No. 20-1054

In The Supreme Court of the United States

VIPULA D. VALAMBHIA, ET AL., *Petitioners,*

–v.–

UNITED REPUBLIC OF TANZANIA, ET AL., *Respondents.*

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

BRIEF OF RESPONDENTS UNITED REPUBLIC OF TANZANIA, BANK OF TANZANIA, AND MINISTRY OF DEFENCE AND NATIONAL SERVICE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the D.C. Circuit correctly conclude that Respondents' alleged failure to satisfy foreign judgments held by Petitioners located in the United States did not cause a "direct effect in the United States" under clause 3 of the commercial activity exception in §1605(a)(2) of the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1602 *et seq.*, where Respondents never made payments on the judgments and the judgments did not provide for payment to be made in the United States?

2. Did the D.C. Circuit correctly conclude that clause 2 of the FSIA's commercial activity exception does not apply to Petitioners' action to recognize foreign money judgments because the suit is based on those judgments, not Respondents' alleged pre-judgment payments from a U.S. bank account?

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INTRODUCTION

The Court should deny the Petition for a Writ of Certiorari because Petitioners have failed to present any good reason for this Court to review the decision of the D.C. Circuit, which affirmed the decision of the U.S. District Court for the District of Columbia dismissing Petitioners' suit against Respondents under the commercial activity exception of the FSIA.

The Petition is based on the false premise that the D.C. Circuit exceeded its authority by imposing "extra-statutory limitations on jurisdiction found nowhere in the FSIA." Pet. 2. It did no such thing. The Court of Appeals did nothing more than apply the statutory text and this Court's controlling precedent to conclude that (1) Petitioners failed to allege that Respondents' acts abroad caused any "direct effect in the United States" and (2) Petitioners' suit was not based upon any act of Respondents in the United States.

Despite Petitioners' rhetorical hand-waving and misrepresentations of the record below, they fail to show that the D.C. Circuit's straightforward decision conflicts with the decisions of this Court or of any other circuit. Accordingly, there is no reason for the Court to review the Court of Appeals' decision and the Petition should be denied.

STATEMENT OF THE CASE

Petitioners sued Respondents the United Republic of Tanzania, the Bank of Tanzania, and Tanzania's Ministry of Defence and National Service (collectively "Respondents" or "Tanzania") under the District of Columbia's Uniform Foreign-Country Money Judgments Recognition Act, D.C. Code §§ 15-361 *et seq*. to obtain recognition of two foreign money judgments issued by the High Court of Tanzania. Pet. App. 22. The foreign judgments relate to contracts from the 1980s. *Id.* at 23.

In 1985, Tanzania entered into a contract with Transport Equipment Ltd. ("TEL"), an Irish company, to purchase military equipment (the "TEL-Tanzania contract"). *Id.* In 1989, TEL and the since-deceased Mr. Devram P. Valambhia, a former TEL employee and Petitioners' now-late husband and father, entered into an "Irrevocable Agreement" providing that 45% of the monies TEL was owed under the TEL-Tanzania contract should be paid to Mr. Valambhia (the "TEL-Valambhia Irrevocable Agreement"). *Id.*

According to Petitioners' Amended Complaint, in view of the TEL-Valambhia Irrevocable Agreement, Tanzania began paying Mr. Valambhia some of the monies owed under the TEL-Tanzania contract in 1989. *Id.* at 23-24. Respondent the Ministry of Defence and National Service allegedly made such payment from its bank account at the Federal Reserve Bank of New York. *Id.* Neither the Amended Complaint nor any of the attachments to it say how many payments were made from that bank

account, nor do they indicate the geographic destination of such payment.[1] *See id.* at 11, 16; *see also generally* Am. Compl.

In 1989, TEL sued Mr. Valambhia in the High Court of Tanzania to prevent him from collecting the monies TEL owed him under the TEL-Valambhia Irrevocable Agreement. Pet. App. 4. Mr. Valambhia counter-claimed for an order stating that the agreement entitled him to those monies, and that Tanzania was obliged to pay him and his family that amount. Am. Compl.¶ 18.

