No. 20-304

In The
Supreme Court of the United States

WORLD PROGRAMMING LIMITED,

Petitioner,

v.

SAS INSTITUTE INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a district court has discretion under the All Writs Act, Federal Rule of Civil Procedure 60(b)(6), or North Carolina law to issue an injunction necessary to protect its final judgment from frustration and sustained collateral attack in a foreign court.

2. Whether a U.S. court may act to protect the collection of funds within the United States in satisfaction of a money judgment awarded under U.S. law, notwithstanding the existence of a foreign clawback action brought solely to interfere with that U.S. judgment.

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INTRODUCTION

Ever since a U.S. court found that it owed $79 million in damages for its fraudulent and deceptive conduct, Petitioner World Programming Limited ("WPL") has sought – as the Fourth Circuit put it – "to operate in the U.S. but face limited consequences for its violations of U.S. law." Pet. App. 29a. This case arises from WPL's repeated attempts to evade a U.S. money judgment through parallel proceedings in the U.K., effectively halting ordinary collection efforts in the U.S. and clawing back to WPL two-thirds of any U.S. funds collected.

To protect its judgment from such interference – including explicit threats to imprison the employees of Respondent SAS Institute Inc. ("SAS") – the district court forbade WPL to claw back U.S. funds or to accept orders from new customers for use in the U.S. while the judgment remains unsatisfied. The Fourth Circuit upheld these orders as within the district court's discretion under the All Writs Act and the Federal Rules of Civil Procedure.

Neither WPL's paper-thin suggestions of conflict among the circuits, nor its mistaken criticisms of the Fourth Circuit's fact-bound application of longstanding principles, merit this Court's review. Rather, as the Fourth Circuit determined, the district court's orders were within its traditional authority "to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued." *United States v. N.Y. Tel. Co.*, 434

U.S. 159, 172 (1977). In any case, given the alternative grounds articulated by the Fourth Circuit and by the district court, this Court's intervention would have no concrete effect on the parties, rendering this case an unsuitable vehicle. Having already denied WPL's previous petition on similar issues, the Court should decline WPL's invitation to relitigate those issues.

STATEMENT

I. THE UNDERLYING JUDGMENT

This case has "a complicated procedural history stemming from years of litigation." Pet. App. 10a. But the core facts are straightforward. SAS, a North Carolina company, is the creator of an integrated suite of proprietary business software products known as the "SAS System." *SAS Inst., Inc. v. World Programming Ltd.*, 874 F.3d 370, 375 (4th Cir. 2017) ("*SAS-2017*"). WPL, a U.K. company, decided to reverse engineer and copy the SAS System, acquiring by fraudulent inducement licenses to a dozen copies of the SAS System. Pet. App. 3a–4a. These proceedings followed.

1. In 2009 and 2010, SAS sued WPL in the U.K. (under U.K. law for U.K. damages) and in the Eastern District of North Carolina (under U.S. law for U.S. damages). *Id*. at 4a. Both lawsuits included claims for copyright infringement and for breach of SAS's software license agreement. The North Carolina lawsuit also included claims for "fraudulent inducement in obtaining SAS software . . . and violation of the North

Carolina Unfair and Deceptive Trade Practices Act (UDTPA)." *Id*.

In the U.S., WPL consented to personal jurisdiction because it could not "on a commercial basis stay out of the United States." Joint Appendix ("JA") at 0133, No. 19-1290, *SAS Inst., Inc. v. World Programming Ltd.* (4th Cir. May 13, 2019) (ECF No. 21).

The U.K. litigation concluded first. A U.K. court held that a European statute – the E.U. Software Directive – barred SAS from pursuing its copyright and contract claims in the U.K. Pet. App. 4a.

WPL contended that this decision had preclusive effect in the U.S. It lost. *Id*. After the district court rejected WPL's preclusion arguments at the summary judgment stage, the parties proceeded to trial, and the jury found WPL liable for fraudulent inducement and violating the UDTPA. It awarded SAS compensatory damages of $26.4 million, which were trebled under the UDTPA, leading to total damages of $79.1 million. *Id*. at 5a.

Following trial, SAS sought a permanent injunction against licensing WPL's software for use within the U.S., arguing (among other things) that an injunction was necessary because WPL would resist enforcement.

WPL dismissed SAS's collectability arguments, ridiculing what it called a "vague and conclusory claim that [SAS] may face difficulty in collecting its judgment." JA1620. The district court declined to issue an

injunction, holding that SAS had not met its burden "at this juncture." *SAS Inst., Inc. v. World Programming Ltd.*, No. 5:10-cv-25, 2016 WL 3475281, at *5 (E.D.N.C. June 17, 2016). The court found that SAS had not shown "that WPL is without the means to pay the judgment in this case or that it will be uncollectible because of the U.K. courts." *Id*. And, as WPL had urged, the court regarded SAS's concerns about WPL opposing U.K. enforcement as "pure speculation." *Id*. at *5 n.6.

Both parties appealed to the Fourth Circuit. WPL argued in relevant part that the U.K. litigation should have precluded SAS's U.S. claims. SAS maintained in its cross-appeal that the district court should have enjoined WPL's licensing.

2. In October 2017, the Fourth Circuit affirmed the $79 million judgment and the permanent injunction denial. The Fourth Circuit held that "the U.K. litigation did not have a preclusive effect, given the 'many legal and factual differences between the U.K. litigation and the present [U.S.] suit.'" Pet. App. 5a (alteration in original) (quoting *SAS-2017*, 874 F.3d at 378–79). In particular, "the U.S. suit focused only on sales of [WPL's software] within the United States, and WPL has not established that SAS could have recovered for these sales in the U.K." *SAS-2017*, 874 F.3d at 379.

As for SAS's cross-appeal, the Fourth Circuit viewed "SAS's concerns about the judgment's collectability as speculative," for, "[a]t that point, there was no reason to believe that a $79 million monetary

judgment in SAS's favor was an inadequate remedy for harm suffered." Pet. App. 5a.

WPL petitioned for certiorari from the Fourth Circuit's decision, particularly its holding on "preclusive effect." Pet. for Certiorari at 2, *World Programming Ltd. v. SAS Inst., Inc.*, 2018 WL 1910952 (U.S. Apr. 20, 2018) (No. 17-1459). It argued that deference to the U.K. judgment was required by international comity, to which courts should permit only narrow exceptions. *Id*. at 15–16. This Court denied certiorari in October 2018. 139 S. Ct. 67.

