

IN THE SUPREME COURT OF THE UNITED STATES

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No. 16-1094

REPUBLIC OF SUDAN, PETITIONER

v.

RICK HARRISON ET AL.

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae supporting petitioner and that the United States be allowed ten minutes of argument time. Petitioner has consented to the allocation of ten minutes of its argument time to the United States.

This case concerns the proper interpretation of Subsection (a) (3) of 28 U.S.C. 1608, which is part of the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1441(d), 1602 et

seq. Section 1608 provides four hierarchical and exclusive means for a litigant in the courts of the United States to serve a foreign state. 28 U.S.C. 1608(a)(1)-(4). Subsection (a)(3) provides for "a copy of the summons and complaint and a notice of suit \* \* \* to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. 1608(a)(3). The question presented in this case is whether service under Section 1608(a)(3) may be accomplished by requesting that the clerk of court mail the service package to the embassy of the foreign state in the United States, if the papers are directed to the minister of foreign affairs, or whether Section 1608(a)(3) requires that process be mailed to the ministry of foreign affairs in the country concerned.

The United States has filed a brief as amicus curiae supporting petitioner, arguing that Section 1608(a)(3) requires that process be mailed to the ministry of foreign affairs in the country concerned. In particular, the United States argues that permitting service to be mailed to the foreign state's embassy in the United States, if the papers are directed to the minister of foreign affairs, would violate the best reading of the statute's text and would be inconsistent with the United States' obligations under the Vienna Convention on Diplomatic Relations, done Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95, the United States' diplomatic interests, and the legislative history of the FSIA.

The United States has a substantial interest in the resolution of this case. Litigation against foreign states in U.S. courts can have significant foreign affairs implications for the United States, and can affect the reciprocal treatment of the United States in the courts of other nations. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case.

The United States has participated in oral argument as amicus curiae in prior cases involving interpretation of the FSIA. E.g., Rubin v. Islamic Republic of Iran, 138 S. Ct. 816 (2018); Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co., 137 S. Ct. 1312 (2017); OBB Personenverkehr AG v. Sachs, 136 S. Ct. 390 (2015); Republic of Argentina v. NML Capital, Ltd., 134 S. Ct. 2250 (2014); Samantar v. Yousuf, 560 U.S. 305 (2010). The United States' participation in oral argument is therefore likely to be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record

SEPTEMBER 2018