The High Court of Tanzania granted Mr. Valambhia's counter-claim and issued the two judgments Petitioners eventually asked the District Court to recognize: a 1991 decree and a 2001 Garnishee Order (the "Judgments"). Pet. App. 4-5. The 1991 decree provided that Mr. Valambhia and his family were "netitled [*sic*] to be paid 45%" of the amount due to TEL under the 1985 TEL-Tanzania contract, and that Tanzania was obliged to pay that amount to them. *Id.* at 4. The 2001 Garnishee Order required Respondent the Bank of Tanzania to pay US$ 55,099,171.66 (which represented 45% of the amount due under the 1985 TEL-Tanzania contract, plus interest) "to the Registrar, High Court of Tanzania Dar es Salaam immediately." *Id.* at 5.

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[1] Payment continued to be made to TEL—and perhaps to Mr. Valambhia—under the TEL-Tanzania contract until January 2, 2001, but Tanzania made such payments from the Bank of Tanzania's Exchequer Account, not any account with the Federal Reserve Bank of New York. Pet. App. 11.

Neither judgment required payments to be made in the United States; the latter explicitly required payment *outside* the United States, in Tanzania. *Id.*

Petitioners' Amended Complaint specifically alleges that Tanzania "never paid the amount owed" under the 1991 decree and 2001 Garnishee Order. *Id.* at 5 (citing Am. Compl. ¶ 23).

On February 19, 2018, Petitioners—who have resided in the U.S. since 1981 and became U.S. citizens in 2001—filed suit in the U.S. District Court for the District of Columbia asking the court to recognize the Judgments. Compl. ¶ 1. They filed an Amended Complaint on May 7, 2018. Pet. App. 5.

The District Court dismissed Petitioners' Amended Complaint for lack of jurisdiction under the FSIA, 28 U.S.C. §§ 1602 *et seq*. *Id.* at 22-23. It held that the commercial activity exception to Tanzania's sovereign immunity did not apply to Petitioners' suit. *Id.* at 29-30. A unanimous panel of the U.S. Court of Appeals for the District of Columbia Circuit affirmed, concluding that neither clause 2 nor clause 3 of the commercial activity exception applied. *Id.* at 2. The Court of Appeals subsequently denied Petitioners' requests for a rehearing by the panel and a rehearing *en banc*. *Id.* at 34, 36. Petitioners sought a writ of certiorari from this Court on January 25, 2021.

REASONS FOR DENYING THE PETITION

I. Petitioners Have Failed to Present a Compelling Reason to Review the Court of Appeals' Straightforward Application of Clause Three of the FSIA's Commercial Activity Exception

Clause 3 of the FSIA's commercial activity exception provides for jurisdiction over actions against foreign sovereigns that are "based … upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States." 28 U.S.C. § 1605(a)(2). The D.C. Circuit correctly held that Petitioners failed to allege any such "direct effect in the United States." Pet. App. 10. Petitioners have not identified any compelling reason to review that decision.

A. Petitioners Do Not Identify an "Important Question on Which the Circuits Are Divided"

The opening pages of Petitioners' argument as to why this Court should grant certiorari contains a heading asserting that "[t]his case presents an important question on which the circuits are divided." Pet. 7. Petitioners fail, however, to identify *any* disagreement between the Circuits on *any* "important question." Indeed, in the section ostensibly devoted to arguing that point, Petitioners do not cite a single case from outside the D.C. Circuit, use the term "circuit split" or synonym of it, or even cite Rule 10(a). Nor could Petitioners make

such a showing, as there is no conflict between the circuits that merits intervention by this Court.

In an effort to overcome this deficiency, Petitioners advance an argument that is actually based on the opposite premise: they say that, rather than conflicting with other appellate decisions, the D.C. Circuit's decision is emblematic of a "troubling trend in the circuits" that this Court should correct. Pet. 11. This contradiction in Petitioners' argument suggests that they are confused about the very basis for their petition and is reason enough for the Court to deny it. In any event, as shown below, Petitioners' alternative argument is without merit and cannot justify granting certiorari.