II. WPL'S ATTEMPTS TO EVADE THE JUDGMENT

After the Fourth Circuit affirmed the judgment and this Court denied certiorari, WPL "repeatedly engaged in collateral attacks on the district court's judgment by calling upon the U.K. court system." Pet. App. 11a.

1. Because WPL refused to pay anything voluntarily toward the judgment, SAS sought to enforce it by registering the judgment in the Central District of California. Under California procedure, a judgment creditor may obtain assignment of future payment rights from the judgment debtor's customers. Cal. Civ. Proc. Code § 708.510(a).

In September 2018, the Central District of California accordingly issued an order assigning to SAS the rights to payment from a list of WPL's non-U.K.

customers "until such a time as the North Carolina judgment in the amount of $79,129,905.00 is fully satisfied" ("Assignment Order"). JA3127–36.

WPL appealed to the Ninth Circuit from the Assignment Order. JA3140. It also sought a stay of that Order, which the Central District of California denied. *See* JA3196–97; *see also* JA0959.

2. WPL refused to comply with the Assignment Order. In the months after the Order's entry, WPL received over $1 million in payments from U.S. customers "subject to unchallenged portions of the California court's assignment order," and WPL "had not shown any justification" for not turning those amounts over to SAS. Pet. App. 55a.

In response to WPL's evasions of the Assignment Order, SAS sought an order from the Central District of California requiring WPL to turn over to the U.S. Marshals any assigned payments from non-U.K. customers ("Turnover Order"). *Id*. at 6a. WPL's pending appeal deprived the Central District of California of jurisdiction to enter the Turnover Order, but the court stated that it would enter the Order if the Ninth Circuit allowed a limited remand. *Id*.

3. WPL shifted its attention to the U.K., where SAS had begun enforcement proceedings and WPL "repeatedly engaged in collateral attacks on the district court's judgment." *Id*. at 11a. In December 2018, those collateral attacks led to two U.K. decisions that were "particularly destructive" to the U.S. judgment. *Id*. at 14a.

First, WPL obtained a judgment from a U.K. court (a) refusing to recognize any portion of the $79 million judgment for damages arising in the U.S.; and (b) ordering "that WPL could recover two-thirds of any amount it paid towards the U.S. judgment, corresponding to the non-compensatory portion of damages" ("Clawback Order"). *Id*. at 6a–7a.

The U.K. court's refusal to enforce the U.S. judgment in the U.K., where WPL is based, meant that any collection efforts would have to take place outside the U.K. borders. WPL then altered its payment agreements so that its worldwide customers would predeposit funds in England, before their license fees became due, to immunize the funds from collection. *See* JA1942.

The U.K. court also authorized WPL to claw back two-thirds of SAS's collections "even though SAS had 'not yet recovered more than the compensatory damages awarded.'" Pet. App. 7a (quoting JA1030). In other words, for every dollar of judgment collected by SAS anywhere in the world, including in the U.S., it had to return 67 cents to WPL – even while millions of dollars of compensatory damages remained uncollected.

Second, on Friday, December 21, 2018, WPL obtained a surprise, ex parte injunction "requiring SAS to take certain actions in the United States but forbidding others" ("U.K. Injunction"). *Id*. The U.K. Injunction prohibited SAS from filing a brief due *that day* in the Ninth Circuit, in connection with SAS's motion for a limited remand so that the Central District of

California could enter the Turnover Order. The Injunction required "SAS to 'take all reasonable steps' to prevent entry of the turnover order in California." *Id* (quoting JA1035). And it "forbade SAS from seeking – in the United States – an anti-antisuit injunction or similar relief designed to protect the U.S. judgment and the California collection proceedings." *Id*. This U.K. Injunction included an explicit threat of imprisonment. *Id*. SAS complied. *Id*.

III. THE DISTRICT COURT RESPONDS TO WPL'S FRUSTRATION OF, AND COLLATERAL ATTACKS ON, ITS JUDGMENT

WPL's actions in the U.K. "undermined SAS's ability to enforce the U.S. judgment." Pet. App. 14a. "Collections had all but stopped and were in danger of being undone." *Id*.

In the three months before the U.K. Injunction, "SAS collected $623,886 under the assignment order"; over the next two, collections dropped to under $40,000. *Id*. at 13a. While WPL represented to the district court that a "quiet period" caused this drop, that was not true. *Id*. (quoting JA1210–11, 1237). The district court "discovered that WPL 'got almost $600,000 during that period and kept it.'" *Id.* (quoting JA2849–51). Having paralyzed enforcement proceedings in California federal court, WPL "simply stopped paying 'amounts subject to unchallenged portions of the California court's assignment order.'" *Id*. (quoting *id*. at 55a).

WPL's actions in the U.K. left SAS with "few options to collect on the U.S. judgment." *Id*. SAS was running out of options even though (1) the $79 million fraud judgment had been affirmed on appeal; (2) WPL was continuing to earn millions of dollars per year from the U.S. by licensing the software made possible by that fraud; and (3) U.S. law authorizes SAS to enforce the judgment against those non-U.K. receivables. SAS had been pursuing normal collection efforts in the U.S. when it received – without notice or opportunity to be heard – the U.K. Injunction prohibiting SAS from continuing those efforts or explaining to the Ninth Circuit why remand was appropriate.

In January 2019, SAS sought relief in the Eastern District of North Carolina under Rule 60 and the All Writs Act, seeking to enjoin WPL from further licensing within the U.S. – "one of [its] last remaining options," given the U.K. Injunction prohibiting SAS from requesting less extraordinary relief. *Id*. at 22a. SAS also filed an emergency motion ex parte, for which it sought immediate consideration "before WPL can seek an ex parte order from a UK court prohibiting SAS from communicating with the Court." JA1764.

The Eastern District of North Carolina granted the emergency motion, thus ensuring WPL would remain subject to the district court's jurisdiction. While WPL could obtain U.K. orders limiting SAS's ability to communicate with the U.S. courts, with the district court's injunction in place WPL had to respect the district court's authority if it wanted to keep licensing its software for use in the U.S. "Absent an injunction," the

district court found, "there is a substantial likelihood that [WPL] would seek and obtain an injunction from a U.K. court interfering with [the court's] jurisdiction." Pet. App. at 77a.

