NO. 18-1427

In the Supreme Court of the United States

MARIE LAVENTURE, ET AL.,

Petitioners,

v.

UNITED NATIONS, ET AL.,

Respondents.

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

BRIEF OF AMICUS CURIAE *HEAR THEIR CRIES—STOP CHILD RAPE IN AID* IN SUPPORT OF THE PETITION FOR CERTIORARI

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INTEREST OF AMICUS CURIAE

This Brief of Amicus Curiae is respectfully submitted pursuant to Supreme Court Rule 37(2). It is filed in support of the Petition for Writ of Certiorari.[1]

Hear Their Cries—Stop Child Rape in Aid (hereinafter "HTC" or "Hear Their Cries"—www.heartheircries.org) is a non-profit association based in Geneva, Switzerland. HTC works to ensure international organizations, including the United Nations, are held accountable for their conduct, focusing on the international aid sector, where sexual abuse of women and children by aid workers and peacekeepers is rampant. HTC seeks the complete eradication of such abuse. It works with governments, NGOs and U.N. agencies to implement training, prevention, detection and prosecution of sex abusers. The immunity afforded international aid organizations today, including the United Nations, promotes widespread sexual abuse and injury of the world's most vulnerable populations.

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the Amicus Curiae, or their counsel, made a monetary contribution to its preparation or submission. Counsel of Record for all parties were notified by Amicus Curiae of its intent to file more than 10 days prior to the due date. Petitioners consented to amicus submissions by e-mail. The Solicitor General on behalf of Respondents also consented to the filing of this Brief of Amicus Curiae by letter dated May 22, 2019.

The current state of international organization (IO) immunity jurisprudence is a mass of confusion, encouraging irresponsibility in humanitarian operations, leading aid organizations towards deception, dishonesty and impunity. HTC submits that it allows IO staff to operate without consequence from their bad acts causing untold harm to the most vulnerable around the world. Affording international organizations, like the United Nations, absolute immunity (greater than that afforded to sovereign states) repudiates international moral principles and threatens United States sovereignty as well as the United States' ability to protect its citizens from wrongdoing.

STATEMENT OF THE FACTS

Petitioners are residents of the United States and citizens of Haiti, who were sickened, or are relatives of those who died, because of the Haiti cholera outbreak in late 2010. Cholera was brought to Haiti by United Nations Nepalese peacekeeping forces. It caused severe illness to hundreds of thousands and at least 10,000 deaths. These facts are generally not in dispute.

Petitioners—individually, on behalf of the estates of their deceased relatives, and as representatives of a larger class of individuals who died in or who were infected by the cholera outbreak—have sued the United Nations and its various components and representatives, seeking to recover damages, injunctive relief, and other equitable remedies.

Dismissing Petitioners' claims, the District Court rejected their immunity waiver argument holding the United Nations benefits from immunity, and there had been no waiver, and therefore the court lacked subject matter jurisdiction to entertain the claim. The Second Circuit for the United States Court of Appeals affirmed.

As a non-profit, human rights organization, HTC files the instant Brief in support of the Petition for Certiorari. Granting the United Nations immunity is unlawful as it violates the U.S. Constitution. Thus, Petitioners' claims must be permitted to continue because the immunity the U.N. enjoys from U.S. law and court proceedings is itself unlawful.

SUMMARY OF ARGUMENT

Through its grossly negligent acts in Haiti, the United Nations left a staggering 10,000 dead and nearly one (1) million infected or seriously ill with the cholera virus. Adding insult to injury, the U.N. refuses to set up the "standing claims commissions" mandated by the applicable Status of Forces Agreement.[2] This demonstrates the United Nations will never permit innocent third parties any redress for damages result-

[2] Agreement Between the United Nations and the Government of Haiti Concerning the Status of the United Nations Operations in Haiti, July 9, 2004, 2271 U.N.T.S. 235 ("SOFA").

ing from its tortious actions, avoiding liability at all costs.[3]

To allow the United Nations and other international organizations absolute immunity, beyond that of foreign governments, and which bars Petitioners' claims for even preliminary discovery due to lack of subject matter jurisdiction, creates a lawless environment, generating resentment, where impunity could lead to violent reprisal. It further allows nefarious individuals, corporations, and governments to hide behind the veil of multinational, altruistic organizations to perpetrate not only acts of misfeasance, as with the spread of cholera in Haiti, but also heinous acts of sexual abuse of some of the world's most vulnerable populations in the name of humanitarianism.