B. The Court of Appeals' Decision Does Not Conflict with This Court's Decision in *Republic of Argentina v. Weltover* or Perpetuate a "Troubling Trend in the Circuits"

Unable to identify a circuit split to justify review of the D.C. Circuit decision, Petitioners turn instead to misrepresenting that decision. They claim it is "[c]ontrary to … this Court's holding in *Weltover*" and an exemplar of "a troubling trend" of "engrafting a variety of extra-statutory limits on jurisdiction" under clause three of the FSIA's commercial activity exception. *Id.* (citing *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607 (1992))

Petitioners misconstrue the D.C. Circuit's decision. As Respondents show in Section I.B.1 below, there is no conflict with this Court's ruling in

Weltover. Nor does the decision impermissibly add judicially-created requirements to the FSIA, as Respondents explain in Section I.B.2. Petitioners' alternative argument for certiorari must therefore be rejected.

1. The Court of Appeals Properly Applied *Weltover*

Petitioners claim that the D.C. Circuit imposed a "foreseeability rule" in conflict with *Weltover*. Pet. at 2. It did not. Petitioners have not shown that any aspect of the D.C. Circuit's direct effects analysis "effectively imposed a more onerous version of its prior 'foreseeability' rule." *Id.* at 7; *see also id*. at 9. Indeed, the Court of Appeals' conclusion that Petitioners did not adequately allege a direct effect did not turn on whether the parties "fore[saw] that effects will occur in the United States." *Id.* at 10.

Far from contradicting *Weltover*, the Court of Appeals took care to situate its analysis within the *Weltover* framework. It began by emphasizing the centrality of *Weltover*:

> In evaluating this direct-effect requirement, our touchstone is the Supreme Court's decision in *Republic of Argentina v. Weltover*. … Crucially, the Court held that an "effect is 'direct' if it flows as an immediate consequence of the defendant's activity." The effect need not be "substantial" nor "foreseeable," but it

> must not be "purely trivial" or "remote and attenuated."

Pet. App. 9. The Court of Appeals then held that neither of the two "direct effects" Petitioners identified—(1) Tanzania's long-ago use of a New York bank account before the Judgments even existed, and (2) post-Judgment harm that Petitioners allegedly suffered based on their citizenship and residence in the United States—"satisfies this standard." *Id.*

As to the first alleged direct effect, the Court of Appeals rightly concluded that "Tanzania's use of a New York bank account [to pay amounts due under the TEL-Tanzania contract] cannot fairly be characterized as a 'direct effect' of the High Court judgments or Tanzania's subsequent failure to pay." *Id.* at 11. Its holding is compelled by basic logic. Clause 3 of the commercial activities exception creates jurisdiction over actions that are based upon "an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and *that act causes a direct effect in the United States*." 28 U.S.C. § 1605(a)(2) (emphasis added). Even assuming that the Judgments constitute an act "in connection with a commercial activity of" Tanzania, they could not have caused the payments made before they even existed. As the Court of Appeals stated, "Tanzania's earlier-in-time use of a New York bank account cannot serve as an 'immediate consequence' of judgments and withholdings that occurred years later." Pet. App. 11.

The Court of Appeals' decision on the second alleged direct effect—financial injury in the U.S. as a result of Petitioners' "citizenship and residence in the United States," *id.* at 14—is likewise unassailable. Petitioners do not directly challenge the Court of Appeals' rejection of their reliance on this "effect." That is because they know the D.C. Circuit based its decision on *Weltover*'s "immediate consequence" test, which the court has long applied in unimpugned decisions dating back to 1994, two years after *Weltover*. *Id.* at 15 (citing, *inter alia*, *Goodman Holdings v. Rafidain Bank*, 26 F.3d 1143, 1146-47 (D.C. Cir. 1994), *cert. denied*, 513 U.S. 1079 (1995)).

