No.

In the Supreme Court of the United States

AVINESH KUMAR, ET AL., PETITIONERS

v.

REPUBLIC OF SUDAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a service packet is "addressed and dispatched * * * to the head of the ministry of foreign affairs" of a foreign state, as required by 28 U.S.C. 1608(a)(3), when the service packet is sent by registered mail to the head of the ministry of foreign affairs of the foreign state at the state's embassy in the United States.

PARTIES TO THE PROCEEDING

Petitioners are Avinesh Kumar, individually and as the guardian of the estate and next friend of C.K., a minor; Kate Brown; Gloria Clodfelter; Jennifer Clodfelter, individually and as next friend of N.C., a minor; John Clodfelter; Joseph Clodfelter; Dorothy Costelow; Sharla Costelow, individually and as next friend of E.C. and B.C., minors; David Francis; James Francis; Ronald W. Francis; Sandra Francis; Sarah Guana Esquivel; Anton J. Gunn; Jamal Gunn; Jason Gunn; Lou Gunn; Mona Gunn; Ollesha Smith Jean; Diane McDaniels, individually and as next friend of J.M., a minor; Fredericka McDaniels-Bess; Kera Parlett Miller; Jesse Nieto; Jamie Owens, individually and as the guardian of the estate and next friend of I.M.O., a minor; Hugh M. Palmer; Etta Parlett, individually and as next friend of H.P., a minor; Leroy Parlett; Matthew Parlett; Kevin Roy; Olivia Rux; Rogelio Santiago; Simeona Santiago; Jacqueline Saunders, individually and as the guardian of the estate and next friend for J.T.S., a minor; Isley Gayle Saunders; Teresa Smith; Deborah Swenchonis; Gary Swenchonis, Sr.; Shalala Swenchonis-Wood; Jack Earl Swenson; Freddie Triplett; Kevin Triplett; Lorie D. Triplett, individually and as the guardian of the estate and next friend of A.T. and S.R.T., minors; Wayne Triplett; Patricia A. Wibberly; Thomas Wibberly; and Toni Wibberly. George Costelow, Kenyon Embry, Savannah Triplett, and Theodis Triplett, who were appellees below, have passed away. Respondent is the Republic of Sudan.

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A. Wibberly; Thomas Wibberly; and Toni Wibberly respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-37a) is reported at 880 F.3d 144. The opinion of the district court denying respondent's motion to vacate (App., *infra*, 38a-91a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 19, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 4 of the Foreign Sovereign Immunities Act, 28 U.S.C. 1608, provides in relevant part:

> (a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:
>
> > (1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or
> >
> > (2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or
> >
> > (3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign

> state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or
>
> (4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.
>
> As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

STATEMENT

This case presents a recognized circuit conflict on the interpretation of the service provisions of the Foreign Sovereign Immunities Act (FSIA). The FSIA authorizes suits by victims of certain terrorist acts against foreign states designated as state sponsors of terrorism that have provided material support for those acts. See 28 U.S.C. 1605A. As is relevant here, the FSIA requires service on a foreign state "by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the

foreign state concerned." 28 U.S.C. 1608(a)(3). The question presented is whether that requirement is satisfied where the clerk of the court sends a service packet by registered mail to the head of the ministry of foreign affairs of the foreign state at the state's embassy in the United States.

Petitioners are family members of the seventeen American sailors killed in the terrorist bombing of the U.S.S. Cole in 2000. For more than a decade, petitioners have sought to hold the Republic of Sudan, the respondent in this case and a designated state sponsor of terrorism, liable for its role in the attack. In bringing this action, petitioners prepared a service packet and caused the clerk of the court to send it, via certified mail, to the Sudanese embassy in Washington, addressed to Sudan's minister of foreign affairs. The embassy accepted the envelope and signed the certified mail receipt. But Sudan did not enter an appearance. After splitting the action into seventeen separate cases and conducting a bench trial and a further evidentiary hearing, the district court entered default judgments in favor of petitioners. App., *infra*, 18a, 45a.

