

No. _____

In the
Supreme Court of the United States

OUSSAMA EL OMARI,
Petitioner,
v.

INTERNATIONAL CRIMINAL POLICE ORGANIZATION,
ALSO KNOWN AS INTERPOL,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. Whether INTERPOL is entitled to immunity as a “public” international organization under 22 U.S.C. § 288 of the IOIA as interpreted by *Jam v. Int'l Fin. Corp.*, 139 S.Ct. 759 (2019), when INTERPOL’s treaty ratification failed and its existence is merely due to its own “1956 Constitution” which has no roots in state action?
- II. Even assuming, *arguendo*, INTERPOL is an immune public international organization under the IOIA, whether INTERPOL waived immunity under § 288a(b) by INTERPOL’s 2008 Agreement with France, when INTERPOL initially agreed to arbitration and then later in 2016 abrogated that arbitration right?

PARTIES TO THE PROCEEDINGS

Petitioner is Oussama El Omari, the appellant in the court below. The International Criminal Police Organization, also known as INTERPOL, was the appellee in the court below.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the United States Court of Appeals for the Second Circuit and the United States District Court for the Eastern District of New York:

- Oussama El Omari v. The International Criminal Police Organization - Interpol, No. 19-cv-1457 (E.D.N.Y.), judgment issued May 14, 2021.
- Oussama El Omari v. The International Criminal Police Organization – also known as INTERPOL, No. 21-1458 (2nd Cir.), judgment entered May 24, 2022.

There are no other proceedings in state or federal trial or appellate courts directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS.....	ii
STATEMENT OF RELATED PROCEEDINGS	ii
TABLE OF AUTHORITIES	vi
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW.....	1
JURISDICTION.....	1
STATUTORY PROVISIONS INVOLVED	1
INTRODUCTION.....	2
STATEMENT OF THE CASE.....	3
A. This Court interpreted 22 U.S.C. § 288 of the International Organizations Immunity Act in <i>Jam v. Int'l Fin. Corp.</i> , 139 S.Ct. 759 (2019) without defining or using the word “public” in its discussion of public international organizations, however all examples in <i>Jam</i> were treaty based and the rationale in <i>Jam</i> relied upon those treaty based charters which could expand or contract immunity, and INTERPOL is not treaty based and does not even have a state issued charter	3

B. Even assuming, <i>arguendo</i> , INTERPOL falls within the meaning of a “public” international organization under <i>Jam</i> , immunity can be waived under § 288a(b), and INTERPOL did so by INTERPOL’s 2008 Agreement with France, because INTERPOL initially agreed to arbitration of disputes and then later in 2016 abrogated that arbitration right	6
REASONS FOR GRANTING THE WRIT.....	7
I. Concern about INTERPOL is more than mainstream, both the Executive and Legislative Branches have spoken on transnational repression and INTERPOL. This case presents an opportunity to clarify immunity under <i>Jam</i> as to the definition of a “public” international organization, since the Second Circuit did not want to limit the meaning of “public international organizations” to require them to be treaty based even in light of the rationale and sweeping <i>dicta</i> in <i>Jam</i>	7
II. This case also presents an opportunity to clarify what constitutes a waiver of immunity by a public international organization as also discussed in <i>Jam</i>	13
CONCLUSION.....	15
APPENDIX	
Appendix A Opinion in the United States Court of Appeals for the Second Circuit (May 24, 2022)	App. 1

Appendix B Memorandum and Order in the United States District Court Eastern District of New York (May 13, 2021)	App. 25
Appendix C Judgment in the United States District Court Eastern District of New York (May 14, 2021)	App. 43

TABLE OF AUTHORITIES**CASES**

<i>Birch Shipping Corp. v. Embassy of United Republic</i> , 507 F. Supp. 311 (D.D.C. 1980) . . .	6, 14
<i>Cargill Int'l S.A. v. M/T Pavel Dybenko</i> , 991 F.2d 1012 (2d Cir. 1993)	6
<i>Frolova v. Union of Soviet Socialist Republics</i> , 761 F.2d 370 (7th Cir. 1985).	13
<i>Jam v. Int'l Fin. Corp.</i> , 139 S.Ct. 759 (2019)	<i>passim</i>
<i>Libyan American Oil Co. v. Socialist People's Libyan Arab Jamahirya</i> , 482 F. Supp. 1175 (D.D.C. 1980)	14
<i>Resource Dynamics Int'l, Ltd. v. General People's Committee</i> , 593 F. Supp. 572 (N.D. Ga. 1984) . . .	14
<i>Steinberg v. International Criminal Police Organization</i> , 672 F.2d 927 (D.C. Cir. 1981) . . .	11