The D.C. Circuit reasoned that it had consistently "rejected the contention that 'pay wherever you are' scenarios in which the asserted direct effect in the United States is simply that plaintiffs reside or are citizens here, *without more*, satisfied this requirement." Pet. App. 15 (emphasis added). This rule is entirely consistent with *Weltover*'s admonition that "jurisdiction may not be predicated on purely trivial effects in the United States," *Weltover*, 504 U.S. at 618. It is also consistent with the holdings of other courts of appeals, which have long held that mere financial injury in the United States does not constitute a direct effect of a foreign sovereign's acts in connection with a commercial activity abroad.[2] It is

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[2] *See, e.g.*, *United World Trade v. Mangyshlakneft Oil Prod. Ass'n*, 33 F.3d 1232, 1238 (10th Cir. 1994) (holding that "[t]he requirement that an effect be 'direct' indicates that Congress

moreover faithful to Congress's intent. In enacting the FSIA, Congress "did not intend to provide jurisdiction whenever the ripples caused by an overseas transaction manage eventually to reach the shores of the United States." *United World Trade*, 33 F.3d at 1238. To hold otherwise would turn the federal courts "into small 'international courts of claims[,]' . . . open . . . to all comers to litigate any dispute which any private party may have with a

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did not intend to provide jurisdiction whenever the ripples caused by an overseas transaction manage eventually to reach the shores of the United States"), *cert. denied*, 513 U.S. 1112 (1995); *Big Sky Network Canada, Ltd. v. Sichuan Provincial Gov't*, 533 F.3d 1183, 1190 (10th Cir. 2008) (Gorsuch, J.) (quoting *United World Trade*, 33 F.3d at 1238-39) (explaining that the "mere fact that an American corporation ultimately 'suffered a financial loss' in the United States" was insufficient to "place the direct effect of the defendants' actions in the United States"); *Guirlando v. T.C. Ziraat Bankasi A.S.*, 602 F.3d 69, 78 (2d Cir. 2010) (stating the principle that "the mere fact that a foreign state's commercial activity outside of the United States caused physical or financial injury to a United States citizen is not itself sufficient to constitute a direct effect in the United States"), *cert. denied*, 562 U.S. 1250 (2011); *Terenkian v. Republic of Iraq*, 694 F.3d 1122, 1138 (9th Cir. 2012) (holding that the non-deposit of payments for oil in a New York bank account due to the non-purchase of oil did not constitute a direct effect as defined in § 1605(a)(2) and subsequent case law), *reh'g denied*, 704 F.3d 814 (9th Cir. 2013), *cert. denied*, 571 U.S. 818 (2013); *Odhiambo v. Republic of Kenya*, 764 F.3d 31 (D.C. Cir. 2014) (holding that the contract at issue "simply established the kind of 'pay wherever you are' arrangement" that the court had repeatedly held "insufficient to cause a direct effect in the United States"), *reh'g denied*, 2014 U.S. App. LEXIS 20755 (D.C. Cir. 2014), *cert. denied*, 136 S. Ct. 2504 (2016).

foreign state anywhere in the world,'" an intolerable "danger" the FSIA exists to protect against. *Verlinden B.V. v. Cent. Bank of Nig.*, 461 U.S. 480, 490 (1983) (quoting *Jurisdiction of U.S. Courts in Suits Against Foreign States: Hearings on H.R. 11315 Before the Subcomm. on Admin. Law and Governmental Relations of the House Comm. on the Judiciary,* 94th Cong. 31 (1976) (testimony of Bruno A. Ristau, Chief of the Foreign Litig. Section, Civil Div., Dep't of Justice)) (quotation marks and ellipses in original).

In an attempt to manufacture a conflict between *Weltover* and the D.C. Circuit's decision, Petitioners misconstrue the import and nature of a payment Tanzania made in 2001. They state, "Tanzania made payments to the Valambhias in U.S. dollars using its New York bank account before unilaterally stopping these payments in 2001—ten years after the first judgment was entered." Pet. 8-9. *See also id.* at 4. Petitioners intimate that the Court of Appeals erred, on the theory that the existence of the 2001 payment implies that payments under the Judgments were supposed to have been made in the U.S. and that Tanzania's subsequent failure to pay Petitioners thereunder constituted a direct effect here. *See id.* at 8-10 (citing *Weltover*, 506 U.S. at 617-618).

