize [DOHSA] with other areas of admiralty law," so it brushed this history aside. See Pet. App. 17a.

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[3] The original § 7 was also recodified without substantive change. *See* 46 U.S.C. § 30308(a).

And *Tallentire* specifically held that DOHSA itself creates concurrent jurisdiction. 477 U.S. at 232. The Seventh Circuit should have started from that premise instead of trying to parse the statute on a blank slate. Yet it declared in a footnote that *Tallentire* is essentially irrelevant—along with the statutory language that *explicitly* "allows plaintiffs to bring DOHSA claims in state court." Pet. App. 14a n.4.

For similar reasons, the Seventh Circuit erred in analogizing DOHSA to other statutes that do create exclusive admiralty jurisdiction. See Pet. App. 14a–15a. The court relied on the Ship Mortgage Act of 1920, see 46 U.S.C. §§ 31301–31343, and the Public Vessels Act, see *id.* §§ 31101–31113. But unlike DOHSA in *Tallentire*, these statutes have never been held to create concurrent jurisdiction with state courts. On the contrary, the Court has explained that these statutes create exclusive jurisdiction—meaning that claims cannot be heard in any non-admiralty court, including a state court. See *Detroit Tr. Co.* v. *The Thomas Barlum*, 293 U.S. 21, 42 (1934); *Guidry,* 834 F.2d at 1472–74. Thus, these statutes differ fundamentally from DOHSA. That is true despite the presumption "that the same language in related statutes carries a consistent meaning." Pet. App. 14a–15a. DOHSA's savings clause and this Court's decisions interpreting these various statutes already overcome that presumption.

Finally, contrary to the decision below, Congress never "acquiesced in or ratified" the view that, "if a case involving only DOHSA claims is in federal court, it must proceed in admiralty, without a jury trial." Pet. App. 15a–16a. In so holding, the Seventh Circuit pointed to *Higa*, 230 F.2d at 786; *Noel* v. *Linea Aeropostal Venezolana*, 247 F.2d 677 (2d Cir. 1957); and a smattering of district court decisions. But *Higa* and

Noel both concluded that DOHSA jurisdiction is *completely* exclusive—meaning it excludes state courts too. See *Noel*, 247 F.2d at 680 ("any rights created by that Act are cognizable only in admiralty," so a "suit could [not] be maintained in other forums"); *Higa*, 230 F.2d at 784–85 (rejecting the argument that DOHSA creates concurrent jurisdiction because Congress did not mean to exclude state courts). And that is precisely the view this Court rejected in *Moragne* and *Tallentire*. The interpretation urged in these abrogated decisions hardly gained the wide acceptance necessary to support ratification—especially since "there is nothing to indicate that it was ever called to the attention of Congress." *United States* v. *Calamaro*, 354 U.S. 351, 359 (1957). That a few district courts expressed the same view, Pet. App. 15a, is irrelevant. See *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 589 n.10 (2010) (questioning whether "Congress would have looked to district court, rather than court of appeals, opinions in discerning the meaning of the statutory language").

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DOHSA's text, its history, and this Court's precedents all make clear that DOHSA confers concurrent, not exclusive, jurisdiction—both across courts and within them. The Seventh Circuit's contrary holding is wrong.

III. This case provides an ideal vehicle to decide this important issue.

This case is an ideal vehicle to decide the question presented. First, this case presents a clean legal issue. As the district court noted, "the facts of the case are irrelevant" to the resolution of the "pure question of law" at issue. Pet. App. 23a & n.3. And no one disputes that non-admiralty grounds for federal

jurisdiction exist here: The Manfredis properly involved diversity and multiparty, multiforum jurisdiction; they demanded a jury trial; and they declined to designate the claim as an admiralty claim under Rule 9(h). The question presented is thus dispositive: If the decision below is reversed, a remand for a jury trial is required.

Finally, this is an important issue. Even setting aside high-profile air crashes like this one, maritime fatalities are estimated between 32,000 and 100,000 annually. See Ian Urbina, *Is the World's Deadliest Profession Among the Most Violent?*, CBS News (Sept. 26, 2022), https://www.cbc.ca/news/world/outlaw-ocean-lawless-seas-1.6595578. And as this case and others like it illustrate, a single maritime accident can create hundreds, or even thousands, of DOHSA claims. See, *e.g.*, *Baris*, 932 F.2d at 1541–42 (noting that approximately 5,000 people died in a ferry crash, giving rise to many DOHSA claims).

Congress enacted DOHSA "to provide a uniform and effective wrongful death remedy for survivors of persons killed on the high seas." *Tallentire*, 477 U.S. at 214; see *id.* at 221 (reemphasizing "the importance of uniformity of admiralty law"). The decision below, however, threatens "to destroy the uniformity of wrongful death remedies on the high seas." *Id.* at 232. *True* concurrent jurisdiction in this area "prevents disunity in the provision of forums to survivors of those killed on the high seas; it ensures that if [two people] are killed at sea in the same accident, the beneficiaries of both are able to choose the forum in which they prefer to proceed." *Id.* Under the Seventh Circuit's rule, however, a plaintiff seeking a jury trial must avoid federal court—and even then, a defendant can often defeat the jury-trial right by removing the case to federal court. Allowing this kind of manipulation badly

undermines Congress's scheme, warranting this Court's intervention.

CONCLUSION

For these reasons, the Court should grant the petition.

Respectfully submitted,

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February 5, 2025

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