Soon thereafter, Sudan entered an appearance and moved to vacate the default judgments on the ground that service was improper. App., *infra*, 19a. The district court denied Sudan's motion to vacate. *Ibid.*

The Fourth Circuit reversed and remanded. App., *infra*, 15a. The Fourth Circuit acknowledged that the text of the FSIA does not specify a location where the service packet must be sent, but it nonetheless concluded that service addressed to the foreign minister and sent to the foreign state's embassy was ineffective. App., *infra*, 25a-26a, 31a-32a. In so holding, the Fourth Circuit expressly disagreed with the Second Circuit's prior decision in *Harrison* v. *Republic of Sudan*, 802 F.3d 399 (2d Cir. 2015), petition for cert. pending, No. 16-1094 (filed Mar. 9, 2017),

which addressed the same question in a materially identical case brought by another group of U.S.S. Cole bombing victims. App., *infra*, 33a.

In the wake of the Fourth Circuit's decision in this case, there is a square conflict on the question whether sending a service packet to the head of the ministry of foreign affairs of a foreign state at the state's embassy in the United States satisfies the requirements of Section 1608(a)(3). In light of the conflict on an important question of statutory interpretation, and because this case is a superior vehicle to *Harrison* in which to resolve that conflict, the petition for a writ of certiorari should be granted.

A. Background

1. The Foreign Sovereign Immunities Act authorizes suits against foreign states designated as state sponsors of terrorism that have provided material support for certain terrorist acts. See 28 U.S.C. 1605A. The FSIA both waives the state's immunity from suit and creates a substantive cause of action that authorizes recovery of economic, noneconomic, and punitive damages. See 28 U.S.C. 1605A(c).

The FSIA also provides the sole means for effecting service of process on a foreign state. See 28 U.S.C. 1608(a). It prescribes four methods of service in descending order of preference; a plaintiff must attempt service by the first method, or determine that it is unavailable, before attempting each of the subsequent methods in order. See *ibid.*

Initially, a plaintiff is required to serve process "in accordance with any special arrangement for service between the plaintiff and the foreign state." 28 U.S.C. 1608(a)(1). If there is no such arrangement, the plaintiff may effect service "in accordance with an applicable international convention on service of judicial documents." 28

U.S.C. 1608(a)(2). If there is no such convention, the plaintiff may then effect service under the provision at issue here, by "sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. 1608(a)(3). Finally, if service cannot be effected within thirty days under Section 1608(a)(3), a plaintiff may have the service documents "addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services," for transmission to the foreign state. 28 U.S.C. 1608(a)(4).

B. Facts And Procedural History

1. On October 12, 2000, al Qaeda terrorists bombed the U.S.S. Cole, an American naval destroyer, as it was refueling in the port of Aden, Yemen. The bombing killed seventeen sailors and wounded forty-two others. App., *infra*, 15a.

In 2004, family members of the deceased sailors filed suit against the Republic of Sudan in the Eastern District of Virginia. See *Rux* v. *Republic of Sudan*, Civ. No. 2:04-428 (E.D. Va. filed July 16, 2004). The *Rux* plaintiffs invoked the court's jurisdiction under the FSIA, alleging that Sudan had provided material support to al Qaeda for the attack. See *Rux* v. *Republic of Sudan*, 461 F.3d 461, 467-468 (4th Cir. 2006), cert. denied, 549 U.S. 1208 (2007). At that time, the FSIA did not provide a substantive cause of action against foreign states that supported terrorism, so the plaintiffs sought to hold Sudan liable for the sailors' deaths under another federal statute, the Death on the High Seas Act. App., *infra*, 16a.

Sudan initially failed to appear; when the district court entered a default, Sudan entered an appearance, challenging the default, moving to dismiss, and initiating an appeal from the district court's denial of its motion. See *Rux*, 461 F.3d at 466. After Sudan was unsuccessful in those efforts, it directed its attorneys not to defend or otherwise participate in the proceedings on the merits. App., *infra*, 42a; see *Rux* v. *Republic of Sudan*, 410 Fed. Appx. 581, 583 (4th Cir. 2011). The district court twice ordered Sudan to respond to the complaint, but Sudan failed to comply. App., *infra*, 42a.