Here Petitioners simply want their day court. They are victims of the 2010 cholera outbreak, a result of the United Nations' grossly negligent contamination of the drinking water of hundreds of thousands of innocent Haitians.

Further, United States Courts denied not only the Petitioners' fundamental right to access redress in courts, but that of other victims of wrongdoing or negligence committed by international organizations, as are highlighted in the argument section of this brief. This denial is in direct conflict with Constitutional principles of Strict Scrutiny. Federal Courts

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[3] SOFA, art. VIII, ¶ 55. It is likely that the U.N. expressly waived its immunity through the SOFA between itself and Haiti. *See* Farhana Choudury, *The United Nations Immunity Regime: Seeking a Balance Between Unfettered Protection and Accountability*, Georgetown Law Review, page 740 at https://georgetownlawjournal.org/articles/17/united-nations-immunity-regime/pdf.

have been abridging rights of Petitioners in the most broadly tailored way possible: absolute denial of redress.

Notably in *Jam v. International Finance Corp.*, 860 F.3d 703 (D.C. Cir. 2017), the D.C. Circuit held the International Finance Corporation ("IFC"), headquartered in Washington, D.C., was immune from civil liability in a case arising out of an IFC-funded project. In *Jam*, the D.C. Circuit struggled to determine the exact extent of IFC immunity. This Court ultimately held that IFC's immunity was restrictive rather than absolute, like that enjoyed by sovereign states under the Foreign Sovereignties Immunity Act of 1976. IFC immunity comes from the International Organization Immunity Act of 1945,[4] but the UN's immunity is afforded by the General Convention on Privileges and Immunities, ratified by the U.S. in 1972. Here the outcome for Petitioners is the same: they are denied access to redress in United States Courts.

In any case, the source of the immunity is irrelevant here. Such immunity is unconstitutional whether granted by Congressional act or a ratified treaty. We urge this Court is to hear the present appeal completing the work started in *Jam*, finally settling the extent and validity of immunities asserted by all international organizations operating or domiciled within the United States.

Alternatively, United Nations immunity for serious crimes does not exist anywhere. In 2006, the United Nations recognized in a U.N. General Assembly

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[4] *Jam*, *Infra*.

Report 2006 (UN Document number A/60/980) at paragraph 21 that many acts of criminal conduct are not protected by U.N. immunity.[5] The intentional and/or reckless conduct by U.N. Peacekeepers, allowing untreated sewerage containing cholera to enter the drinking water of hundreds of thousands of innocent third parties amounts to criminal conduct, not protected by any immunity grant. In addition, in the United States, a grant of immunity for such criminal conduct is simply unconstitutional. Since there is no immunity, questions of the immunity's waiver are irrelevant. Thus, Petitioners are entitled to continue their action.

ARGUMENT

At issue is whether the United Nations enjoys immunity from lawsuits in U.S. courts, like the instant action brought by Petitioners. The United Nations' putative immunity stems from Article II Section 2 of the Convention on the Privileges and Immunities of the United Nations ("CPIUN"). *See* 21 U.S.T. 1418; *United States v. Bahel*, 662 F.3d 610, 623-24 (2d Cir. 2011). CPIUN provides that the United Nations "shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity." 21 U.S.T. 1418, art. II, § 2.