In the two months after entering the temporary injunction, the district court held two hearings, ordered an accounting of WPL's receivables, and received two rounds of briefing, including briefing based on a forensic accounting of those receivables, *see* JA2300. Then, in March 2019, the district court issued the opinion and order that gives rise to this petition for certiorari. *See* Pet. App. 31a.

A. The U.S.-Expansion Injunction

Pursuant to its authority under the All Writs Act and Rule 60(b)(6), the district court enjoined WPL from licensing its software to new customers for use in the U.S. while the judgment remains unpaid ("U.S.-Expansion Injunction").

1. The district court held that the U.S.-Expansion Injunction was warranted under its All Writs Act authority " 'to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained,' 'to achieve the rational ends of law,' and 'to achieve the ends of justice entrusted to it.' " Pet. App. 53a–54a (quoting *N.Y. Tel. Co.*, 434 U.S. at 172–73). The "U.K. injunction obtained by WPL undermined enforcement of the U.S. judgment by 'reach[ing] directly into proceedings in the United States' and 'prevent[ing] SAS from seeking the full

panoply of judgment collection tools' available." *Id*. at 9a (alterations in original) (quoting *id*. at 54a). Indeed, WPL's U.K. Injunction even enjoined SAS from filing a brief in the Ninth Circuit in furtherance of available judgment-collection procedures.

Given those circumstances, the district court granted a narrower form of relief proposed by SAS, "to enjoin WPL from future sales of its software products to new customers for use within the United States until it satisfies the court's judgment." *Id*. at 59a–60a.

The district court "determine[d] that an injunction . . . achieves the goals of preventing the frustration of [the district] court's orders and ensuring the ends of justice in providing due relief to SAS for its claims under United States law," *id*. at 61a, preventing WPL from generating U.S. revenue that it would then shield from collection for its U.S. liabilities. The district court found this limited relief "more in keeping with its own jurisdiction and principles of international comity, as recognized by United States courts, to award injunctive relief that focuses on conduct in the United States and touching upon United States based transactions and commerce." *Id*. at 60a.

By contrast, the "alternatives proposed by WPL" to the court's injunction "all suffer from the same fundamental defect in that they are dependent upon voluntary cooperation by [WPL], all while [SAS] is severely restricted in the tools available to it to enforce [the] court's judgment." *Id*. at 62a. Without relief from the district court, "SAS had at its disposal no mechanism

to prevent WPL from transferring sums received from U.S.-based customers to accounts in the United Kingdom, from altering licensing terms to direct payments to accounts in the United Kingdom, from communicating directly with customers special instructions for transmitting payments, or from taking any other actions in the United Kingdom to avoid paying sums to SAS." *Id*. at 55a (emphasis in original).

2. The district court also ruled that the U.S.-Expansion Injunction was "independently" appropriate under Federal Rule of Civil Procedure 60(b)(6). *Id*. at 53a. The court recognized that "several critical points" had changed in the months since it had denied SAS's earlier, post-trial request for a permanent injunction against U.S. licensing. *Id*. at 65a.

First, SAS suffered irreparable harm because the damages found at trial had not been redressed; SAS had "not collected even" its "lost profits, much less over $12 million representing future damages." *Id*. at 66a. Second, it had become clear that SAS's legal remedies were inadequate because there was "definitive proof of the UK's unwillingness to enforce any portion of the damages award" and its willingness, at WPL's behest, to erect further barriers, such as the Clawback Order and U.K. Injunction. *Id*. at 67a. Third, the district court ruled that the balance of hardships "has changed," since "SAS has returned to this court seeking injunction only in the face of counteroffensive maneuvers by WPL to reach into the US and alter ongoing US proceedings and collections." *Id*. at 67a–68a. Finally, the "public interest factor" had "flipped in favor of SAS"

given "WPL's conduct" in the U.K. and the fact that the "award of compensatory and punitive damages," which had been "eroded through WPL's conduct" in the U.K., "no longer serve well the rule of law concerns." *Id*. at 69a.

Thus, based on Rule 60(b)(6), the district court determined that changed circumstances since its earlier denial of injunctive relief justified relief for SAS in the form of a limited injunction tailored to future U.S. licensing while the judgment remains unpaid.

B. The Anti-Clawback Injunction

Under the All Writs Act, the district court directed that no sums collected from WPL's U.S. licensees be clawed back ("Anti-Clawback Injunction"). The court found that the clawback WPL obtained "frustrates the court's orders and judgment" because SAS is "entitled to collect the entire amount of the judgment." Pet. App. 51a. Thus far, SAS had been able to collect modest sums in the U.S., including sums required by the district court as security for WPL's appeal. Those "sums received to date originating in this country, and any future United State originated revenues, involve monies without <u>any nexus to any enforcement proceeding in the United Kingdom</u>." *Id*. at 52a (emphasis in original). Especially for those sums collected in the U.S., "any action by WPL in the United Kingdom seeking relief in the form of a clawback is in <u>direct contravention</u> of [the district] court's judgment <u>and contrary</u> to United States law governing enforcement." *Id*. at 51a

(emphasis in original). The district court therefore ruled that "no sum previously collected or to be collected by the judgment creditor in the United States is subject to payment to the judgment debtor" under the Clawback Order. *Id.* at 53a (quoting *id*. at 74a).

IV. THE FOURTH CIRCUIT'S DECISION

The Fourth Circuit affirmed the U.S.-Expansion and Anti-Clawback Injunctions. Writing for a unanimous panel, Judge Wilkinson explained that the "two injunctions were necessary" because of "the extensiveness of WPL's attack on the U.S. judgment." Pet. App. 11a.

1. The Fourth Circuit affirmed the district court's "narrow and carefully tailored" U.S.-Expansion Injunction as necessary under the All Writs Act to protect the judgment. *Id*. at 21a. The district court had issued that injunction after WPL "interfered with U.S. collection proceedings and avoided collection efforts 'with impunity.'" *Id*. at 20a (quoting *id*. at 55a). The U.S.-Expansion Injunction "discourages WPL's evasion of the U.S. judgment by ensuring that its frustration strategies will no longer be painless." *Id*. And it "does not foreclose the possibility of modification . . . if WPL makes good-faith payment efforts." *Id*. at 21a.