STATUTES

22 U.S.C. § 288	1, 3, 4
22 U.S.C. § 288a(b)	2, 6, 14
28 U.S.C. § 1254(1)	1
28 U.S.C. § 1602(a)	4
28 U.S.C. § 1602(b)	4

CONSTITUTIONAL PROVISIONS

Article VI, Section 2 of the Constitution of the United States	13
-------------------------------------------------------------------------	----

LEGISLATIVE MATERIALS

Congressional Record. H.Rep.No. 94-1487, 94th Cong., 2d Sess., <i>reprinted in</i> [1976] U.S.Code Cong. & Ad.News 6604	14
-------------------------------------------------------------------------------------------------------------------------------------	----

Transnational Repression Accountability and Prevention (“TRAP”) Act. TRAP, 22 U.S. Code § 263b	11
------------------------------------------------------------------------------------------------------------	----

PUBLICATIONS

<i>Assistant Attorney General Matthew Olsen Delivers Remarks at Press Conference Announcing Transnational Repression Charges</i> , Justice News, Department of Justice (2022), https://www.justice.gov/opa/speech/assistant-attorney-general-matthew-olsen-delivers-remarks-press-conference-announcing	10
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

<i>Briton gets high-court go-ahead to sue Interpol chief over torture claim</i> , UK news, theguardian.com, Feb. 8, 2022	12
---------------------------------------------------------------------------------------------------------------------------------------	----

Diplomatic Note from Department of State to Foreign Diplomats and Missions, (July 1, 2022) url: https://www.state.gov/wp-content/uploads/2022/07/2022-07-01-Circular-Note-Counter-Transnational-Repression.pdf	10
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

Editorial Board, Opinion, <i>Hong Kong Exiles Fear an Interpol Notice</i> , Wall St. J., Feb 11, 2022	7
-----------------------------------------------------------------------------------------------------------------	---

<i>Joint Departments of State and Homeland Security Roundtable Affirms U.S. Commitment to Accountability for Transnational Repression</i> , U.S. Department of State Media Note (2022), https://www.state.gov/joint-departments-of-state-and-homeland-security-roundtable-affirms-u-s-commitment-to-accountability-for-transnational-repression/	8, 9, 10
<i>Matt Apuzzo, How Repressive World Leaders Turned Interpol Into Their Personal Weapon</i> , N.Y. Times, Mar. 23, 2019	8
<i>Out of Sight, Not out of Reach, The Global Scale and Scope of Transnational Repression</i> , Freedom House, February 2021, freedomhouse.org	8
<i>The UAE and Interpol – an analysis</i> , March 2021, Sir David Calvert-Smith (former UK Director of Public Prosecutions and former High Court Judge)	8
<i>Tools of Transnational Repression: How Autocrats Punish Dissent Overseas, Hearing Before the Comm. on Sec. and Coop. in Eur.</i> , 116th Cong., CSCE 116-1-7 (2019)	9, 10, 11
<i>Wife of former head of Interpol sues the police agency</i> , https://www.euronews.com/2019/07/08/wife-of-former-head-of-interpol-sues-the-international-police-agency	8
<i>Who will police Interpol?</i> , The Economist, December 4, 2021	8

PETITION FOR WRIT OF CERTIORARI

Petitioner, Oussama El Omari respectfully petitions this Court for a Writ of Certiorari to review the judgment in this case by the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the Second Circuit is reproduced in the appendix hereto (“App.”) at App. 1. The opinion of the District Court for the Eastern District of New York is reproduced at App. 25.

JURISDICTION

The judgment of the Second Circuit Court of Appeals was entered on May 24, 2022. Petitioner invokes this Court’s jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

For purposes of the International Organizations Immunity Act, (“the IOIA”) an “international organization” is defined as having three elements under 22 U.S.C. § 288 as:

[1] a *public* international organization [2] in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorization such participation or making an appropriation for such participation, and [3] which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges,

exemptions, and immunities provided in this subchapter. [emphasis added]

Immunity may be waived under 22 U.S.C § 288a(b), which provides in pertinent part:

...except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract."