Certain types of immunities are so fundamental and inherent they form part of the fabric of the American legal system. *See Harlow v. Fitzgerald*, 457

[5] U.N. Document number, A/60/980, at paragraph 21.

U.S. 800, 810-11, 102 S.Ct. 2727, 2734-35 (1982) (recognizing the existence of "judicial, prosecutorial, and legislative functions" to which "absolute immunity" attaches, but also noting that protection arising under those immunities extends "no further than its justification would warranty"); *Dostal v. Haig*, 652 F.2d 173, 176-77 (D.C. Cir. 1981) (recognizing the historic right of diplomatic immunity). However, the concept of immunity itself, especially as it relates to foreign entities, is disfavored. *See Nat'l City Bank v. Republic of China*, 348 U.S. 356, 358-59, 75 S.Ct. 423, 426 (1955) (noting that immunity of foreign bodies is not a requirement of the U.S. Constitution but instead rests on "considerations of policy"); *Fed. Hous. Admin. v. Bureau*, 309 U.S. 242, 245, 60 S.Ct. 488, 490 (1940) (Immunity waivers are "liberally construed" because of the "current disfavor of the doctrine of governmental immunity from suit").

Affording the United Nations putative absolute immunity, as in the District Court, violates the constitutional rights of Petitioners and other individuals who have been forced to bear the effects of the United Nations' criminal negligence, both in Haiti and elsewhere. It is well settled that "all persons enjoy a constitutional right of access to the courts." *Brown v. Stone*, 66 F. Supp. 2d 412, 433 (E.D.N.Y. 1999). The sources of this right are varied. *See, e.g.*, *Christopher v. Harbury*, 536 U.S. 403, 415 n.12, 122 S.Ct. 2179, 2186 (2002) ("Decisions of this Court have grounded the right of access to courts in the Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses." (citations omitted)); *Acevedo*

v. Surles, 778 F. Supp. 179, 184 (S.D.N.Y. 1991) ("The right of access to the courts is guaranteed by the First Amendment right to petition the government for the redress of grievances."). Regardless of source, the right of access to courts is fundamental. *Brown*, 66 F. Supp. 2d at 433 ("While the origins of the right, as well as its contours, may be the subject of debate, the right of access to the courts nonetheless remains a fundamental conscript of constitutional law." (citations omitted)).

The right of access to courts means the government cannot simply "bolt the door to equal justice." *See Griffin v. Illinois*, 351 U.S. 12, 24, 76 S.Ct. 585, 593 (1955) (Frankfurter, J., concurring). Due process requires "the opportunity to be heard," an opportunity that "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 551-52, 85 S.Ct. 1187, 1191 (1965) (quotation omitted). Due process protects those "who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429, 102 S.Ct. 1148, 1154 (1982).

In assessing challenges regarding restrictions to fundamental right of judicial access, the Court must weight "the character and intensity of the individual interest at stake" against government justification for restriction. *M.L.B. v. S.L.J.*, 519 U.S. 102, 120-21, 117 S.Ct. 555, 566 (1996).

Consideration of the nature of these individual interests involves three factors. The first factor is the amount of interference with access to the judicial system. Physical and legal barriers that foreclose access

to courts are problematic, *see, e.g.*, *Tennessee v. Lane*, 541 U.S. 509, 527-29, 124 S.Ct. 1978, 1990-91 (2004) (involving courthouses the disabled were unable to access); *Webster v. Doe*, 486 U.S. 592, 603, 108 S.Ct. 2047, 2053 (1988) (a "'serious constitutional question' would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim" (citation omitted)). Partial barriers are less likely to be found unconstitutional. *See Lassiter v. Dep't of Social Services of Durham County*, 452 U.S. 18, 26-27, 101 S.Ct. 2153, 2159-60 (1981) (holding a court should determine a parent's request for court-appointed counsel for their minor child (a partial barrier to judicial access) on a case-by-case basis).