After conducting a bench trial, the district court found that Sudan had provided al Qaeda and its leader, Osama bin Laden, with a sanctuary within which to meet, organize, and train militants; that it had cooperated with al Qaeda and bin Laden to finance terrorist training camps; and that it had allowed al Qaeda and bin Laden to use its banks to store and launder money. See *Rux* v. *Republic of Sudan*, 495 F. Supp. 2d 541, 549-550 (E.D. Va. 2007). The district court determined that Sudan's actions had meaningfully contributed to the attack on the U.S.S. Cole, which was carried out by al Qaeda under bin Laden's direct supervision. See *id.* at 552-553. Although the district court ultimately found Sudan liable, it awarded only economic damages, as authorized under the Death on the High Seas Act. App., *infra*, 16a, 42a-43a.

After the entry of judgment in *Rux*, Congress amended the FSIA to add the new substantive cause of action against designated state sponsors of terrorism. In so doing, Congress expanded the available damages to include noneconomic damages, including solatium, and punitive damages. App., *infra*, 16a; see National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338-341 (codified at 28 U.S.C. 1605A).

2. In 2010, petitioners—the original *Rux* plaintiffs and four additional family members—brought this new, related action in the Eastern District of Virginia to take advantage of the broader category of damages available under the amended FSIA. App., *infra*, 17a. Because petitioners had no special arrangement with Sudan for service of process and because Sudan was not a party to any applicable international convention, the first two methods of service prescribed by the FSIA were unavailable. Accordingly, petitioners sought to serve Sudan by mail pursuant to 28 U.S.C. 1608(a)(3). App., *infra*, 18a, 21a-22a.

At the petitioners' request, the clerk of the court sent the necessary documents "via certified mail, return receipt requested," to:

> REPUBLIC OF SUDAN
> Serve: Deng Alor Koul,
> Minister of Foreign Affairs
> Embassy of the Republic of Sudan
> 2210 Massachusetts Avenue NW
> Washington, DC 20008

App., *infra*, 18a. A person at the embassy accepted the packet and signed the return receipt. *Ibid.*

Despite accepting the packet (and despite its intermittent participation in the earlier *Rux* litigation), Sudan failed to enter an appearance or file responsive pleadings. App., *infra*, 18a. As a related action, the case was assigned to the same judge who oversaw the *Rux* litigation. The district court split the action into seventeen related cases to allow "individual attention" to ascertaining the appropriate amount of damages. Order at 1, *Kumar* v. *Republic of Sudan*, Civ. No. 10-171 (E.D. Va. Nov. 15, 2013); see App., *infra*, 18a.

The district court then conducted a bench trial. Consistent with its findings in *Rux*, the district court again

found that Sudan had directly supported al Qaeda operations and that Sudan's support of al Qaeda had led to the murders of the seventeen American sailors serving on the U.S.S. Cole. See *Kumar* v. *Republic of Sudan*, Civ. No. 10-171, 2014 U.S. Dist. LEXIS 59505, at *6-*7 (E.D. Va. Apr. 29, 2014). The court conducted a further evidentiary hearing as to the damages it should award for each sailor. The court then entered judgments in favor of petitioners totaling approximately $20 million in compensatory damages and $14 million in punitive damages. App., *infra*, 18a, 45a.

3. Soon after, Sudan entered its first appearance in the case and moved to vacate the judgments under Federal Rules of Civil Procedure 55(c) and 60(b). App., *infra*, 19a. As is relevant here, Sudan argued that the district court lacked personal jurisdiction over it because the plaintiffs had failed to effect proper service under Section 1608(a)(3), on the ground that the service packet was sent to the foreign minister at Sudan's embassy in the United States, rather than at the ministry of foreign affairs in Khartoum. *Id.* at 71a-72a.

The district court denied Sudan's motion to vacate. App., *infra*, 75a. As is relevant here, the district court reasoned that "the text of [Section] 1608(a)(3) does not prohibit service on the Minister of Foreign Affairs at an embassy address." *Id.* at 73a (alteration and citation omitted). The district court noted that Sudan's only authority concerned "service of process upon the embassy itself or upon a diplomatic officer," neither of which "occur[red] in this case." *Ibid.* Agreeing with the Second Circuit's analysis in *Harrison*, the district court added that this method of service was consistent with the Vienna Convention on Diplomatic Relations. *Id.* at 74a-75a (citing *Harrison*, 838 F.3d 86, 94-95 (2d Cir. 2016)).