INTRODUCTION

Petitioner Oussama El Omari, a U.S. citizen, brought this action in the United States District Court for the Eastern District of New York against the International Criminal Police Organization (commonly known as "INTERPOL") alleging negligent infliction of emotional distress and violation of his right to due process of law under the State of New York's Constitution, after INTERPOL refused to delete a "Red Notice" secretly requested by the UAE and secretly issued against him by INTERPOL based on an *in absentia* criminal conviction in one of the Emirates' Rulers Courts.

El Omari alleged below the conviction was done without basic tenets of due process and was an act of politically based retaliation related to an Emirati ruler succession rivalry, and INTERPOL's own internal rules required deletion of the Red Notice, but it refused. El Omari was detained briefly at JFK airport in New York based on the secret Red Notice, and to this day cannot travel internationally to work in his profession of running international free trade zones or to even visit his dying father in his native country of Morocco for

fear of his arrest and being forced to the UAE where he would be jailed, likely tortured and possibly die.

STATEMENT OF THE CASE

- A. This Court interpreted 22 U.S.C. § 288 of the International Organizations Immunity Act in *Jam v. Int'l Fin. Corp.*, 139 S.Ct. 759 (2019) without defining or using the word “public” in its discussion of public international organizations, however all examples in *Jam* were treaty based and the rationale in *Jam* relied upon those treaty based charters which could expand or contract immunity, and INTERPOL is not treaty based and does not even have a state issued charter.**

INTERPOL remains shrouded in secrecy. It was a mystery what exactly INTERPOL is until oral argument in the Second Circuit. In INTERPOL’s Corporate Disclosure Statement filed in its response brief it described itself as an “unincorporated entity that has no parent entities and is not otherwise owned by any publicly-held company.” Then during oral argument, INTERPOL’s counsel represented that it was an “unratified treaty international organization” with “no state issued founding charter” or words to that effect. INTERPOL’s counsel further represented that it was “established by its 1956 Constitution” but “not incorporated in any state” or words to that effect. As such, INTERPOL is a failed treaty based organization and has no state issued charter.

The Second Circuit erred in deciding this case without resolving what exactly INTERPOL is, noting the competing academic theories of a de facto international organization or an NGO. “We thus have no need to arbitrate between the competing academic theories.” Instead, the Second Circuit based its conclusion on INTERPOL’s membership. “... we conclude that a ‘public international organization’ as used in § 288 includes, at minimum, any international organization that is composed of governments as its members, regardless of whether it has been formed by international treaty.” This squarely conflicts with the rationale and examples in *Jam v. Int’l Fin. Corp.*, 139 S.Ct. 759 (2019).

The Second Circuit’s decision runs counter to sweeping *dicta* in *Jam* of examples of public international organizations. A close reading of *Jam* instructs that “public” unequivocally means an international organization created by treaty. This treaty requirement jives with the District Court’s dictionary definition “of or provided by the state,” although the District Court misapplied that definition.

Jam would also seem to instruct to look to the law of the FSIA for a definition or meaning of “public” so the two statutes develop in tandem. There appears to be no definition of “public,” but there is a definition of a “foreign state” which would seem to lend itself as the next best thing for consistency. “A ‘foreign state’, except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).” 28 U.S.C. § 1602(a). Section 1602(b) goes on to define “an agency or instrumentality of a

foreign state.” INTERPOL admittedly is not a governmental entity and does not meet either definition.

Therefore, reading the IOIA and the FSIA in tandem, as *Jam* requires, there must be consistency between a “public international organization,” a “foreign state,” and an “agency or instrumentality of a foreign state.” That consistency is found in the treaty based examples of the UN, IMF, WHO, and World Bank. INTERPOL, a mystery entity, is way out of this orbit. Interpol is an apple to the oranges in *Jam*.

The Second Circuit minimized the guidance of *Jam*, stating only “[i]t would not be appropriate for us to divine some limiting principle for what qualifies as ‘public’ based solely on the organizations mentioned in the *Jam* opinion as examples of that category. And while *Jam* states that an organization’s charter may in some cases override the IOIA’s default rules regarding immunity, *id.*, it did not suggest that all ‘public international organizations’ must be formed pursuant to such a charter.”

For these reasons, this Court should make clear that public international organizations must be treaty based to qualify for immunity under the IOIA.