Second, the strength of the interests involved: the stronger the individual interest, the more likely the barrier is an unconstitutional hindrance. Barriers posing potentially life-altering consequences raise serious constitutional concerns. *See, e.g.*, *Lindsey v. Normet*, 405 U.S. 56, 74-79, 92 S.Ct. 862, 874-77 (1972) (a state's appellate double-bond requirement, where an evicted tenant might be financially unable to seek judicial review to protect the tenant's essential interest in housing); *Mayer v. Chicago*, 404 U.S. 189, 197, 92 S.Ct. 410, 416 (1971) (a significant transcript fee is an unconstitutional barrier to judicial access because the "impecunious medical student" cannot afford it and might "find himself barred from the practice of medicine because of a conviction he is unable to appeal for lack of funds"); *see also Little v. Streater*, 452 U.S. 1, 16-17, 101 S.Ct. 2202, 2210-11 (1981) (a statute is unconstitutional if it requires an indigent to pay for blood tests to contest paternity. "[A]part from the putative father's pecuniary interest in avoiding a

substantial support obligation and liberty interest threatened by the possible sanctions for noncompliance, at issue is the creation of a parent-child relationship").

The final factor is the availability of alternative avenues for redress. A scheme is constitutionally problematic where the litigant has no means for redress outside of the judicial system. This Court has long recognized the importance of a legal system to which individuals—both defendants and plaintiffs—have access. *Boddie v. Connecticut*, 401 U.S. 371, 374-77, 91 S.Ct. 780, 785 (1971). In that case, the Court struck down as unconstitutional a state-court filing fee for divorce cases, in part because the litigant had no avenue for divorce except the judicial system:

> As this Court on more than one occasion has recognized, marriage involves interests of basic importance in our society. It is not surprising, then, that the States have seen fit to oversee many aspects of that institution. Without a prior judicial imprimatur, individuals may freely enter into and rescind commercial contracts, for example, but we are unaware of any jurisdiction where private citizens may covenant for or dissolve marriages without state approval. Even where all substantive requirements are concededly met, we know of no instance where two consenting adults may divorce and mutually liberate themselves from the constraints of legal obligations that go with marriage, and more fundamentally the prohibition against remarriage, without invoking the State's judicial machinery.

> Thus, although they assert here due process rights as would-be plaintiffs, we think appellants' plight, because resort to the state courts is the only avenue to dissolution of their marriages, is akin to that of defendants faced with exclusion from the only forum effectively empowered to settle their disputes. Resort to the judicial process by these plaintiffs is no more voluntary in a realistic sense than that of the defendant called upon to defend his interests in court. For both groups this process is not only the paramount dispute-settlement technique, but, in fact, the only available one. . . .

Id. at 376-77.

The Court ultimately held that the state court's refusal to consider the divorce without the filing fee is unconstitutional:

> [W]e conclude that the State's refusal to admit these appellants to its courts, the sole means in Connecticut for obtaining a divorce, must be regarded as the equivalent of denying them an opportunity to be heard upon their claimed right to a dissolution of their marriages, and, in the absence of a sufficient countervailing justification for the State's action, a denial of due process.

Id. at 380-81.

Here, a consideration of all three "character and intensity" factors weighs in favor of finding the U.N.'s putative immunity unconstitutional.

First, the immunity enjoyed by the U.N. acts as a complete barrier to redress. Unless the U.N. expressly waives immunity—which the District Court below indicated requires more than an explicit declaration of its representative assuming liability—Petitioners or other innocent third parties who face injury or death at the hands of the U.N. have no recourse. There is no judicial avenue for such individuals to seek redress for their injuries.

Second, the individual interests at issue here are significant. The underlying litigation concerns more than just Petitioners' economic interests. Indeed, Petitioners here do not merely seek personal financial damages, but they instead also demand injunctive relief, remediation of the Haitian waterways afflicted by cholera because of the U.N.'s negligence, provision of adequate sanitation, and efforts to eradicate the ongoing cholera outbreak. That is, this matter involves the rights of Petitioners, as well as the members of the class they represent, to life, family, health, and basic subsistence. And in a broader sense, this litigation involves the interests of fundamental fairness and justice. Unless the U.N. faces accountability for its grotesque negligence, it has no incentive to exercise caution in the future and similar disasters will continue.