4. The court of appeals reversed and remanded. App., *infra*, 15a.

At the outset, the court of appeals explained that the issue before it was a question of pure statutory interpretation. App., *infra*, 20a, 23a. The court acknowledged that the statute's text "does not specify delivery only at the foreign ministry in the foreign state's capital" and "does not meaningfully limit the geographic location where service is to be made." *Id.* at 25a-26a. But it reasoned that the statute was ambiguous as to whether delivery at the foreign state's embassy is permitted, because, "while the head of a ministry of foreign affairs generally oversees a foreign state's embassies, the foreign minister is rarely—if ever—present there." *Id.* at 26a.

The court of appeals believed that, in enacting Section 1608(a), Congress "meant to account for the United States' rights and obligations under the Vienna Convention [on Diplomatic Relations]." App., *infra*, 27a. The court proceeded to interpret the Vienna Convention to bar service of process by mailing materials to an embassy, concluding that such mailing "impinges upon the unique characteristics of a diplomatic mission." *Id.* at 29a. The court further determined that, to the extent the Vienna Convention permitted the head of a mission to waive the inviolability of the premises, the Sudanese ambassador did not do so here, despite the embassy accepting the service packet. *Id.* at 29a-30a. Accordingly, the court of appeals concluded that the service of process was inadequate. *Id.* at 31a-32a, 36a.

The court of appeals recognized that "[its] holding conflicts" with the Second Circuit's holding in *Harrison*, which determined that the same service of process on Sudan satisfied the requirements of Section 1608(a)(3). App., *infra*, 33a. The court of appeals further noted that the pending petition for a writ of certiorari in *Harrison*

"squarely raises" the question presented in this case. *Id.* at 34a. The court nevertheless proceeded to resolve that question, deemed void the judgments in petitioners' favor, and remanded for further proceedings. *Id.* at 36a-37a.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit's decision creates a straightforward circuit conflict, in cases involving essentially identical facts and overlapping parties, on the question whether sending a service packet to the head of the ministry of foreign affairs of the foreign state at the state's embassy in the United States satisfies the requirements of 28 U.S.C. 1608(a)(3). That conflict necessitates the Court's review because it leaves victims of international terrorism without clear guidance as to how to proceed in their suits. It has particularly arbitrary consequences on the facts of the conflict-creating cases, because it forces some victims of the U.S.S. Cole bombings to start anew years into the litigation while allowing others to hold onto the judgment they have obtained.

Neither the existence of the conflict nor the importance of the question presented are disputed. Sudan has sought certiorari on the same question in *Harrison*, invoking the conflict and arguing that the question is important and warrants this Court's immediate review. Because this case is a preferable vehicle to *Harrison* in which to resolve the question, the Court should grant review in this case, and either grant review or simply hold the petition in *Harrison*.

A. The Decision Below Creates A Conflict In The Courts Of Appeals

The decision below creates a square conflict with the Second Circuit as to whether sending a service packet to the head of the ministry of foreign affairs of a foreign state at the state's embassy in the United States satisfies the

requirements of 28 U.S.C. 1608(a)(3). The Second Circuit and the Fourth Circuit have reached opposite conclusions on that question when considering the same service of process effected by two groups of victims of the same attack, represented by the same attorneys, against the same foreign state.

1. As the Fourth Circuit recognized, its decision in this case directly conflicts with the Second Circuit's decision in *Harrison*. App., *infra*, 33a.

In *Harrison*, a different group of victims of the U.S.S. Cole bombing and several of their spouses sued Sudan in the United States District Court for the District of Columbia. See 802 F.3d at 400. The *Harrison* plaintiffs also alleged that Sudan had provided material support to al Qaeda for the attack. See *ibid.* Critically for present purposes, the plaintiffs in *Harrison*, represented by the same attorneys, effected service on Sudan in precisely the same way as petitioners did here: *viz.*, by arranging for the clerk of the relevant court to send the required documents via certified mail, with a return receipt requested, to the Minister of Foreign Affairs, Deng Alor Koul, at the Sudanese Embassy in Washington. App., *infra*, 18a; see *Harrison*, 838 F.3d at 89.