The Fourth Circuit emphasized that the U.S.-Expansion Injunction was one of the few options available to the district court to protect its judgment. *See id.* at 21a–22a. The district court was "'bound to implement' the 'strongly mandated legislative policies' of the U.S.

and North Carolina," and "[f]ailing to act would have left the district court looking helpless." *Id.* at 22a (quoting *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 916 (D.C. Cir. 1984)). The district court thus chose an option "consistent with 'principles of international comity'" because it "'focuses on conduct in the United States and touching upon United States based transactions and commerce.'" *Id*. at 21a (quoting *id*. at 60a–61a). The district court's approach was also "consistent with the historical practice of allowing equitable relief necessary to protect 'a creditor who had already obtained a [money] judgment.'" *Id*. (alteration in original) (quoting *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319–21 (1999)).

The Fourth Circuit rejected WPL's argument that the U.S.-Expansion Injunction "is not authorized by Rule 69 of the Federal Rules of Civil Procedure or by North Carolina law." *Id*. at 26a. The court found this argument misplaced because "North Carolina law authorizes injunctive relief." *Id*. In any event, the All Writs Act "empowers [federal courts] *to fashion extraordinary remedies when the need arises*." Pet. App. 27a (alteration and emphasis in original) (quoting *Pa. Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 43 (1985)). The district court's resort to the U.S.-Expansion Injunction was justified because it was "faced here with the need for an extraordinary remedy." *Id*.

The Fourth Circuit did not "reach or discuss [the district court's] alternate holding that Rule 60 provides grounds for relief." *Id*. at 8a n.1. But the Fourth Circuit

did analyze "the four-factor test traditionally required for injunctive relief" and held that the test is "satisfied" here. *Id*. at 22a.

SAS "demonstrated irreparable injury from WPL's actions" because "'the unsatisfiability of a money judgment can constitute irreparable injury.'" *Id*. at 23a–24a (quoting *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 206 (3d Cir. 1990)). Legal remedies were inadequate because "SAS's money judgment would be rendered near 'illusory'" without the two injunctions. *Id*. (quoting *SAS-2017*, 874 F.3d at 387). The balance of hardships shifted to SAS given the district court's decision "allowing [WPL] to continue serving existing customers." *Id*. at 25a. And the public interest favors the injunctions because the "ability of US courts to enforce their own laws and to allow litigants to pursue freely rights accorded to them under US law have been significantly eroded through WPL's conduct." *Id*. at 25a–26a (quoting *id*. at 69a).

All of these circumstances were new: when the Fourth Circuit affirmed the denial of injunctive relief in 2017, it "did not know that WPL would undermine U.S. collection proceedings at every turn and seek clawbacks in the U.K." *Id*. at 26a. It did not know that WPL would "instruct[] customers to disregard the [California] assignment order." *Id*. at 11a; *see also*, *e.g.*, JA2082, 2086–87. Nor did it know that WPL would change its license terms in a manner intended to magnify the impacts on U.S. proceedings of the U.K. orders. *See* JA1810; *see also* JA2016–21. These and

other post-judgment developments "have made equitable relief essential." Pet. App. 26a.

2. The Fourth Circuit held that "no abuse of discretion occurred" in the district court's issuance of the Anti-Clawback Injunction. *Id*. at 15a. That "injunction falls within the court's [All Writs Act] authority" and "respects comity." *Id*.

The Fourth Circuit reasoned that the All Writs Act authorizes the Anti-Clawback Injunction because the injunction "protects SAS's ability 'to collect the entire amount of the [U.S.] judgment.'" *Id*. (alteration in original) (quoting *id*. at 51a). The "judgment was under sustained collateral attack," and "the district court was well within its rights to issue an injunction preventing U.K. clawbacks of U.S. collections." *Id*. As other courts have recognized, "injunctive relief is appropriate when faced with attempts 'to frustrate the enforcement of American law in American courts against companies doing business in America.'" *Id*. at 16a (quoting *Laker Airways*, 731 F.2d at 940).

The Fourth Circuit also concluded that the Anti-Clawback Injunction was consistent with international comity. As the Fourth Circuit explained, "the district court showed great respect for comity" by "limiting the impact of its anti-clawback injunction to sums collected in the U.S." – especially when WPL had itself demonstrated "a lack of respect for American courts and American law" by pursuing "an action brought

solely to interfere with a final U.S. judgment." *Id*. at 17a–18a.

ARGUMENT

The Court should deny certiorari for three overarching reasons.

First, the "district court did not abuse its discretion by issuing the injunctions in this case." Pet. App. 30a. The All Writs Act empowers a federal court "to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued." *N.Y. Tel. Co.*, 434 U.S. at 172. The district court exercised that power here because inaction "would invite foreign litigants to undermine the finality of many an American judgment and foreign countries to doubt the very efficacy of American law." Pet. App. 30a.

Second, the district court issued the injunctions in response to unprecedented attacks on a U.S. judgment – attacks that, the Fourth Circuit recognized, created "the need for an extraordinary remedy." *Id*. at 27a. While the issues here are important, they are not recurring. WPL cannot identify a single case analogous to the truly extraordinary circumstances presented here. Nor can it identify a genuine circuit split implicated by either injunction.

Third, this case presents a poor vehicle for reviewing the questions presented. The injunction against

licensing to new customers is justified on three separate grounds. And WPL's comity arguments rely on developments that post-date the decisions below. WPL should present its new arguments to the trial court before asking this Court to weigh in.

This certiorari petition is not about clarifying the law or resolving a disagreement among the courts of appeals. It is a request for this Court to intervene in a one-off dispute to permit WPL – a party that has "shown a lack of respect for American courts and American law," *id*. at 17a – "to operate in the U.S. but face limited consequences for its violations of U.S. law," *id*. at 29a. This Court should deny that request.

I. THE U.S.-EXPANSION INJUNCTION DOES NOT MERIT REVIEW

A. The District Court Acted Within Its Discretion Under the All Writs Act When Entering the U.S.-Expansion Injunction

The All Writs Act provides that the "Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). While this language "refers only to writs issued 'in aid of [courts'] jurisdictions,' it is understood that the All Writs Act 'also empowers federal courts to issue injunctions to protect or effectuate their judgments.'" *SFM Holdings, Ltd. v. Banc of Am. Sec., LLC*, 764 F.3d 1327, 1334–35 (11th Cir. 2014) (alteration in original)

(quoting *Burr & Forman v. Blair*, 470 F.3d 1019, 1026 (11th Cir. 2006)); *accord N.Y. Tel. Co.*, 434 U.S. at 172.

