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

REPLY FOR PETITIONER

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SAS agrees "the issues here are important." Br. in Opp. 18. The courts of appeals are divided on whether the All Writs Act authorizes courts to create novel ways to coerce satisfaction of money judgments. That issue affects core judicial functions, impacts myriad contexts, and raises significant separation-of-powers concerns. The unprecedented remedy of closing the borders to foreign software to "incentivize" a judgment's satisfaction also affects foreign relations. SAS seeks to defend that remedy by distorting the facts and invoking "discretion." But the question is *legal*. The decision below cannot be reconciled with Federal Rule of Civil Procedure 69's text and this Court's All Writs Act precedents. While SAS

denies any circuit conflicts, it ignores one of the three entirely. And the issue is recurring. Other courts have *refused* to authorize unprecedented remedies of the sort imposed here.

The Court should also resolve the acknowledged circuit split over the standard for enjoining foreign judgments. SAS's defense of the Fourth Circuit's worldwide ban on enforcing an English judgment invites foreign courts to treat U.S. judgments similarly. While SAS seeks to distract from that troubling consequence with heated rhetoric and half-truths, its complaints spring from *judicial conflict* over the international enforcement of opposing judgments. This case presents important issues for review.

I. The Decision Below Creates Circuit Conflicts Concerning The All Writs Act And Rule 69

A. The Decision Creates a Conflict—and Errs—in Authorizing Novel Decrees To Coerce Payment Under the All Writs Act

The All Writs Act cannot be invoked where another statue or rule "'specifically addresses the particular issue at hand.'" *Carlisle* v. *United States*, 517 U.S. 416, 429 (1996). That limitation applies here. SAS nowhere denies that Rule 69 specifically addresses collection: It directs that federal processes on money judgments "must" accord with state execution law unless "a federal statute governs." Fed. R. Civ. P. 69(a)(1). Consequently, in *Aetna Casualty & Surety Co.* v. *Markarian*, 114 F.3d 346 (1st Cir. 1997), the First Circuit held that state law provides the "exclusive route" for enforcing federal money judgments. *Id.* at 350. It rejected the argument that the All Writs Act "'govern[s]'" instead. *Ibid.*

1. SAS abandons the Fourth Circuit's primary rationale for reaching the opposite result—that the All Writs Act "'governs' collection proceedings" within the meaning of Rule 69. Pet.App. 27a (brackets omitted); see Pet. 11. That rationale is indefensible. See Pet. 21. It would mean judgments *must be enforced* using the All Writs Act rather than state law. That rationale also conflicts with *Markarian*'s holding that "'all federal process on money judgments'" must accord with state law. 114 F.3d at 350. SAS contends (at 26) that holding is qualified because the creditor did "'not develop its argument.'" But *Markarian* expressly held "the legal predicate" for applying the All Writs Act was "lacking." 114 F.3d at 350. Later precedent recognizes as much. See *United States* v. *Barrett*, 178 F.3d 34, 55 (1st Cir. 1999). The conflict is square.

Markarian cannot be distinguished as merely addressing "ordinary money-judgment collection cases." Br. in Opp. 27. While *Markarian* recognized that Rule 69 does not require collection by "writ of execution" when "the court directs otherwise," Fed. R. Civ. P. 69(a)(1), the Fourth Circuit did not invoke that "otherwise directs" proviso here, Pet.App. 27a—and with reason: As *Markarian* explained, "'well established principles'" confine that language to "narrowly" defined situations involving government-related debts, 114 F.3d at 349 & n.4. *Markarian* thus ruled that "difficulties in enforcing [a] judgment due to the location of the assets and the uncooperativeness of the judgment debtor" do not "warrant departure from the general rule" that state law governs. *Ibid.* The Fourth Circuit, by contrast, invoked difficulties reaching *foreign assets* to depart from the general rule here. Pet.App. 20a.

2. SAS offers another rationale: Rule 69, it says, applies only to "ordinary collection" situations, not ones involving purported "collateral attacks." Br. in Opp. 20-22. That rationale deepens the conflict with *Markarian*'s holding that "'*all* federal process on money judgments'" must accord with state law, even where debtors resist enforcement. 114 F.3d at 349-350 & n.4 (emphasis added). Rule 69 creates no exception for "extraordinary" collection difficulties. It instead incorporates state "supplementary" procedures, Fed. R. Civ. P. 69(a)(1), designed for situations in which property "cannot be reached by the *ordinary* process of execution," *e.g.*, *Massey* v. *Cates*, 162 S.E.2d 589, 591 (N.C. Ct. App. 1968) (emphasis added).