Petitioners' argument fails for at least two reasons. *First*, it is defeated by the allegations of Petitioners' Amended Complaint, in which they specifically allege that Tanzania "never paid the amount owed" under the 1991 decree and 2001

Garnishee Order. *See* Pet. App. 5 (citing Am. Compl. ¶ 23). On Petitioners' own case, any payment Tanzania may have made in 2001 would have been under the TEL-Tanzania contract, not the Judgments.

Second, Petitioners' argument is also flawed because, as the Court of Appeals recognized, the record shows that "any such payments [in 2001] did not come from the New York account of the Ministry of Defence, but from the Bank of Tanzania's Exchequer Account."[3] Pet. App. 11. Because the 2001

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[3] Petitioners argue that the Court of Appeals "improperly construed the facts alleged in the complaint against the Valambhias and in Tanzania's favor by assuming that all of Tanzania's New York payments were made prior to the original 1991 judgment." Pet. 9. Petitioners, however, did not allege in their amended complaint that payments were made from the New York bank account at any point later than "[s]hortly []after" the Ministry of Defence and National Service acknowledged the "Irrevocable Agreement" in June 1989. Pet. App. 3-4. Further, as the Court of Appeals recognized, Petitioners' own exhibits demonstrate that any later-in-time payments came from the Bank of Tanzania's Exchequer Account. *Id*. at 10-11. It would not be reasonable to infer otherwise, and the Court of Appeals properly declined to do so. Moreover, even assuming *arguendo* that the Court of Appeals erred, the Supreme Court is "not a court of error correction," Hon. Stephen G. Breyer, *Reflections on the Role of Appellate Courts: A View from the Supreme Court*, 8 J. APP. PRAC. & PROCESS 91, 92 (2006), and the decision of the Court of Appeals has neither "so far departed from the accepted and usual course of judicial proceedings" nor "sanctioned such a departure by a lower court" as to warrant the exercise of this Court's supervisory power, Sup. Ct. R. 10(a). *See also* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the

payment had nothing to do with the United States, it could not constitute or give rise to a direct effect *in the United States*, as the FSIA requires. Alleging such a non-U.S. payment of a non-Judgment amount cannot convert payment of amounts owed under the Judgments into "[m]oney that was supposed to have been delivered" in the U.S. *Weltover*, 504 U.S. at 619. Accordingly, Petitioners' attempt to realign the facts of their case to match those of *Weltover* fails, and there is no "direct effect in the United States" under *Weltover*'s reasoning.

No part of the court's decision thus "conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). The Court should therefore reject the Petition.

2. Petitioners' False Assertion that There is a "Troubling Trend in the Circuits of Engrafting a Variety of Extra-Statutory Requirements onto Clause Three" Does Not Merit Certiorari

Despite the Court of Appeals' straightforward application of *Weltover*, Petitioners nevertheless attempt to portray the court's decision as part of a "troubling trend in the circuits of engrafting a variety of extra-statutory requirements onto clause three" in the hopes that the Court will decide that the decision merits review. Pet. 11. This maneuver

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asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

fails because, as shown above, the D.C. Circuit's decision does not conflict with a decision of this Court and, as shown below, it is not part of a "troubling trend" as Petitioners would have the Court believe. *See* Sup. Ct. R. 10(a) & 10(c).

To begin with, the "troubling trend" of the courts of appeals imposing additional, extra-statutory requirements for jurisdiction under clause 3 is a figment of Petitioners' imagination. No court identified by Petitioners created an "extra-statutory requirement." They did only what courts of appeals do every day: interpret how rules decided by this Court—in this case, *Weltover*'s definition of "direct effect"—apply to the questions before them. *See Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("Those who apply the rule to particular cases, must of necessity expound and interpret that rule.").