WPL cannot plausibly deny that it frustrated and collaterally attacked the district court's judgment. So it argues instead that the district court was powerless to stop that frustration and attack, all while WPL continued to reap profits from the U.S. market by selling the software it created in violation of U.S. law. But a federal court has the power to "vindicate its authority" and "effectuate its decrees" by preventing conduct that flouts or imperils the judgment. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380 (1994). Without this power to protect judgments, "the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution." *Peacock v. Thomas*, 516 U.S. 349, 356 (1996) (quoting *Riggs v. Johnson Cty.*, 73 U.S. (6 Wall.) 166, 187 (1867)).

The district court was right – and well within its discretion – to issue the U.S.-Expansion Injunction.

1. WPL frustrated enforcement of the district court's judgment by obtaining an injunction from the U.K. court that prohibits SAS from enforcing its U.S. judgment under U.S. law. The U.K. Injunction prohibits SAS from seeking relief in California for WPL's violation of the Assignment Order. And SAS is enjoined from arguing to the Ninth Circuit that WPL's frustration of the Assignment Order merits entry of the Turnover Order. Indeed, WPL's counsel conceded that if WPL collects money from the U.S. and deposits it in a

bank in England, SAS cannot pursue relief in the U.S. under California law because of the U.K. Injunction. *See* JA1224–25.

In short, the U.K. Injunction empowers WPL to evade the Assignment Order with near impunity, frustrating judgment execution in the U.S. and thus rendering the judgment inadequate. The purpose of the U.K. Injunction is "to frustrate the enforcement of American law in American courts against [a] compan[y] doing business in America." *Laker Airways*, 731 F.2d at 940. The district court, therefore, did not abuse its discretion in exercising its power under the All Writs Act to issue an injunction to "protect or effectuate [its] judgment[ ]" from attack in the U.K. tribunal. *United States v. Cohen*, 152 F.3d 321, 325 (4th Cir. 1998) (quoting *Ward v. Pa. N.Y. Cent. Transp. Co.*, 456 F.2d 1046, 1048 (2d Cir. 1972)).

2. WPL also collaterally attacked the judgment by relitigating matters in the U.K. resolved by and encompassed within the U.S. judgment. The district court entered the damages judgment after rejecting WPL's theory that WPL's liability in the U.S. should be precluded by the earlier U.K. judgment based on the E.U. Software Directive. On appeal from that damages judgment, the Fourth Circuit similarly rejected WPL's preclusion arguments because accepting those arguments "would frustrate [U.S.] policy goals by barring a North Carolina company from vindicating its rights under North Carolina law on the basis of the E.U.'s contrary policies." *SAS-2017*, 874 F.3d at 379–80. This Court likewise denied certiorari. 139 S. Ct. 67.

Having failed to convince the U.S. judiciary that the money judgment violated preclusion principles, WPL sought and obtained an order in the U.K. court that the $79 million judgment stems from "abusive" claims purportedly in violation of claim- and issue-preclusion principles and in conflict with the E.U. Software Directive. JA0997

3. WPL argues that the district court had no power under the All Writs Act to protect its judgment from WPL's frustration and collateral attacks because the "All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute." *Carlisle v. United States*, 517 U.S. 416, 429 (1996) (quoting *Pa. Bureau of Corr.*, 474 U.S. at 43); *see* Pet. 20. Yet WPL identifies no other statute that applies here. It relies exclusively on Federal Rule of Civil Procedure 69, but that rule is targeted at ordinary collection efforts, and it says nothing about frustration through collateral attacks.

As a general matter, Rule 69 requires federal courts to follow state "procedure[s]" in enforcing an ordinary money judgment. Fed. R. Civ. P. 69(a)(1). SAS was following those procedures in California when WPL obtained an injunction blocking further proceedings in the Central District of California and in the Ninth Circuit. But Rule 69 does not designate state procedures as the only way to respond when those very procedures are enjoined by a foreign court. WPL is thus wrong to argue that the U.S.-Expansion Injunction is improper because the All Writs Act "must be construed as subject to the same limitations" as Rule 69. Pet. 21

(quoting *Fink v. O'Neil*, 106 U.S. 272, 279 (1882)). Rule 69 does not outline a procedure for federal courts to follow when their judgments are under sustained collateral attack.

4. WPL is also wrong to claim that the district court invoked the All Writs Act because "compliance with statutory procedures appears inconvenient or less appropriate." *Pa. Bureau of Corr.*, 474 U.S. at 43; *see* Pet. 4, 14–15. The U.K. Injunction did not render the Rule 69 judgment-enforcement procedures inconvenient or inappropriate; it forbade SAS, under penalty of imprisonment, from following those procedures. That extraordinary attack on U.S. jurisdiction justified resort to the All Writs Act, the safety valve that "empowers federal courts to fashion extraordinary remedies when the need arises." *Pa. Bureau of Corr.*, 474 U.S. at 43.

5. WPL also argues that the Fourth Circuit approved of a remedy "previously unknown to equity jurisprudence." Pet. 26 (quoting *Grupo Mexicano*, 527 U.S. at 332). But that argument has two basic flaws.

First, it is beyond cavil that the district court had the power to enjoin WPL from selling its fraud-infected software to any customer in the U.S. The district court exercised its discretion not to enter that broad relief after trial because, among other reasons, it was SAS's burden to show that the judgment "will be uncollectible because of the U.K. courts and [SAS] has failed to satisfy its burden *at this juncture*." *SAS Inst.*, 2016 WL 3475281, at *5 (emphasis added). The facts have now

changed, making "equitable relief essential." Pet. App. 26a. WPL may disagree about the need for equitable relief here, but it cannot claim that a post-verdict injunction supported by the "traditional equitable analysis" is unknown to equity jurisprudence. *Id*. at 22a. The district court did not invent a novel remedy; it imposed a narrower version of the "broad injunctive relief" that all agree could have been entered against WPL's product "several years ago." *Id*. at 26a.