- B. Even assuming, *arguendo*, INTERPOL falls within the meaning of a “public” international organization under *Jam*, immunity can be waived under § 288a(b), and INTERPOL did so by INTERPOL’s 2008 Agreement with France, because INTERPOL initially agreed to arbitration of disputes and then later in 2016 abrogated that arbitration right.**

Just as important as immunity, is its waiver. An otherwise immune public international organization may waive immunity under § 288a(b) of the IOIA. El Omari pointed out below that INTERPOL did so by Article 24(1) of Interpol’s agreement with France of April 14, 2008, which provided an express right of independent arbitration for disputes between Interpol and private parties. (“Unless the Parties in the dispute decide otherwise, any dispute between the Organization and a private party shall be settled in accordance with the Optional Rules for Arbitration between International Organizations and Private Parties of the Permanent Court of Arbitration....”).

The Second Circuit construed this language in INTERPOL’s 2008 Agreement with France as “more akin to the sorts of agreements to arbitrate in foreign countries that, without more, do not generally act as immunity waivers to permit suit in federal district court,” citing *Cargill Int’l S.A. v. M/T Pavel Dybenko*, 991 F.2d 1012, 1017 (2d Cir. 1993). But see, *Birch Shipping Corp. v. Embassy of United Republic of Tanzania*, 507 F. Supp. 311, 312 (D.D.C. 1980) (“... an agreement to arbitrate, standing alone, is sufficient to

implicitly waive immunity, as was recognized by Congress. That waiver cannot now be unilaterally withdrawn.” [internal citations omitted]).

For these reasons, the Court should speak on immunity waiver and that INTERPOL’s 2008 Agreement was a waiver of immunity under the IOIA.

REASONS FOR GRANTING THE WRIT

I. Concern about INTERPOL is more than mainstream, both the Executive and Legislative Branches have spoken on transnational repression and INTERPOL. This case presents an opportunity to clarify immunity under *Jam* as to the definition of a “public” international organization, since the Second Circuit did not want to limit the meaning of “public international organizations” to require them to be treaty based even in light of the rationale and sweeping *dicta* in *Jam*.

The Second Circuit acknowledged that INTERPOL “Red Notices” have become a tool of transnational repression by authoritarian governments. “More generally, the complaint alleges that the red notice system has been repeatedly abused by the UAE to attack political opponents and gain leverage in civil disputes. Similar concerns about nations abusing Interpol’s notice system appear in the news with some regularity. *See, e.g.*, Editorial Board, Opinion, *Hong Kong Exiles Fear an Interpol Notice*, Wall St. J., Feb 11, 2022, at A16 (“Authoritarian governments have abused the [red notice] system in the past to hound opponents

and limit their freedom of movement.”; Matt Apuzzo, *How Repressive World Leaders Turned Interpol Into Their Personal Weapon*, N.Y. Times, Mar. 23, 2019, at A10.”

See also, *Out of Sight, Not out of Reach, The Global Scale and Scope of Transnational Repression*, Freedom House, February 2021, freedomhouse.org, at 6, 51. (“Such Interpol abuse is, in fact, disturbingly common. In the last two decades, numerous governments have learned that ‘red notices’ and other notifications provide cheap and easy means of reaching exiles.... Despite years of civil society advocacy on the topic, and some improvements in the vetting process, Interpol abuse remains a widespread problem.” “Authorities in ... the UAE ... have all abused Interpol to detain opponents.” *Who will police Interpol?*, The Economist, December 4, 2021. *Wife of former head of Interpol sues the police agency*, [In a joint statement, the Department of State and Department of Homeland Security detailed a policy to hold governments and their agents accountable for transnational repression. *Joint Departments of State and Homeland Security Roundtable Affirms U.S. Commitment to Accountability for Transnational Repression*, U.S. Department of State Media Note \(2022\), <https://www.state.gov/joint-departments-of-state-and-homeland-security-roundtable-affirms-u-s->](https://www.euronews.com/2019/07/08/wife-of-former-head-of-interpol-sues-the-international-police-agency. The UAE and Interpol – an analysis, March 2021, Sir David Calvert-Smith (former UK Director of Public Prosecutions and former High Court Judge).</p></div><div data-bbox=)

commitment-to-accountability-for-transnational-repression/.

Transnational repression defines actions taken by authoritarian regimes to oppress individuals both abroad and within the United States. *Tools of Transnational Repression: How Autocrats Punish Dissent Overseas, Hearing Before the Comm. on Sec. and Coop. in Eur.*, 116th Cong., CSCE 116-1-7, 1 (2019) (statement of Hon. Roger F. Wicker, Co-Chairman, Comm. on Sec. and Coop. in Europe.).