The cases Petitioners cite are nothing more than examples of the courts of appeal interpreting and applying *Weltover*. For instance, in breach of contract cases the D.C. Circuit and Second Circuit consider the contract's place of performance to determine whether the breach caused an "immediate consequence" in the United States, as *Weltover* requires for an effect to be "direct." *See Odhiambo*, 764 F.3d at 38-40, *cert. denied* 136 S.Ct. 2504 (2016); *Rogers v. Petroleo Brasileiro, S.A.*, 673 F.3d 131, 138-40 (2d Cir. 2012). This is not an "extra-statutory" requirement. Likewise, the post-*Weltover* cases Petitioners cite that invoke a "'legally significant acts' test" merely apply *Weltover*'s immediate consequence requirement and its admonition that

jurisdiction under clause 3 "may not be predicated on purely trivial effects in the United States," *Weltover*, 504 U.S. at 618. *See Gen. Elec. Capital Corp. v. Grossman*, 991 F.2d 1376, 1385 (8th Cir. 1993); *United World Trade*, 33 F.3d at 1239, *cert. denied*, 513 U.S. 1112 (1995); *Adler v. Fed. Republic of Nigeria*, 107 F.3d 720, 727-29 (9th Cir. 1997); *Virtual Countries, Inc. v. Republic of S. Afr.,* 300 F.3d 230, 240-41 (2d Cir. 2002).

Petitioners' theatrics notwithstanding, they have not come remotely close to showing these cases resemble the "factor-intensive, loosely common-law-based immunity regime" the FSIA was intended to replace. Pet. 13 (quoting *Republic of Arg. v. NML Capital, Ltd.*, 573 U.S. 134, 141 (2014)). Accordingly, there is no merit to their concern about a "troubling trend … of engrafting a variety of extra-statutory requirements onto clause 3." Pet. 11.

Moreover, even assuming *arguendo* that there were such a "troubling trend" requiring correction, there are two reasons why this would not be the right case to address it.

First, this case is not an example of the supposed trend. Petitioners contend that the D.C. Circuit—in concluding that the pre-judgment payments from U.S. accounts did not constitute a "direct effect" in the United States—applied a rule according to which "'direct effects' cannot exist under clause 3 of the commercial activities exception unless the parties expressly 'agree,' 'contemplate,' or otherwise 'arrange' for, the effects occur in the

United States." Pet. 6 (citing Pet. App. 11-13); *see also* Pet. 9-10.

But the section of the decision Petitioners latch onto—where the Court of Appeals explains that "nothing about the High Court judgments, nor the underlying agreements, contemplated or suggested that Tanzania would use" the New York account, Pet. App. 11—is only *dicta*; it does not form part of the court's holding. That much is clear from the analysis in Section I.B.2 *supra*, which demonstrated that the D.C. Circuit's decision was based on a straightforward application of the statute and *Weltover* to the facts of the case, not an analysis of the content of the Judgments or the underlying contracts.

The fact that this portion of the court's opinion is *dicta* is also evident from the way the court introduced it. The discussion comes after the court's conclusion that "Tanzania's use of a New York bank account cannot fairly be characterized as a 'direct effect.'" Pet. App. 10. It then begins: "Even setting aside the question of timing, *we doubt* that Tanzania's use of the New York bank account could constitute a direct effect." *Id.* (emphasis added). What follows is thus just a provisional, non-definitive view that was entirely unnecessary to the core holding: the pre-Judgment payments could not have been an "immediate consequence" of the Judgments. As the Court of Appeals recognized, not "even a loose construction of the third clause of the FSIA commercial activity exception could support the conclusion that Tanzania's previous and optional

use of a NY bank account constitutes a direct effect or, as *Weltover* put it, an 'immediate consequence' in the United States of Tanzania's conduct abroad." *Id.* at 14.