SAS's supposed "collateral attacks" merely reflect legal principles "recognised internationally." Pet.App. 183a; see Pet. 21-22. SAS complains (at 20-22) of the English courts' decision to decline enforcement of a U.S. judgment *in England* against *English assets*. But a foreign sovereign is under "no obligation" to enforce a U.S. judgment within its borders. *Hilton* v. *Guyot*, 159 U.S. 113, 166 (1895). Many U.S. creditors thus have difficulties reaching foreign assets. See Pet. 21-22. The English injunction—imposed to prevent SAS from circumventing territorial limits and prior English judgments—simply makes those limits more apparent. See *ibid.* SAS in substance complains about English protection of territorial sovereignty. See Pet. 22.[1]

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[1] SAS claims that WPL "religat[ed] matters in the U.K.," Br. in Opp. 21, but in the U.K., SAS disclaimed that U.S. courts "could or should have" addressed those matters, C.A.App. 1082(¶62); WPL C.A.Reply 4-5. Regardless, that rationale cuts both ways: The *English* courts held that *SAS* improperly relitigated issues in the U.S. See C.A.App. 986-1011.

SAS stresses (at 21) that the All Writs Act may be used to "'protect or effectuate'" judgments. Not so for judgment collection, which is specifically controlled by Rule 69. See *Syngenta Crop Protection, Inc.* v. *Henson*, 537 U.S. 28, 32 (2002). Nor does SAS explain how banning U.S. software licensing remotely "protects" its damages-only judgment, which found no infringement and *denied injunctive relief*. See Pet. 23. Forbidding WPL from licensing software does not restore "state [collection] procedures." Br. in Opp. 22. It reduces WPL's U.S. revenues, which SAS has been using those procedures to collect. See Pet. 9, 28.[2]

This case thus is not even about whether the All Writs Act authorizes injunctions to prevent interference with collection—the U.S. licensing ban removes no purported impediment. It is about whether the Act authorizes imposing onerous limits on business operations—banning U.S. software licensing—"until [a] judgment is satisfied," to "incentivize" payment, notwithstanding Rule 69. Pet.App. 20a, 24a.

B. The Fourth Circuit Erred—and Created a Second Conflict—on Rule 69

The Fourth Circuit's alternative theory—that Rule 69 authorizes the U.S. licensing ban because state law generally authorizes preliminary injunctions—fares worse still. SAS does not dispute that Rule 69(a)(1) incorpo-

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[2] SAS mischaracterizes (at 1, 19-21) the U.K. injunction as preventing all U.S. enforcement. SAS has collected millions of WPL's U.S. revenues despite the U.K. injunction, Pet.App. 14a & n.2; WPL C.A.Reply 10-11, and continues to collect, *e.g.*, Dist.Ct.Dkt. 938 (reporting November 2020 collections of $216,000). SAS's accusation (at 7) that WPL altered payment procedures elides that *U.S.-customer* payments are not affected. See C.A.App. 2018-2019; Pet.App. 55a-56a (recognizing WPL's "evidence" and "assurances").

rates only state procedures "*on execution*," not state procedures generally. See Pet. 23. Neither SAS nor the courts below identified a state-law judgment execution provision authorizing a sales ban until a judgment is satisfied. See Pet. 18. The Fourth Circuit invoked only a state statute addressing "preliminary injunction[s]" generally. N.C. Gen. Stat. § 1-485; see Pet. 18. SAS agrees (at 30) the Fourth Circuit did so. SAS never tries to reconcile that ruling with myriad decisions holding that "Rule 69 incorporates only state remedies 'that deal *specifically with enforcement of judgments*.'" Pet. 17-18.

SAS misses the point when it argues (at 31) that this case turns on state-law concepts because North Carolina, as a "general rule," allows courts to issue injunctions "'in aid of another action.'" The question here is whether *Rule 69* allows resort to "general" state procedural rules providing for injunctive relief or whether, as other courts hold, Rule 69 incorporates only state rules "specifically" addressing execution. SAS's defense underscores the breadth of the Fourth Circuit's decision: It authorizes courts to issue injunctions like the one here (*e.g.*, banning sales until a judgment is paid) *any time* state law permits *injunctions*. See Pet. 18. The case SAS cites for its "general rule," moreover, is not about post-judgment execution. It holds that courts may issue preliminary injunctions to prevent "irreparable loss" before "the final hearing." *Edmonds* v. *Hall*, 72 S.E.2d 221, 223 (N.C. 1952). The notion that a general preliminary-injunction statute, or one permitting injunctions in aid of other actions, somehow can be said to *specifically* address post-judgment execution is "plainly untenable" regardless. *Ward* v. *Bd. of Cnty. Comm'rs*, 253 U.S. 17, 22-23 (1920).