Third, Petitioners, those they represent, and other similarly wronged individuals have no alternative or non-judicial means of obtaining relief. The judicial branch holds a monopoly on compelling monetary, injunctive, and equitable recompense from the U.N. By upholding and applying the U.N.'s asserted immunity, the District Court effectively eliminated the only available means of relief.

In sum, all three factors support the conclusion that Petitioners' interests are of constitutional importance. Consequently, in order for the U.N. immunity at issue here to pass constitutional muster, there must be a strong governmental interest in upholding and applying that immunity. *See M.L.B.*, 519 U.S. at 120-21. None exists.

Very few cases have addressed the constitutionality of the U.N.'s immunity. In *George v. United Nations*, 834 F.3d 88 (2d Cir. 2016) and *Brzak v. United Nations*, 597 F. 3d 107 (2d Cir. 2010), the Second Circuit summarily concluded that the United Nations' immunity was constitutional without providing meaningful analysis or legal insight.

In *Brzak*, the 2nd Circuit rejected constitutional arguments similar to those presented here noting "[e]ach of these arguments fails, as each does no more than question why immunities in general should exist." *Brzak*, 597 F.3d at 114. And further:

> The short—and conclusive—answer is that legislatively and judicially crafted immunities of one sort or another have existed since well before the framing of the Constitution, have been extended and modified over time, and are firmly embedded in American law. If appellants' constitutional argument were correct, judicial immunity, prosecutorial immunity, and legislative immunity, for example, could not exist. Suffice it to say, they offer no principled arguments as to why the continuing existence of immunities violates the Constitution.

Id. at 114. The Court in *George*, addressing comparable arguments, simply quoted and applied the foregoing language from *Brzak*. *See George*, 834 F.3d at 98.

The Court's characterization of the access-to-courts argument made in those cases—similar to the argument made here—is incorrect. Not all immunities are unconstitutional, and neither does HTC seek to eliminate fundamental immunities. However, the inherent and long-standing immunities noted in *Brzak* —judicial, prosecutorial, legislative, and diplomatic— are entirely unlike the immunity the U.N. enjoys.

As indicated above, and as the *Brzak* Court observed, some immunities are so ingrained into the fabric of United States common law and custom that their validity and purpose are not subject to reasonable dispute. *See Harlow*, 457 U.S. at 810-11 (recognizing "judicial, prosecutorial, and legislative functions" to which "absolute immunity" applies); *Dostal*, 652 F.2d 173, 176-77 (1981) (recognizing the historic right of diplomatic immunity). *See generally District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783 (2008) (explaining that preexisting laws, practices, and understandings inform the meaning of the Constitution). Critically, the immunity claimed by the United Nations falls under none of those categories.

The immunity behind which the United Nations seeks to avoid culpability for its negligence and criminal behavior does not stem from long-standing principles of common law or from the U.S. Constitution. The United Nations is not a judicial body, prosecutor, or legislature, nor a foreign nation-state or agent of a foreign nation-state part of a diplomatic mission. Rather, the immunity at issue here is a creature of

statute; it was created by an act of the United Nations itself, and ratified by the U.S. as a treaty. And the Supreme Court has recognized that, while certain immunities remain extant, the concept of immunities is still disfavored, and the scope of such immunities cannot extend more than is justifiable. *See Nat'l City Bank*, 348 U.S. at 358-59 (noting that immunity of foreign bodies is not a requirement of the U.S. Constitution but instead rests on "considerations of policy"); *Fed. House. Admin.*, 309 U.S. at 245 (recognizing the "current disfavor of the doctrine of governmental immunity from suit").