Second, WPL overlooks the distinction between equitable remedies granted *before* a money judgment, disapproved of in *Grupo Mexicano*, and those granted afterwards, in aid of a judgment. *See* 527 U.S. at 319–21 (discussing "the general rule requiring a judgment"). By contrast, the Fourth Circuit recognized that the U.S.-Expansion Injunction is "consistent with the historical practice of allowing equitable relief necessary to protect 'a creditor who had already obtained a [money] judgment.' " Pet. App. 21a (alteration in original) (quoting *Grupo Mexicano*, 527 U.S. at 319–21). To be sure, courts lack "a general power to grant relief whenever legal remedies are not practical and efficient," but that is not what the Fourth Circuit approved here. *Grupo Mexicano*, 527 U.S. at 321 (quotation marks omitted). The district court granted equitable relief because, among other reasons, WPL frustrated and attacked the judgment, preventing SAS from enforcing it in the U.S. under U.S. law.

6. At bottom, the district court was "not compelled to acquiesce" in WPL's "postjudgment conduct . . . which frustrates the significant policies of the

domestic forum." *Laker Airways*, 731 F.2d at 915. The "prerogative of a nation to control and regulate activities within its boundaries is an essential, definitional element of sovereignty," *id*. at 921, and a "foreign corporation doing business within the United States reasonably expects that its United States operations will be regulated by United States law," *id*. at 923.

The district court took a measured approach in response to WPL's efforts to frustrate judgment collection in the U.S. The court did not order WPL to turn over all non-U.K. revenue or enter an anti-suit injunction forbidding WPL from taking any steps to enforce its U.K. Injunction – both of which would have been proportional responses to WPL's attacks, albeit responses that SAS was prohibited from requesting. The district court chose instead "to award injunctive relief that focuses on conduct in the United States and touching upon United States based transactions and commerce." Pet. App. 60a. That measured approach is consistent even with the "early view of the scope of the all writs provision," which "confined it to filling the interstices of federal judicial power when those gaps threatened to thwart the otherwise proper exercise of federal courts' jurisdiction." *Pa. Bureau of Corr.*, 474 U.S. at 41.

B. There Is No Disagreement Among the Courts of Appeals

WPL is wrong to claim that the "courts of appeals are squarely divided on the scope of judicial authority under the All Writs Act." Pet. 13. The decisions WPL

cites – one in which the party "d[id] not develop its argument," *Aetna Cas. & Sur. Co. v. Markarian*, 114 F.3d 346, 350 (1st Cir. 1997), and one in which the All Writs Act is not mentioned at all, *Wheeling-Pittsburgh Steel Corp. v. Mitsui & Co.*, 221 F.3d 924 (6th Cir. 2000) – are not only inapposite; they show just how rarely the facts involved in this petition might arise, and just how unnecessary is the Court's review.

1. The First Circuit's decision in *Aetna Casualty & Surety* concerns the availability of injunctive relief under Massachusetts law and Federal Rule of Civil Procedure 69, which generally incorporates state procedures on execution. That appeal arose from "an ordinary civil collection action" in which the plaintiff had obtained a "writ of *ne exeat*" under Massachusetts Rule of Civil Procedure 4.3(c). *Aetna Cas. & Sur.*, 114 F.3d at 347. That rule provides that an "order of arrest may be entered" in some cases "when the plaintiff has obtained a judgment or order requiring the performance of an act, the neglect or refusal to perform which would be punishable by the court as a contempt." Mass. R. Civ. P. 4.3(c). The plaintiff had obtained no such judgment or order, and so the First Circuit held that Rule 4.3(c) did not authorize the *ne exeat* writ. *Aetna Cas. & Sur. Co.*, 114 F.3d at 350.

WPL cites *Aetna Casualty & Surety* because the plaintiff in that case made a passing reference to the All Writs Act but did "not develop its argument." *Id.* That alone would suggest a soft conflict, if any existed; but there is not even a soft conflict here. The First Circuit stated that the All Writs Act could not authorize

the *ne exeat* writ "[w]here, as here, there is a statutory procedure which 'specifically addresses the particular issue at hand'" – namely, Rule 69 and Massachusetts Rule 4.3(c). *Id*. (quoting *Pa. Bureau of Corr.*, 474 U.S. at 43). The plaintiff before the First Circuit had invoked a state-law judgment collection procedure in an "ordinary" collection matter; having invoked that procedure, the plaintiff had to follow it. *Id.* at 347; *see also id.* at 350.

The Fourth Circuit's decision does not conflict with *Aetna Casualty & Surety*. Not only was the First Circuit deciding without a fully developed argument, it was deciding a different issue: whether a party could make recourse to the All Writs Act in ordinary money-judgment collection cases governed by ordinary state law. The First Circuit recognized that federal courts, though usually bound by state procedure under Rule 69, had the authority to "direct[] otherwise" in extraordinary circumstances, *id.* at 349 (quoting Fed. R. Civ. P. 69(a)(1)); it merely concluded that "the location of the assets and the uncooperativeness of the judgment debtor" did not qualify as "extraordinary circumstances," *id*. at 349 n.4.

By contrast, the Fourth Circuit faced anything but an "ordinary" collection matter with an ordinarily grudging debtor: it was "faced . . . with the need for an extraordinary remedy" after "straightforward collection procedures were thwarted." Pet. App. 27a–28a. SAS did not, and could not, invoke ordinary state-law collection procedures because "WPL obtained an injunction preventing 'SAS from seeking the full panoply

of judgment collection tools.'" *Id*. at 27a (quoting *id*. at 54a). That the First Circuit thought one circumstance not extraordinary, and that the Fourth Circuit thought that a different circumstance *was* extraordinary, is not a conflict among the circuits within the meaning of this Court's Rule 10(a).

2. The Sixth Circuit's decision in *Wheeling-Pittsburgh Steel* is yet further afield: it does not discuss or even reference the All Writs Act. The case addressed the "availability of injunctive relief under the [Antidumping] Act of 1916," a statute Congress repealed in 2004. 221 F.3d at 926; *see* Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108-429, § 2006, 118 Stat. 2434, 2597 (2004). That now-repealed Act created a private cause of action and provided that the plaintiff "shall recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee." 15 U.S.C. § 72 (2000). The Sixth Circuit held that, "when Congress provided for specific legal relief under the 1916 Act, it implied that other relief would not be appropriate." *Wheeling-Pittsburgh Steel Corp.*, 221 F.3d at 927. That reasoning does not apply here. WPL has never argued that the North Carolina General Assembly authorized only legal remedies in fraud, breach of contract, and UDTPA cases such as this.