Second, the D.C. Circuit's decision is not an appropriate vehicle for this Court to review an "express or implied place-of-performance rule … in breach of contract cases under clause 3." Pet. 11 (citing *Odhiambo*, 764 F.3d at 38-40, and *Rogers*, 673 F.3d at 139-40). This case is not a breach of contract case, and the D.C. Circuit did not apply an "express or implied place-of-performance rule."[4] In fact, Judge Pillard—who dissented in *Odhiambo*—stated that the D.C. Circuit's decision did not "import *Odhiambo*'s rule," as "the FSIA may require explication of a closer nexus to the United States in the contract context, where the parties themselves control the terms of the agreement." Pet. App. 14. In any event, had this Court considered *Odhiambo*'s so-called "place-of-performance rule" to be in conflict with its decision in *Weltover* and warrant review, it would have granted the writ in that case. It did not. *See Odhiambo v. Republic of Kenya*, 136 S.Ct. 2504 (2016) (denying petition for writ of certiorari). There is no stronger reason to grant the writ here.

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[4] Similarly, Petitioners' attempt to contrast circuits that "apply a 'legally significant acts' test" with those that "have declined to adopt such a test," Pet. 12-13, does not warrant granting certiorari. The D.C. Circuit did not rely on a "'legally significant acts' test" in its analysis and it would therefore be inappropriate for the Court to grant certiorari to address such a test.

As explained above, Petitioners have failed to identify any compelling reason for the Court to review the D.C. Circuit's decision on clause 3 of the commercial activity exception to the FSIA. Accordingly, their Petition should be denied.

II. Petitioner's Lawsuit Is Not "Based Upon" Any Acts in the United States Under Clause Two of the FSIA's Commercial Activity Exception

There is also no reason for the Court to review the Court of Appeals' rejection of Petitioners' argument that clause 2 of the FSIA's commercial activity exception applies to their action. Pet. App. 17. Clause 2 provides for jurisdiction in actions "based … upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere," 28 U.S.C. § 1605(a)(2). This case does not qualify.

Following this Court's decision in *OBB Personenverkehr AG v. Sachs*, 136 S. Ct. 390 (2015), the D.C. Circuit determined that Petitioners' action to recognize the Judgments was not "based … upon" the "act performed in the United States" that Petitioners alleged: Tanzania's pre-Judgment payments from a New York bank account on the underlying commercial contract. Pet. App. 18 (citing *Sachs*, 136 S. Ct. 390). The court succinctly reasoned that those acts "have little to do with the recognition action that forms the basis of the suit," the "gravamen" of which was, according to Petitioners, "'recognition of a foreign judgment.'" Pet. App. 18

(internal citations omitted). Thus the court concluded:

> Treating the payments from the Ministry of Defence's New York bank account as made 'in connection with' Tanzania's commercial activity elsewhere is a dead end because the Valambhia's [*sic*] suit here is not based on those payments.

Id.

Petitioners incorrectly assert that this decision exemplifies a pattern of "improperly impos[ing] a variety of extra-statutory limitations on jurisdiction in clause 2 cases." Pet. 15. The Court did nothing of the kind, nor did it implicitly apply a rule that the "'the acts (or omissions) encompassed [by clause 2] are limited to those which in and of themselves are sufficient to form the basis of a cause of action.'" *Id.* at 15-16 (citing *Zedan v. Kingdom of Saudi Arabia*, 849 F.2d 1511, 1514 (D.C. Cir. 1998)). Instead, the Court of Appeals did no more than examine whether Petitioners' recognition action was "based upon" payments made before the Judgments even existed in connection with a related, but separate, contract. The court easily and rightly concluded it was not.

Petitioners again misconstrue the record to contend that the Court of Appeals erred by "restrictively" interpreting clause 2. Specifically, Petitioners argue that the D.C. Circuit refused to

exercise jurisdiction even though Petitioners "filed this action to recognize and enforce the Judgments only after Tanzania *stopped making payments on the Judgments*." Pet. 16 (emphasis added). Not so: the D.C. Circuit recognized that Petitioners expressly alleged in the Amended Complaint that Tanzania "never paid the amount owed" under the Judgments. Pet. App. 5 (citing Am. Compl. ¶ 23). Consequently, the D.C. Circuit could not reasonably have concluded that Petitioners' recognition action was "based upon" pre-judgment payments in the U.S., which were made on the underlying contract, not the Judgments. There is thus no reason, much less a compelling reason, to grant certiorari to review that aspect of the Court of Appeals' decision.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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