In other words, because certain immunities predate the Constitution and make up the fundamental fabric of the Constitution, those immunities cannot themselves violate the Constitution. The same cannot be said of the immunity at issue here. The United Nations' immunity stems solely from the CPIUN. It is neither based on the Constitution nor ingrained into the constitutional fabric of American jurisprudence. Consequently, like any other statutory creation, CPIUN must pass constitutional muster. It does not. Neither the U.S. government nor the U.N. has articulated any basis to overcome Petitioners critical constitutional interests, prohibiting those innocent third parties injured from seeking redress for damages against the United Nations.

In short, jurisprudential factors applicable to constitutional access-to-court analysis overwhelmingly support finding the "character and intensity" of the individual interests involved are of constitutional importance. The District Court's decision to grant absolute immunity to the U.N. infringes on Petitioners'

fundamental right of access to the courts and must be reversed.

Further, the United States Supreme Court declared the right of access to courts to be fundamental. *Tennessee v. Lane*, 541 U.S. 509, 533-34 (2004).

As such, a restriction on that right requires a "strict scrutiny" analysis, and U.N. immunity fails because it is over-inclusive, virtually absolute and beyond that of common law government immunities. As such it cannot be considered narrowly tailored. Moreover, the means employed by the Government to implement its presumed compelling interest in ensuring the proper functioning and independence of international organizations is not the least restrictive means available to the Government. Congress could have passed a statute like the Federal Tort Claims Act (FTCA, 28 USC § 1346(b)), or mandated third party claims or employee suits against the respondent U.N. be addressed in the Court of Claims, or an independent, alternative dispute mechanism with all due process protections required by the U.S. Constitution. (Similar to the internal dispute resolution system applying to some Federal Government employees which allows access to Federal Court when dissatisfied with the outcome of the internal dispute resolution mechanism). Civil Service Reform Act, 5 U.S.C. 7101, *et seq.*

While there might certainly be a compelling interest to shield the United Nations (a largely charitable organization purportedly operating for the public good on a non-profit basis) from the doubtless large volume of frivolous lawsuits it could be exposed to should no immunity exist, it is counter-productive and

dangerous to give the organizations and its members absolute immunity. This type of complete immunity from criminal and civil legal consequences makes fertile ground for incompetence and criminal behavior. It does not serve a compelling interest.

The absence of narrow tailoring of the United Nations' immunity by the District Court opens the door to a number of adverse consequences. No official United Nations function is served by the introduction of cholera in a country already devastated by a damaging earthquake.

This Court has held that an official seeking absolute immunity bears the burden of showing such immunity is justified for the function in question. *Forrester v. White*, 484 U.S. 219, 224, 108 S.Ct. 538, 542 (1988), and *Harlow v. Fitzgerald,* 457 U.S. 800, 812, 102 S.Ct. 2727, 2734 (1982). The Court has been "quite sparing" in its recognition of absolute immunity, *Forrester, supra,* at 224, and has refused to extend it "further than its justification would warrant". *Harlow, supra,* at 811.

Judges, legislators, and prosecutors, are not shielded from civil or criminal suit based on official immunity when engaged in gross negligence or criminal activity. *See Nixon v. Fitzgerald*, 457 U.S. 731, 752, 759, 102 S.Ct. 2690, 2702, 2706 (1982) (Burger, C. J., concurring) (noting that "a President, like Members of Congress, judges, prosecutors, or congressional aides—all having absolute immunity are not immune for acts outside official duties"); *see also* 457 U.S. at 761. The way the District Court has construed the United Nation's immunity protects acts outside the UN's formal functions and official staff duties.

This Court has addressed whether an international treaty can free the government from Constitutional restraints. *See Bond v. United States*, involving the application of the Chemical Weapons Convention Implementation Act of 1998 as applied against a defendant accused of using such chemicals to retaliate against an unfaithful spouse. The issue was whether the Act applied broadly subverted States' rights in violation of the Tenth Amendment; the Court ruled that Congress does not have the authority to enact legislation to enforce a treaty that would infringe upon traditional state matters. (*see Bond v. United States*, 174 S.Ct. 2077 (2014)).