C. The Decision Below Conflicts with Sixth Circuit Precedent and *Grupo Mexicano*

The Fourth Circuit's licensing ban also defies *Grupo Mexicano de Desarrollo, S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999). That decision limits All Writs Act decrees to the "type[s] of relief" historically awarded at equity. *Id.* at 322, 326 n.8. Applying that standard, *Wheeling-Pittsburgh Steel Corp.* v. *Mitsui & Co.*, 221 F.3d 924 (6th Cir. 2000), held that the relief here—excluding otherwise lawful goods from the U.S.—exceeds courts' "equitable power." *Id.* at 927. The Fourth Circuit disagreed on the theory that *Grupo Mexicano* authorizes *any relief* deemed "necessary to protect 'a creditor,'" Pet.App. 21a, and rejected the Sixth Circuit's view that *Grupo Mexicano* requires a historical inquiry into the specific "type of relief" awarded, *Wheeling-Pittsburgh*, 221 F.3d at 927.[3]

SAS claims (for the first time) that *Grupo Mexicano*'s requirements are satisfied here because injunctions are issued in "contract" and "fraud" cases. Br. in Opp. 28. But the injunction here was not imposed as a contract or tort remedy. It was imposed under the All Writs Act "to incentivize WPL to satisfy" a damages-only judgment that *denied injunctive relief*. Pet.App. 19a-20a; see Pet. 23-24. The generic proposition that courts may award equitable relief to aid creditors, Br. in Opp. 24, does not

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[3] It is irrelevant that *Wheeling-Pittsburgh* arose from an antidumping dispute and the plaintiff "did not yet have a final judgment." Br. in Opp. 28. Neither *Wheeling-Pittsburgh* nor the decision below suggests that *Grupo Mexicano*'s requirements change with entry of judgment or with the substantive claim asserted. The Sixth Circuit, moreover, failed to find "*any* evidence" that courts historically banned the "importation of foreign goods" in *any* context. *Wheeling-Pittsburgh*, 221 F.3d at 927 (emphasis added).

show courts historically awarded the "type of [injunctive] relief" awarded here. Nor does SAS deny that its expansive view would permit *any* coercive measure thought to "incentivize" payment, no matter how unprecedented. See Pet. 24-26.

D. Review Is Warranted

SAS concedes (at 18) the issues are "important." Whether the All Writs Act can be construed to authorize novel ways to coerce a judgment's satisfaction profoundly affects core judicial functions in multiple contexts. Pet. 25-26. Indeed, SAS does not dispute that issue raises federalism, separation-of-powers, and international-relations concerns. See Pet. 26-27. Instead, SAS denies (at 18, 29) the issues are "recurring." But this Court's All Writs Act decisions and the circuit conflicts demonstrate an ongoing dispute. It is just that, until now, courts have generally rejected that the All Writs Act authorizes unprecedented remedies whenever "'the need arises.'" Pet.App. 27a; see Pet. 16-17, 19.

Despite SAS's unfounded invective, Br. in Opp. 29, accusations and heated rhetoric provide no basis for sidelining the rule of law. SAS identifies no principled line that would prevent frequent claims that exotic remedies are "need[ed]." See Pet. 22, 26; pp. 4-5, *supra*. As *Markarian* observes, it is "not * * * extraordinary" to encounter collection barriers due to assets' location or debtor resistance. 114 F.3d at 349 n.4. SAS seeks to make much of English courts' decisions not to permit enforcement against English assets. Br. in Opp. 29. But SAS ignores that U.S. judgments generally *are not* automatically enforceable abroad. Pet. 21-22; pp. 4-5, *supra*.

SAS argues (at 31-32) that this case is not a good vehicle because the Fourth Circuit expressly declined to address the district court's alternative ruling under Rule

60(b)(6). That is no barrier to review. *Perry* v. *Thomas*, 482 U.S. 483, 492 (1987). SAS's invocation of comments from the Fourth Circuit on *other* issues, Br. in Opp. 30-31, cannot change that the court never resolved a hot dispute over whether Rule 60(b)(6)'s exacting standards were met, Pet.App. 8a n.2. This Court could address the critical issues presented, without addressing an alternative theory the Fourth Circuit never addressed. See *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

Nor would this case require the Court to resolve state-law disputes. The questions presented are federal—they concern the *All Writs Act's* scope and whether *Rule 69* incorporates general state-law provisions on injunctions, or only state procedures for post-judgment execution. See p. 6, *supra*.

II. This Court Should Address The Standard For Enjoining Foreign Judgments

A. The Courts of Appeals Are Divided

The courts have acknowledged a three-way "split" on the test for issuing foreign antisuit injunctions. Pet. 28. Without analysis, SAS asserts (at 36) the various approaches do not "actually produce[] different results." But SAS overlooks that appellate courts have specifically divided on whether courts should tolerate damages judgments issued under the PTIA. See Pet. 30-31. In *Laker Airways Ltd.* v. *Sabena, Belgian World Airlines*, 731 F.2d 909 (D.C. Cir. 1984), the D.C. Circuit concluded that foreign sovereigns *may* require "repayment of * * * [punitive] damages" under the PTIA. *Id.* at 933 n.81; see *id.* at 943. The Fourth Circuit reached the opposite result here. Pet.App. 17a-18a. SAS ignores that entirely.

