

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

AENERGY, S.A. AND COMBINED CYCLE POWER PLANT SOYO, S.A.,
Applicants,

v.

REPUBLIC OF ANGOLA, MINISTRY OF ENERGY AND WATER OF
THE REPUBLIC OF ANGOLA, MINISTRY OF FINANCE OF THE
REPUBLIC OF ANGOLA, EMPRESA PUBLICA DE PRODUCAO DE
ELECTRICIDADE, EP, EMPRESA NACIONAL DE DISTRIBUICAO DE
ELECTRICIDADE, GENERAL ELECTRIC COMPANY,
GENERAL ELECTRIC INTERNATIONAL, INC., AND
GE CAPITAL EFS FINANCING, INC.,

Respondents.

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

**APPLICATION FOR EXTENSION OF
TIME TO FILE A PETITION FOR A WRIT
OF CERTIORARI**

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**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI**

To the Honorable Sonia Sotomayor, Associate Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the Second Circuit:

Under this Court’s Rules 13.5 and 22, Applicants Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A. (collectively, “AE”) respectfully request an extension of sixty (60) days to file a petition for a writ of certiorari. The petition will challenge the decision of the Second Circuit in *Aenergy, S.A. v. Republic of Angola*, 31 F.4th 119 (2d Cir. 2022), a copy of which is attached to this application as Exhibit A. In support of this application, AE states the following:

1. The Second Circuit issued its opinion on April 13, 2022. On June 16, 2022, it issued an order denying a timely petition of rehearing and rehearing *en banc*. A copy of that order is attached to this application as Exhibit B. Without an extension, the petition for a writ of certiorari will be due on September 14, 2022. With the requested extension, the petition would be due on November 14, 2022 (as November 13, 2022 falls on a Sunday). This Court’s jurisdiction will be based on 28 U.S.C. § 1254(1).

2. In the decision below, the Second Circuit affirmed the dismissal of a case brought against the Republic of Angola and certain state-owned agencies and instrumentalities for (*inter alia*) breach of contract, and against certain General Electric legal entities for tortious interference with those contracts, under the doctrine of *forum non conveniens* (“FNC”).

3. The Second Circuit's published decision case presents multiple, significant questions for review, and AE intends to raise one or more of them in its petition. First, the decision below places the Second Circuit in conflict with published decisions of the Fourth, Fifth, Sixth, and Ninth Circuits as to the adequacy of a foreign forum in multi-defendant cases. Before the panel decision below, the law was uniform and clear that, to be an adequate alternative forum, a single foreign court must be able to "take the case"—*i.e.*, to exercise jurisdiction over *all* defendants—rather than take jurisdiction over one or more, but not all, of multiple defendants sued in a U.S. action. *In re Bridgestone/Firestone, Inc.*, 420 F.3d 702, 706 (7th Cir. 2005). *E.g.*, *Galustian v. Peter*, 591 F.3d 724, 731 n.5 (4th Cir. 2010); *In re Air Crash Disaster Near New Orleans*, 821 F.2d 1147, 1165 (5th Cir. 1987) (en banc); *Watson v. Merrell Dow Pharm.*, 769 F.2d 354, 357 (6th Cir. 1985); *Gutierrez v. Advanced Med. Optics, Inc.*, 640 F.3d 1025, 1029 (9th Cir. 2011). Said otherwise, to dismiss a case, it was settled that "the case and *all of the parties* [must] come *within that alternative court's jurisdiction.*" Wright & Miller, *Federal Practice and Procedure* § 3828.3 (4th ed.) (emphasis added). Until the Second Circuit held otherwise, circuit courts uniformly held that FNC dismissal was proper only if all defendants may be sued in a single foreign court. In the decision below, however, the Second Circuit affirmed dismissal even though Applicants' claims would proceed in *two separate courts* in Angola. 31 F.4th at 131 ("AE's claims against Angola would proceed in the Supreme Court of Angola, while its claims against GE would proceed in Luanda Provincial Court.").

4. Second, the decision below elides Congress’s intent in enacting the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602, *et seq.* (“FSIA”), and, to the extent an FSIA case may be dismissed on FNC grounds, places the Second Circuit in conflict with the D.C. Circuit. To begin, as this Court has observed, “Congress has the undisputed power to decide, as a matter of federal law, whether and under what circumstances foreign nations should be amenable to suit in the United States.” *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 493 (1983) (emphasis added). Congress exercised that power in the FSIA by identifying “the types of actions for which foreign sovereigns may be held liable in a federal court.” *Id.* at 481, 496–97. The panel below violated constitutional separation of powers by holding that district courts have the prerogative to override Congress’s clear determination that cases such as this one should be heard in the United States, if district judges determine in their own discretion that the interests of the foreign sovereign defendant are greater than those of the United States.

5. Furthermore, in reaching this constitutionally improper conclusion, the Second Circuit split with the D.C. Circuit. That is because the D.C. Circuit has squarely rejected the argument that “a foreign sovereign’s interest in resolving disputes internally” should affect the FNC analysis or support dismissal of a case. *Simon v. Republic of Hungary*, 911 F.3d 1172, 1188 (D.C. Cir. 2018), *vacated and remanded on other grounds*, 141 S. Ct. 691 (2021). By contrast, the Second Circuit in the decision below embraced the opposite view, concluding that “principles underlying the *forum non conveniens* doctrine” may apply with “greater weight”

to U.S. lawsuits brought against foreign sovereigns—and indeed (according to the court below) did so in the present case. 31 F.4th at 127. *Compare Philipp v. Federal Republic of Germany*, 894 F.3d 406 (D.C. Cir. 2018) (under the FSIA, courts cannot give foreign sovereigns greater rights than private persons), *vacated and remanded on other grounds*, 141 S. Ct. 703 (2021).

6. In light of these and other important questions presented by the decision below, as well as the complexity of the case, AE respectfully requests a 60-day extension to file its petition for certiorari. The extension will permit counsel for AE adequately to investigate these and other potential legal questions to raise for this Court's consideration. Applicants' extension is also respectfully requested in light of the other commitments of counsel.

7. For the foregoing reasons, Applicants respectfully request that the due date for their petition for a writ of certiorari be extended to November 14, 2022.

Respectfully submitted,

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