> Since the Act is clear, the real question this case presents is whether the Act is constitutional as applied to petitioner. An unreasoned and citation-less sentence from our opinion in *Missouri v. Holland*, 252 U.S. 416 (1920), purported to furnish the answer: "If the treaty is valid"—and no one argues that the Convention is not—"there can be no dispute about the validity of the statute under Article I, § 8, as a necessary and proper means to execute the powers of the Government." *Id.*, at 432.[4] Petitioner and her amici press us to consider whether there is anything to this ipse dixit. The Constitution's text and structure show that there is not.

Bond v. United States, 174 S.Ct. 2077, 2098 (2014) (Justice A. Scalia Concurring)

Further stating that:

> We would not give the Government's support of the Holland principle the time of day were

> we confronted with "treaty-implementing" legislation that abrogated the freedom of speech or some other constitutionally protected individual right. We proved just that in *Reid v. Covert*, 354 U.S. 1 (1957), which held that commitments made in treaties with Great Britain and Japan would not permit civilian wives of American servicemen stationed in those countries to be tried for murder by court-martial. The plurality opinion said that "no agreement with a foreign nation can confer power on the Congress, or on any other branch of Government, which is free from the restraints of the Constitution." *Id.*, at 16.

Bond v. United States, 174 S.Ct. 2077, 2101 (2014) (Justice A. Scalia Concurring).

Thus, in this case, the District Courts ruling that U.N. absolute immunity can infringe on traditional state prerogatives and Fundamental Rights like in *Bond*, renders the District Court's interpretation unconstitutional.

Finally, to dismiss Petitioners' claims for lack of subject-matter jurisdiction without allowing the case to be heard in its infancy precludes Petitioners from discovery as to whether there is criminal conduct or conduct outside the scope of official U.N. acts. Discovery is necessary "to verify allegations of specific facts crucial to an immunity determination." *First City, Texas-Houston, N.A. v. Rafidain Bank*, 150 F.3d 172, 176 (2d Cir. 1998). Not allowing a case to be heard based on absolute United Nations immunity denies discovery and prevents Petitioners from ever

finding out why so many innocent people died or became seriously ill as a result of the United Nations' grossly negligent or criminal acts.

United Nation's absolute immunity is simply not the least restrictive means to abridge a petitioner's fundamental right to petition U.S. Courts for redress. Conversely, it is the most restrictive means available, and must not stand.

CONCLUSION

This Court has held that multiple provisions in the Constitution guarantee individuals a right to open access to the judicial system. While there are certain long-held immunities that pre-date the Constitution and form the jurisprudential fabric upon which the Constitution was built, statutory immunity of the United Nations under the CPIUN is not among them.

The United Nations' immunity at issue here acts as an impermissible, absolute bar to the courts by individuals such as Petitioners whose fundamental rights have been abridged, and which require redress. As indicated above, a proper weighing of applicable factors reveals that immunity cannot withstand constitutional scrutiny. Moreover, while lower Courts have blithely rejected similar constitutional arguments regarding the validity of United Nations immunity, they have done so only superficially and without giving due regard to the critical constitutional questions and concerns raised by the litigants involved here.

This Court must take the opportunity to review and determine the proper measure of immunity to be afforded to the United Nations, if any. After doing so, it will be apparent that as presently afforded, United Nations immunity acts as an unconstitutional bar to court access. It impermissibly denies Petitioners, and other innocent third parties wronged by negligent or criminal U.N. actions, an opportunity to seek justice in exercise of their fundamental rights. U.N. immunity cannot exceed the restrictive immunity set out in FSIA of 1976, as recently expressed in *Jam.*

The petition should be granted.

Respectfully submitted,

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