That conflict likewise defeats SAS's contention the decision below is "proper under any formulation." Br. in

Opp. 36. In this case, moreover, the Fourth Circuit admitted that comity is not "advanced when one country enjoins legitimate collections efforts in another country." Pet.App. 18a; see Pet. 29-30. The Fourth Circuit sidestepped the comity implications of *its* decision—enjoining *WPL* from collecting on an *English* judgment in *England*—only by focusing on WPL's alleged *actions*. Pet. 30. SAS does not defend that reframing of the comity test either.

SAS's reliance on the Solicitor General's brief in *Goss International Corp.* v. *Tokyo Kikai Seisakusho*, No. 07-618 (U.S.), confirms the need for review. In that case, the Eighth Circuit considered a "clawback" action—which would have required repayment of a U.S. judgment *in full*—and found it did "not threaten United States jurisdiction or any current United States policy." *Goss Int'l Corp.* v. *Man Roland Druckmaschinen Aktiengesellschaft*, 491 F.3d 355, 367 (8th Cir. 2007). It did so despite being "profoundly aware" the action could "effectively nullify" a U.S. judgment. *Ibid.* The courts below reached the opposite conclusion, even though the English judgment leaves compensatory damages unaffected.

B. SAS's Defense Illustrates the Need for Review

SAS attempts to defend the Fourth Circuit's decision to enjoin enforcement of an English damages judgment, even in England. Br. in Opp. 33-35. But SAS's arguments show exactly *why* the issue warrants review. Each of SAS's arguments supports what the English courts did—and would, if accepted internationally, allow *foreign courts* to enjoin enforcement of *U.S. judgments in the U.S.*

SAS observes (at 34) that WPL did business and consented to personal jurisdiction in the U.S. That observation applies with equal force to SAS—it did business in

England and consented to English jurisdiction, suing WPL there twice. Pet. 30. One of those suits yielded the PTIA damages judgment the Fourth Circuit enjoined. See *ibid.* SAS observes (at 34-35) that U.S. courts found a prior English take-nothing judgment was not binding in the U.S. Similarly, English courts held that SAS's U.S. damages judgment was not binding in England. Pet. 32. On SAS's reasoning, the English courts could have responded to the U.S. damages judgment against WPL—which conflicted with a prior English take-nothing judgment—by *enjoining* SAS from collecting a penny *even in the U.S.* The right answer, however, is not to prohibit enforcement worldwide (like the Fourth Circuit) but to respect territorial sovereignty. The U.S. judgment should govern enforcement against U.S. assets, and the English judgment should govern enforcement against English assets. Pet. 30-32.

SAS's characterization (at 35) of the English PTIA judgment as a "direct attack" on a U.S. judgment is empty. The English courts saw SAS's U.S. judgment as directly attacking a prior English judgment holding SAS should take nothing. Pet. 31-32.[4] The principle that the All Writs Act permits courts to protect judgments, Br. in Opp. 35, does not mean they can reach across the sea at will. Where different sovereigns have "fundamentally opposed policies," comity counsels allowing each sovereign to pursue its policies within its own "territorial ju-

[4] WPL is not "relitigat[ing]" issues decided earlier in this case. Br. in Opp. 2. WPL's prior certiorari petition concerned whether U.S. courts should give *preclusive effect* to the English take-nothing judgment. See Pet. 13-27, *World Programming Ltd.* v. *SAS Inst., Inc.*, No. 17-1459 (U.S.). The issue now is whether U.S. courts may *enjoin enforcement* of a later-issued English judgment in England.

risdiction" rather than elevating one nation's policies at all costs. *Laker*, 731 F.2d at 936, 955; see Pet. 30.

The decision below does the opposite. It refuses to make allowance for English courts to provide a local damages remedy, and exempts SAS from having to observe English policies while operating in England.[5] Notably, SAS nowhere denies that the Fourth Circuit's logic invites *foreign* courts to enjoin enforcement of *U.S. judgments*, even *in the U.S.*, if they seem contrary to foreign judgments. See Pet. 31; *Hilton*, 159 U.S. at 192 (emphasizing "reciprocal" treatment of judgments). The issue has undeniable importance. At a minimum, the Court should seek the United States' views in light of the serious foreign-policy implications here.

CONCLUSION

The petition should be granted.

[5] Contrary to SAS's assertion (at 37), nothing bars WPL from citing an English decision that post-dates the Fourth Circuit's. See *Lebron* v. *Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995). WPL pressed its comity argument below, Pet.App. 15a-18a, 58a, and cites the English decision merely as additional support.

Respectfully submitted.

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