In *Harrison*, as in this case, Sudan did not enter an appearance during the liability proceedings in district court, and the district court entered a default judgment. See 838 F.3d at 89. Sudan subsequently argued that service was improper, seeking to challenge orders entered against it in the Southern District of New York to turn over property as a result of the default judgment in the plaintiffs' favor. See *ibid.*[1]

[1] Although identical as to the substantive issue, *Harrison* is substantially different from this case in its procedural posture. See pp. 16-17, *infra*.

The Second Circuit affirmed the turnover orders, holding that service in the underlying proceeding had been proper. See *Harrison*, 802 F.3d at 406. The Second Circuit reasoned that "[n]othing in [Section] 1608(a)(3) requires that the papers be mailed to a location in the foreign state." *Id.* at 404. Because a "mailing addressed to the minister of foreign affairs at the embassy" was "consistent with the language of the statute and could reasonably be expected to result in delivery to the intended person," it satisfied the requirements of Section 1608(a)(3). *Ibid.*

Sudan petitioned for rehearing, and the United States filed an amicus brief in support of the petition. The Second Circuit denied the petition, with the panel explaining its reasoning in an accompanying opinion. See *Harrison*, 838 F.3d at 90. The court unequivocally rejected the United States' argument that service at the embassy's address is inconsistent with the Vienna Convention. See *id.* at 93-94. The court reasoned that the Vienna Convention would "preclude service of process on an embassy * * * as an agent of a foreign government" because such "compulsory process" would breach diplomatic immunity. *Id.* at 94. But the service of process at issue did not implicate those concerns, the court continued, because the papers were specifically addressed to the Minister of Foreign Affairs and were merely sent *via* the embassy (which voluntarily chose to acknowledge receipt of the materials, rather than rejecting or subsequently returning them). *Ibid.* Just as there is "nothing offensive * * * about mailing a letter into the sovereign territory of a foreign state," the court explained, there is nothing offensive about mailing a letter to the foreign state's embassy. *Id.* at 95.

The court further concluded that Sudan's actions as to the service papers constituted consent to entry onto the

embassy's premises under the Vienna Convention. See 838 F.3d at 95. The court also rejected as untimely Sudan's factual arguments that the service packet may not have reached the embassy or subsequently been transmitted to the Sudanese minister of foreign affairs. See *id.* at 96. Accordingly, the court adhered to its holding that service was proper. See *id.* at 88.

2. Sudan has itself recognized that the decision below conflicts with the Second Circuit's decision in *Harrison*. While Sudan filed its petition for certiorari in *Harrison* before the Fourth Circuit issued its decision in this case, Sudan filed a supplemental brief after that decision in which it argued that the conflict "could hardly be more square" because "[this case] and *Harrison* involved the same underlying incident, the same service method, and the same subsection of the same statute," yet "the Second and Fourth Circuits * * * reached opposing outcomes on the same legal question." Pet. Second Suppl. Br. at 3, *Harrison*, No. 16-1094 (filed Jan. 30, 2018). There can be no serious doubt, therefore, that this case presents a paradigmatic circuit conflict that warrants the Court's review.

B. The Question Presented Is Important And Warrants Review In This Case

1. The question presented is undisputedly important. Every suit against a foreign state involves service of process under 28 U.S.C. 1608(a). Plaintiffs who lack a special arrangement for the service of process are required to attempt service under Section 1608(a)(3) whenever Section 1608(a)(2) does not apply: that is, whenever they sue one of the many countries that is not a party to international conventions on service of process. Cf. Hague Conference on Private International Law, Status Table <tinyurl.com/

HagueStatus> (last visited Mar. 9, 2018) (listing 73 parties to the Hague Convention on Service Abroad); Department of State, Inter-American Service Convention and Additional Protocol <tinyurl.com/IACAPParties> (last visited Mar. 9, 2018) (listing 13 parties to the Inter-American Service Convention). Whether petitioners' method of service in this case complies with the requirements of Section 1608(a)(3) thus bears on how every plaintiff without the benefit of an international convention (or special arrangement) may initiate a suit under the FSIA.

In addition, the diametrically different interpretations of Section 1608(a)(3) by the Second and Fourth Circuits create intolerable uncertainty and the concomitant risk that judgments will be voided after years of proceedings. And the conflict on the question presented creates an inconsistency in the specific (and undeniably important) context of the dozens of victims of the U.S.S. Cole bombing, who are identically situated in all relevant respects but have been subject to disparate treatment in their efforts to obtain redress from Sudan, a state sponsor of terrorism.