Moreover, the Sixth Circuit was addressing the proper relief for a party that did not yet have a final judgment in its favor. *See id.* at 926 ("pending a final trial on the merits of the action"). Its reasoning could

not apply to the All Writs Act, which, far from prescribing only certain forms of relief, authorizes "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law," 28 U.S.C. § 1651(a), especially to "prevent the frustration of orders [that a court] has previously issued," *N.Y. Tel. Co.*, 434 U.S. at 172.

3. WPL's effort to show a circuit split by relying on two inapposite cases – only one of which even mentions the All Writs Act – reveals more than the lack of any disagreement among the courts of appeals. It also reveals that the first issue presented seldom arises and thus does not merit attention from this Court. The federal courts rarely face the "daunting situation" presented here: a "judgment . . . under sustained collateral attack." Pet. App. 15a. While many debtors may wish to avoid satisfying a judgment, few have shown, as Judge Wilkinson wrote for the Fourth Circuit, the "lack of respect for American courts and American law" that WPL demonstrated in this case. *Id*. at 17a. Fewer still will have the kind of success WPL enjoyed "calling upon the U.K. court system" to frustrate a U.S. judgment. *Id*. at 11a. WPL has not identified a single U.S. court that has tolerated the "helpless" position in which WPL tried to place the district court here. *Id*. at 22a. The unique circumstances of this case do not merit attention from this Court.

C. This Case Would Be a Poor Vehicle for Considering the Scope of the All Writs Act or Rule 69 Because the U.S.-Expansion Injunction Is Proper Under Rule 60(b)(6) and North Carolina Law

The U.S.-Expansion Injunction would be proper even if this Court were to accept all of WPL's arguments about the scope of available All Writs Act and Rule 69 relief. That renders this case an unsuitable vehicle for deciding the question.

1. The U.S.-Expansion Injunction is independently authorized by Rule 69 and North Carolina law. The Fourth Circuit held that, even if a federal court's power to protect its judgment from frustration and collateral attack turned on state-law concepts, the Injunction is proper because "North Carolina law authorizes injunctive relief." Pet. App. 26a. Specifically, North Carolina courts can issue preliminary injunctions when a party is causing "some act to be done in violation of the rights of another party to the litigation respecting the subject of the action, and tending to render the judgment ineffectual." N.C. Gen. Stat. § 1-485(2). The Fourth Circuit held that this provision applies because "WPL's interference with collection proceedings which SAS had a legal right to pursue – and its collateral attack by seeking clawbacks of funds SAS had a right to collect – undermined the effectiveness of the U.S. judgment." Pet. App. 27a.

WPL predicts that the Supreme Court of North Carolina would hold that N.C. Gen. Stat. § 1-485 "is *not*

applicable in postjudgment execution proceedings." Pet. 18. WPL makes this claim based on an intermediate appellate decision holding that § 1-485 was inapplicable when the judgment-creditor had an alternative remedy available under N.C. Gen. Stat. § 1-355. *Harris v. Pinewood Dev. Corp.*, 627 S.E.2d 639, 642 (N.C. Ct. App. 2006). But § 1-355 does not cabin the general rule in North Carolina that "a court of equity, or a court in the exercise of its equity powers, may use the writ of injunction as a remedy subsidiary to and in aid of another action or special proceeding." *Edmonds v. Hall*, 72 S.E.2d 221, 223 (N.C. 1952).

In any case, WPL does not even argue that the Fourth Circuit's construction of state law is independently worthy of this Court's review. That being so, a reversal on the first issue presented would not disturb the judgment below. The Court should not grant certiorari to wade through these state-law concepts to reach an issue that rarely arises and does not control the outcome of this case.

2. As WPL acknowledges, the "district court separately held that Federal Rule of Civil Procedure 60(b)(6) permitted the injunctive relief." Pet. 9 n.2. Yet WPL does not ask the Court to review that Rule 60(b)(6) decision, and it does not explain why it would be appropriate for this Court to grant certiorari on only one of the multiple grounds supporting the U.S.-Expansion Injunction. That the Court *can* grant certiorari in such circumstances does not mean that it should.

WPL's silence on this topic should lead the Court to deny certiorari. "While this Court decides questions of public importance, it decides them in the context of meaningful litigation." *The Monrosa v. Carbon Black Exp., Inc.*, 359 U.S. 180, 184 (1959) (dismissing writ of certiorari as improvidently granted). WPL's complaints about the scope of All Writs Act relief are not meaningful because the district court held that, independent of the All Writs Act, "SAS has demonstrated a basis for amending the court's judgment" to include the U.S.-Expansion Injunction. Pet. App. 70a. In short, SAS "establish[ed] the extraordinary circumstances necessary under Rule 60(b)(6) for granting relief." *Aikens v. Ingram*, 652 F.3d 496, 498 (4th Cir. 2011) (en banc). The Fourth Circuit found it unnecessary to consider that alternative ground for the Injunction, but it did agree with the district court that SAS had shown the "need for an extraordinary remedy," Pet. App. 27a, and had satisfied the "four-factor test traditionally required for injunctive relief," *id*. at 22a. WPL challenges none of those findings. There is no point in WPL's entangling the Court in this dispute in order to have precisely the same injunction upheld on remand.

II. THE ANTI-CLAWBACK INJUNCTION DOES NOT MERIT REVIEW

This Court should also deny review of the Anti-Clawback Injunction, which prohibits WPL from clawing back two-thirds of every dollar SAS collects *in the United States*, including amounts the district court

required WPL to pay as security for its appeal of the money judgment.

1. The district court was right to enjoin enforcement of the U.K. Clawback Order, which effectively remitted the district court's judgment from $79 million to $26 million. Worse yet, the Clawback Order frustrated the judgment by impeding collection of even the compensatory damages. The clawback means SAS must collect the full $79 million in trebled damages, merely to recover its $26 million in compensatory damages. As the district court found, the clawback would stretch collections out over decades. "[I]f two-thirds of collections were subject to clawback in the U.K., it would take SAS 36 years to recover compensatory damages alone." Pet. App. 14a.