Authoritarian governments target perceived dissidents through cyber-hacking, surveillance, and intimidation. *Id.* A common tool of transnational repression is the abuse of INTERPOL. *Id.* Authoritarian regimes will frequently use INTERPOL as a resource to intimidate, harass, and extradite dissidents. *Id.* Politically motivated INTERPOL Red Notices are common tools used by authoritarians seeking to stabilize their rule against perceived opponents. *Id* at 14 (Alexander Cooley, Dir. at Colum. Univ.'s Harriman Institute for the Study of Russ., Eurasia and Eastern Eur. and Claire Tow Professor of Pol. Sci., Barnard College answering Hon. Marc Veasey, Comm'r, Comm. on Sec. and Coop. in Eur.).

“[The] practice of transnational repression constitutes a wholesale assault on the rule of law internationally.” *Tools of Transnational Repression: How Autocrats Punish Dissent Overseas, Hearing Before the Comm. on Sec. and Coop. in Eur.*, 116th Cong., CSCE 116-1-7, 1 (2019) (statement of Hon. Roger F. Wicker, Co-Chairman, Comm. on Sec. and Coop. in Europe.). The Department of State stated as

much that the political use of INTERPOL is a violation of human rights. Diplomatic Note from Department of State to Foreign Diplomats and Missions, (July 1, 2022) url: <https://www.state.gov/wp-content/uploads/2022/07/2022-07-01-Circular-Note-Counter-Transnational-Repression.pdf>.

In a press release, the Department of Justice unsealed several prosecutions against foreign government officials for transnational repression. *Assistant Attorney General Matthew Olsen Delivers Remarks at Press Conference Announcing Transnational Repression Charges*, Justice News, Department of Justice (2022), <https://www.justice.gov/opa/speech/assistant-attorney-general-matthew-olsen-delivers-remarks-press-conference-announcing>. In Assistant Attorney General Olson remarks, he asserted that transnational repression is “antithetical to fundamental American values” and that such repression “undermine[s] our democracy, our economy, and our institutions.” *Id.* He went on to state that the U.S. will not tolerate such repression on its own soil. *Id.* Even more, the assistant attorney general declared that foreign governments cannot deny individuals the protection of U.S. law. *Id.* The FBI also makes clear that these abuses are violations of international and U.S. law. *Transnational Repression*, Fed. Bureau of Investigation, url: <https://www.fbi.gov/investigate/counterintelligence/transnational-repression> (last visited June 2022).

Further, Congress has spoken as to the misuse of INTERPOL. *Tools of Transnational Repression: How Autocrats Punish Dissent Overseas, Hearing Before the*

Comm. on Sec. and Coop. in Eur., 116th Cong., CSCE 116-1-7, 1(2019) (statement of Hon. Roger F. Wicker, Co-Chairman, Comm. on Sec. and Coop. in Europe.). Congress has also spoken on the issue of transnational repression vis à vis the Transnational Repression Accountability and Prevention (“TRAP”) Act. TRAP, 22 U.S. Code § 263b. § 263b(a) regards acts of transnational repression, specifically the abuse of INTERPOL for political means, a violation of international human rights norms. TRAP § 263b(a). The passage of TRAP as a law and the ongoing hearings and investigations of the Helsinki Commission give credence to the argument that the misuse of INTERPOL is a violation of common international legal norms.

Victims of INTERPOL abuse do not always run into a successful immunity defense. *Steinberg v. International Criminal Police Organization*, 672 F.2d 927 (D.C. Cir. 1981) (Ginsburg, J.) (“Taking into account the nature and quality of the alleged act and tortious injury, “the convenient administration of justice in all its aspects, including alternative forums,” and Steinberg’s interest, as a United States citizen and domiciliary, in vindicating his reputation as an individual without a criminal record, we hold that, whatever defenses Interpol and its Secretary General may have to the claim in suit, the litigation is not barred at the threshold for lack of *in personam* jurisdiction.”). “Interpol appears to occupy a rather ambiguous and shadowy existence in this country. It claims not to exist in the United States, yet it disseminates information here, maintains close liaison with United States law enforcement authorities, is in

effect represented in court by the U.S. Department of Justice and, if the complaint is to be believed - as it must be for present purposes - defames American citizens in the United States as well as elsewhere.” *Id.*, at 927.

In the United Kingdom, Ali Issa Ahmad has been given leave to sue the new INTERPOL chief, Maj. Gen. Ahmed Nasser al-Raisi of the UAE. *Briton gets high-court go-ahead to sue Interpol chief over torture claim*, UK news, theguardian.com, Feb. 8, 2022.

