No. 17A-_____

IN THE
SUPREME COURT OF THE UNITED STATES

BUDHA ISMAIL JAM, KASHUBHAI ABHRAMBHAI MANJALIA, SIDIK KASAM JAM, RANUBHA JADEJA, NAVINAL PANCHAYAT, AND MACHIMAR ADHIKAR SANGHARASH SANGATHAN,

Applicants,

v.

INTERNATIONAL FINANCE CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the D.C. 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: Chief Justice John G. Roberts, Jr., Circuit Justice for the United States Court of Appeals for the D.C. Circuit:

Under this Court's Rules 13.5 and 22, Applicants Budha Ismail Jam, et al. request an extension of thirty (30) days to file a petition for a writ of certiorari in this case. Their petition will challenge the decision of the D.C. Circuit in *Jam v. International Finance Corp.*, 860 F.3d 703 (D.C. Cir. 2010), a copy of which is attached. In support of this application, Applicants state:

1. The D.C. Circuit issued its opinion on June 13, 2017, and it denied a timely petition for rehearing en banc on September 26, 2017. App. 21. Without an extension, the petition for a writ of certiorari would be due on December 26, 2017 (December 25, the 90th day, is an official holiday). With the requested extension, the petition would be due on January 25, 2017. This Court's jurisdiction will be based on 28 U.S.C. § 1254(1).

2. This case is a serious candidate for review. It involves the International Organizations Immunities Act (IOIA), 22 U.S.C. § 288 *et seq.* Enacted in 1945, the IOIA provides that entities the President designates as "international organizations" are entitled to "the same immunity from suit and every form of judicial process as is enjoyed by foreign governments." *Id.* § 288a(b). The question presented is whether the IOIA's "same immunity . . . as is enjoyed" language means that the rules governing immunity for international organizations track the "restrictive" theory of immunity now

codified in the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. §§ 1602-11, or whether the IOIA continues to provide the immunities that were available to foreign governments in 1945.

The Third Circuit has held that, as a matter of plain language and common sense, the IOIA tracks the FSIA. *See OSS Nokalva v. European Space Agency*, 617 F.3d 756, 762-64 (3rd Cir. 2010). "The considered view of the Department of State" is likewise that "the immunity of international organizations under the IOIA was not frozen as of 1945, but follows developments in the law of foreign sovereign immunity under the FSIA." App. 13 (Pillard, J., concurring); *see also id.* at 14 (collecting sources); *Broadbent v. Org. of Am. States*, 628 F.2d 27, 31 (D.C. Cir. 1980) (recognizing that United States expressed this view in amicus brief).

The D.C. Circuit, however, has squarely "rejected such an evolving notion of international organization immunity." App. 5 (citing *Atkinson v. Inter-American Dev. Bank*, 156 F.3d 1335, 1341 (D.C. Cir. 1998)). And it reaffirmed its view here that the IOIA gives international organizations "the immunity that foreign governments enjoyed *at the time the IOIA was passed*," which it believed afforded "'virtually absolute immunity.'" *Id.* 4 (quoting *Atkinson*, 156 F.3d at 1340) (emphasis added). Expressly acknowledging the conflict between the Third and D.C. Circuits, the Alaska Supreme Court has also taken the D.C. Circuit's position, holding that "the IOIA provides absolute

immunity to international organizations." *Price v. Unisea, Inc.*, 289 P.3d 914, 920 (Alaska 2012).

3. The question whether the IOIA incorporates the restrictive theory of immunity codified in the FSIA is an important and recurring issue. International organizations play an ever-increasing role in the economic landscape of this country and the world. Therefore, the question whether they are absolutely immune from any kind of lawsuit—no matter how strictly commercial their activities; no matter how egregious their actions; and no matter the views of the Executive Branch—has great significance. To provide just two examples: the issue has arisen in recent years in cases involving race discrimination in employment, *see Smith v. World Bank Corp.*, 694 Fed. Appx. 1 (D.C. Cir. 2017), and bankruptcy, *see Kaiser Group Int'l v. The World Bank*, 420 Fed. Appx. 2 (D.C. Cir. 2011).

4. This case presents an excellent opportunity to resolve this conflict. It arises out of a purely commercial activity, a project financed by respondent, the International Finance Corporation (IFC), which is headquartered in Washington, D.C. Specifically, the IFC provided $450 million in loans for construction of the Tata Mundra Power Plant in Gujarat, India. "In accordance with IFC's policy to prevent social and environmental damage," the loan agreement afforded the IFC "supervisory authority" over the project and "included an Environmental and Social Action Plan designed to protect the surrounding communities" from harm. App 3. Yet, due to the IFC's "inadequate

supervision," the plant's construction and operation "did not comply with the Plan." *Id.* And upon learning this, "the IFC did not take any steps to force the loan recipients into compliance." *Id.*

In 2015, Applicants—who are Indian farmers, fishermen, a trade union of fishworkers, and a local government entity—sued the IFC in the U.S. District Court for the District of Columbia. They bring claims for negligence, negligent supervision, public nuisance, private nuisance, trespass, and breach of contract. If the FSIA's restrictive theory of immunity applies, those claims are actionable because they are based on commercial activities performed in the United States. *See* 28 U.S.C. § 1605(a)(2). But the district court dismissed the claims on the ground that the IOIA provides the IFC absolute immunity from suit. *See Jam v. International Finance Corp.*, 172 F. Supp. 2d 104 (D.D.C. 2016). The D.C. Circuit affirmed, App. 1-20, and refused to rehear the case en banc, App. 21. The question presented is thus perfectly teed up for this Court and outcome determinative of the appeal.

4. This application for a 30-day extension seeks to accommodate Applicants' legitimate needs. Applicants have recently affiliated with undersigned counsel at the Stanford Supreme Court Litigation Clinic. The extension is needed for undersigned counsel and other members of the Clinic to fully familiarize themselves with the record, the decisions below, and the relevant statutes and case law. In light of the impending holidays and the Clinic's many other obligations—including a merits brief in *Lozman v. City of*

Riviera Beach, No. 17-21, that is due on December 28, 2017—the Clinic would not be able to adequately complete these tasks by the current due date.

5. For these reasons, Applicants request that the due date for their petition for a writ of certiorari be extended to January 25, 2017.

Respectfully submitted,

By: _____

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Dated: December 1, 2017