Even before the decision below was issued, Sudan itself emphasized the importance of the question presented. See, *e.g.*, Pet. at 25-32, *Harrison*, *supra* (filed Mar. 9, 2017). And again, even before the decision below, the Court deemed the question presented important enough to invite the views of the United States in *Harrison*. See Order, *Harrison*, *supra* (Oct. 2, 2017).[2] Given the square conflict created by the decision below, petitioners agree with Sudan that the question is one that "[t]his Court should review * * * now." Pet. at 6, *Harrison*, *supra*.

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[2] The Solicitor General has not yet filed a brief in *Harrison*; petitioners have informed the Solicitor General of the filing of this petition.

2. This case is a better vehicle than *Harrison* in which to consider and resolve the question presented.

This case is a straightforward appeal of underlying judgments that petitioners secured against Sudan. After petitioners obtained those judgments, Sudan moved to vacate them; the district court denied the motion, and this appeal followed. See pp. 8-10, *supra*.

In *Harrison*, by contrast, plaintiffs obtained a default judgment against Sudan in the United States District Court for the District of Columbia. Plaintiffs then obtained turnover orders against financial institutions holding Sudanese assets in the Southern District of New York. See *Harrison*, 802 F.3d at 400. Sudan appealed the entry of those orders to the Second Circuit, arguing that the default judgment underpinning the turnover orders was void for lack of personal jurisdiction. See *id.* at 404. Sudan then petitioned for certiorari from the Second Circuit's adverse decision affirming the turnover orders. In the meantime, however, Sudan separately moved to vacate the underlying default judgment in the United States District Court for the District of Columbia. See *Harrison*, 838 F.3d at 89 n.1. In that motion, Sudan raised several arguments challenging the judgment and the size of the damages award. See *Harrison* v. *Republic of Sudan*, Civ. No. 10-1689, Dkt. No. 55 (D.D.C. June 14, 2015). The district court has not acted on the motion.

As the plaintiffs in *Harrison* explained in their brief in opposition to certiorari, see Br. in Opp. at 2-4, *Harrison*, *supra* (filed June 26, 2017), because Sudan continues to challenge the underlying judgment in *Harrison* in separate proceedings, that case is a potentially problematic vehicle for review. Sudan has not moved to stay the District of Columbia proceedings in *Harrison*, and the motion to vacate remains pending and ripe for resolution by the district court there. At any time, that court could grant the

motion to vacate or modify the judgment in a manner that would moot the proceedings before this Court. The resulting uncertainty makes *Harrison* a poor vehicle for this Court's review. This case, by contrast, presents the question without any of those procedural complications.[3]

This case also avoids a factual complication present in *Harrison*. Both in the Second Circuit and in its petition for certiorari, Sudan contended that there is an open question as to whether the service packet was delivered to the embassy at all, because the delivery confirmation listed a delivery location in Maryland. See *Harrison*, 838 F.3d at 96; Pet. at 9-10, 13, *Harrison*, *supra*. The Second Circuit declined to address that argument. See *Harrison*, 838 F.3d at 96. Here, by contrast, Sudan has not pointed to any such anomaly in the delivery confirmation, and the court of appeals expressly observed that "[s]omeone at the embassy accepted the envelope and signed the certified mail receipt." App., *infra*, 18a. There is therefore no valid obstacle that would prevent the Court from reaching and resolving the question presented.

In light of the clear circuit conflict and the importance of the question presented, therefore, the Court should grant the petition for certiorari in this case. Although this case is a better vehicle than *Harrison* standing alone, the Court may also wish to grant the petition in *Harrison* to avoid any risk that the Court will be unable to resolve the question presented, especially because the same counsel represent the respective parties in both cases. In the alternative, the Court should hold the petition in *Harrison* pending the disposition of this case.

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[3] To be sure, petitioners in this case are entitled to re-serve process on Sudan and to commence anew in the district court. App., *infra*, 37a. But it is unlikely that petitioners would be able to re-serve process on Sudan and to obtain new and final judgments against Sudan in the same amounts before this Court completes its review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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