The *Jam* opinion does not use the phrase “public international organization” anywhere in discussing the IOIA. Chief Justice Roberts’ first sentence in *Jam* omitted the word “public” and referred instead to “international organizations *such as* the World Bank and the World Health Organization.” [emphasis added] *Jam.*, at 764. Justice Roberts stated “[t]hose privileges and immunities can also be expanded or restricted by a particular organization’s founding charter.” *Jam*, at 765. Justice Roberts suggested that “[i]f the work of a given international organization would be impaired by restrictive immunity, the organization’s charter can always specify a different level of immunity.” *Jam*, at 771. This could be a full or partial waiver, but the majority also considered it could be a higher level of immunity. “The charters of many international organizations do just that,” and Justice Roberts observed that “the IFC’s own charter does not state that the IFC is absolutely immune from suit.” *Id.* In contrast, it goes without saying that INTERPOL’s non-state issued 1956 Constitution has no legal effect on defining its level of immunity.

The examples given, and indication of the force of law of organizing papers, shows this Court in *Jam* assumed that what makes an international organization “public” is creation by treaty, and treaties are the “supreme law of the land” under Article VI, Section 2 of the Constitution of the United States. Here, Interpol is not created by treaty and doesn’t come remotely close to Justice Roberts’ examples of the World Bank, the World Health Organization, the International Monetary Fund, and the United Nations, which are all treaty based. *Jam*, at 771. Interpol is merely attempting to grossly inflate its image into something that it is not.

II. This case also presents an opportunity to clarify what constitutes a waiver of immunity by a public international organization as also discussed in *Jam*.

The Circuits are split on immunity waiver, and this case give the Court an opportunity to resolve what constitutes a waiver in light of *Jam*.

A close reading of *Jam* shows this Court required the lower courts to import waiver law under the FSIA so the two statutes are read consistently. Waiver law under both statutes must develop in “tandem.” “The IOIA should therefore be understood to link the law of international organization immunity to the law of foreign sovereign immunity, so that the one develops in tandem with the other.” *Jam*, at 769.

See also, *Frolova v. Union of Soviet Socialist Republics*, 761 F.2d 370, 377 (7th Cir. 1985), supporting El Omari’s contention that Interpol

expressly waived immunity for disputes with third parties under § 288a(b) by virtue of the specific language of Article 24(1) of the 2008 Agreement. “Courts have found an implicit waiver under § 1605(a)(1) in cases involving contracts in which a foreign state has agreed to arbitrate disputes without specifying jurisdiction in a particular country or forum....” *Id.*, at 377. See, the Congressional Record. H.Rep.No. 94-1487, 94th Cong., 2d Sess., *reprinted in* [1976] U.S.Code Cong. & Ad.News 6604 at 6617, 6627. See, *Birch Shipping Corp. v. Embassy of United Republic of Tanzania*, 507 F. Supp. 311, 312 (D.D.C.) (“... an agreement to arbitrate, standing alone, is sufficient to implicitly waive immunity, as was recognized by Congress. That waiver cannot now be unilaterally withdrawn.” [internal citations omitted]). See also, *Libyan American Oil Co. v. Socialist People’s Libyan Arab Jamahirya*, 482 F. Supp. 1175, 1178 (D.D.C. 1980); *Resource Dynamics Int’l, Ltd. v. General People’s Committee*, 593 F. Supp. 572, 575 (N.D. Ga. 1984).

The “without more” is INTERPOL’s later abrogation of this arbitration right which leaves persons like El Omari with no legal forum whatsoever. This suggests INTEPOL later regretted its 2008 Agreement. The prohibition against a unilateral withdrawal of an immunity waiver must be interpreted consistently with the similar waiver provision under the FSIA, Section 1605(a)(1). See Congress’ intent expressed at H.R. Rep. 94-1487, at 6617. (“a foreign state [cannot] go back on its promise and seek to revoke the waiver unilaterally.”)

A later 2016 Agreement between INTERPOL and France amended Article 24 by adding a new provision, sub-paragraph 3, which reads: “3. The procedure specified in paragraph 1 of the present Article shall not be applicable to disputes whose origins lie in the application or interpretation of the Organization’s Constitution or its appendices, including those disputes relating to the processing of data in INTERPOL’s Information System [i.e.. Red Notices] and those relating to the employment conditions of the Organization’s officials.” This abrogation was not discussed by the Second Circuit other than in passing.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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