Enforcement of the Clawback Order would frustrate the district court's judgment fixing the judgment amount. That judgment resolved two issues. First, WPL was liable to SAS for wrongdoing leading to WPL's fraudulent creation of its copycat software. And second, the damages that SAS proved at trial were $26 million in compensatory damages, which North Carolina law trebled to $79 million. But after the Fourth Circuit affirmed and this Court denied certiorari, WPL relitigated the judgment amount in the U.K. by seeking a clawback. The U.K. court obliged. Its clawback ruling means that, even if all the revenue collection is U.S. revenue, SAS is barred from recovering more than $26 million (and SAS cannot even recover that amount until it collects the full $79 million).

WPL argues that the Fourth Circuit should have tolerated the Clawback Order under the general principle "allow[ing] different nations to effectuate different national policies within their borders." Pet. 32 (citing *Laker Airways*, 731 F.2d at 933 n.81). But that principle *supports* the Anti-Clawback Injunction here. North Carolina has a policy permitting treble damages against companies who commit fraud in commerce in North Carolina. *Cf. Caldwell v. Smith*, 692 S.E.2d 483, 485–86 (N.C. Ct. App. 2010) (listing purposes of that policy). While the U.K. has a different policy, "WPL cannot participate in the U.S. market, violate U.S. law, and expect to avoid the consequences of its conduct." Pet. App. 29a.

WPL defrauded SAS, consented to personal jurisdiction in the U.S., exhausted its appeals of the fraud verdict, and then asked a foreign court "to frustrate the enforcement of American law in American courts against [a company] doing business in America." *Id.* at 16a (quoting *Laker Airways*, 731 F.2d at 940). The D.C. Circuit's decision in *Laker Airways* and basic principles of territorial sovereignty teach that American courts should not tolerate that action "instituted . . . for the sole purpose of terminating [a] United States claim," especially when that claim has already been reduced to judgment. *Laker Airways*, 731 F.2d at 915; *see also id.* at 928 n.53.

WPL responds that it was justified in pursuing the Clawback Order because U.S. courts refused to grant preclusive effect to the earlier U.K. judgment rejecting under E.U. law SAS's copyright and contract claims

against WPL. But the Fourth Circuit already explained why the "many legal and factual differences" between the U.K. and U.S. lawsuits meant that the U.K. judgment did not preclude the U.S. judgment. Pet. App. 5a (quoting *SAS-2017*, 874 F.3d at 378–79). In particular, the U.S. lawsuit sought relief under U.S. law for harm WPL caused by licensing its software *in the United States*. WPL already petitioned for certiorari from that ruling, and it was denied. 139 S. Ct. 67.

Furthermore, the Clawback Order is not merely inconsistent with the U.S. judgment. It is a direct attack *on* that judgment. *Cf.* Br. for U.S. as Amicus Curiae 13, *Goss Int'l Corp. v. Tokyo Kikai Seisakusho*, 2008 WL 2185728 (U.S. May 23, 2008) (No. 07-618) (explaining that a clawback order "represents an even more direct attack on a final federal judgment than would a mere attempt to relitigate the underlying factual matters").

In short, WPL's objections to the Anti-Clawback Injunction contradict "well settled" law on the power of U.S. courts "to secure or preserve the fruits and advantages of a judgment." *Local Loan Co. v. Hunt*, 292 U.S. 234, 239 (1934); *see also Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 500 F.3d 111, 124 (2d Cir. 2007).

2. WPL claims that the Anti-Clawback Injunction presents an opportunity for this Court to resolve a circuit conflict over the "level of deference afforded to international comity." Pet. 28 (quoting *Goss Int'l Corp.*, 491 F.3d at 359). But no such conflict exists. "Although

the courts of appeals have enunciated different verbal formulations of the proper test, it appears that all of them give weight to comity concerns, and it is not clear that the different formulations have actually produced different results in cases with comparable facts." Br. for U.S. as Amicus Curiae 18, *Goss Int'l Corp.*, 2008 WL 2185728.

Even if there were a real disagreement among the courts of appeals, it is not implicated here. The Fourth Circuit affirmed the Anti-Clawback Injunction "without mentioning any test" because that Injunction is proper under any formulation. Pet. 29. As the Fourth Circuit explained, "the district court showed great respect for comity, limiting the impact of its anti-clawback injunction to sums collected in the U.S. – 'monies without any nexus to any enforcement proceeding in the United Kingdom.'" Pet. App. 18a (emphasis omitted) (quoting *id*. at 52a).

The Clawback Order, in contrast, undermined comity by "condon[ing] an action brought solely to interfere with a final U.S. judgment." *Id*. That action "should not have received full weight in the comity analysis" because it was "specifically designed to overturn a final judgment entered by a court that clearly possessed jurisdiction and was implementing the law of its nation with respect to conduct and harm occurring within the territorial jurisdiction of that nation." Br. for U.S. as Amicus Curiae 16, *Goss Int'l Corp.*, 2008 WL 2185728. In other words, a clawback order is an exceptional affront to international comity that rarely occurs and does not fit neatly within the traditional

comity paradigm. *Cf*. *id*. at 20 (explaining that "the United States is unaware of any other application of a foreign clawback statute against the United States in recent years").

As the Fourth Circuit put it, there is "irony" in WPL seeking to invoke comity in defense of the Clawback Order. Pet. App. 17a. The conflict the Fourth Circuit confronted was "precipitated by the attempts of another country to insulate its own business entities from the necessity of complying with legislation of our country designed to protect this country's domestic policies." *Id*. at 17a–18a (quoting *Laker Airways*, 731 F.2d at 955). No principle of international law required the district court to defer to a decision by a foreign court designed to overturn the district court's judgment, particularly when the district court entered judgment first and the foreign judgment interferes with domestic public policies. *Cf. Paramedics Electromedicina Comercial, Ltda v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 654–55 (2d Cir. 2004) ("[W]here one court has already reached a judgment – on the same issues, involving the same parties – considerations of comity have diminished force.").

In any event, WPL's comity arguments rely on events that took place *after* the district court entered the Anti-Clawback Injunction. *See* Pet. App. 95a–222a. WPL even makes various arguments based on a U.K. decision handed down after the Fourth Circuit denied rehearing en banc. *See* Pet. 12–13, 22, 32 n.7, 33. If WPL believes recent events bear on the proper comity analysis here, it should ask the district court to modify

or lift its Anti-Clawback Injunction. WPL has instead asked this Court to weigh in on the "circumstances" justifying All Writs Act relief, *id.* at i, before asking the lower courts to consider the circumstances on which WPL relies. The Court should deny that premature request.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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