

App. No. _____

In the
Supreme Court of the United States

Republic of Sudan, Ministry of External Affairs and
Ministry of the Interior of the Republic of Sudan,
Petitioners,

v.

James Owens, et al.,
Respondents.

APPLICATION TO EXTEND TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

Christopher M. Curran
Counsel of Record
Nicole Erb
Claire A. DeLelle
WHITE & CASE
701 Thirteenth Street, NW
Washington, DC 20005
(202) 626-3600
ccurran@whitecase.com

*Counsel for Petitioners Republic of Sudan,
Ministry of External Affairs and Ministry of
the Interior of the Republic of Sudan*

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the District of Columbia Circuit:

Pursuant to Supreme Court Rules 13.5, 22, and 30.3, Petitioners the Republic of the Sudan and the Ministry of External Affairs and Ministry of Interior of the Republic of the Sudan (collectively “Sudan”) respectfully request that the time within which Sudan may file a Petition for a Writ of Certiorari in this matter be extended 59 days, until Friday, March 2, 2018.

The United States Court of Appeals for the District of Columbia Circuit issued its decision on July 28, 2017 (attached as Exhibit A). The Court of Appeals denied Sudan’s petition for rehearing *en banc* on October 3, 2017 (order attached as Exhibit B). Absent an extension of time, the Petition for a Writ of Certiorari would be due on January 2, 2018 (because the 90-day period for filing a Petition ends on January 1, a federal holiday, the Petition would be due the

following day). Petitioners are filing this Application at least ten days before that date (*see* Sup. Ct. R. 13.5). The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

BACKGROUND

This case involves a challenge to a decision of the United States Court of Appeals for the District of Columbia Circuit upholding, in part, multi-billion-dollar default judgments issued against Sudan in seven consolidated actions for claims of material support of terrorism arising under 28 U.S.C. § 1605A, the terrorism exception to sovereign immunity under the Foreign Sovereign Immunities Act of 1976, as amended (“FSIA”). Shortly after the default judgments were entered by the district court, Sudan retained counsel and timely appealed the judgments. Sudan also moved to vacate the judgments in the district court under Federal Rule of Civil Procedure 60(b). The district court denied vacatur and Sudan appealed. The Court of Appeals consolidated Sudan’s appeal of its vacatur motions with Sudan’s direct appeal of the default judgments.

Plaintiffs in the consolidated actions are victims and family members of victims of the August 1998 bombings of the U.S. Embassies in Kenya and Tanzania perpetrated by the terrorist organization al Qaeda and Osama Bin Laden. Plaintiffs allege that Sudan (and Iran) provided material support to al Qaeda and Bin Laden that proximately caused the attacks.

Sudan vehemently denies these allegations and expresses its deep condolences to the victims of these horrific attacks and their families. Sudan maintains, however, that it is immune from the jurisdiction of the courts of the United States under the FSIA and that, in Sudan’s absence, the district court committed critical errors in finding jurisdiction and liability, in conflict with decisions of this Court. As Sudan’s Petition will establish, the Court of Appeals compounded these critical errors in several respects, but, most glaringly, by failing to apply this

Court's decision in *Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co.*, 137 S. Ct. 1312 (2017), which was issued after briefing and oral argument before the Court of Appeals in the present case and only a few months before the Court of Appeals issued its decision.

Though the Court of Appeals set aside over \$4.3 billion in punitive damages awarded against Sudan, it ultimately upheld over \$2.1 billion in damages for plaintiffs with federal law claims under 28 U.S.C. § 1605A(c). An additional \$3.8 billion award of damages for certain plaintiffs' state law claims is pending resolution of a question of District of Columbia law certified to the District of Columbia Court of Appeals.

REASONS JUSTIFYING AN EXTENSION OF TIME

In support of its application for an extension of time to file its Petition, Sudan states as follows:

1. This case involves issues of profound importance in the area of terrorism litigation under the FSIA. Civil litigation against foreign sovereigns under the FSIA's terrorism exception has largely proceeded without the benefits of the adversarial system, as most sovereigns do not appear to defend these actions. Sudan's appearance in these consolidated actions and Sudan's repeated expression of its commitment to defending these actions on the merits therefore presents a rare opportunity to correct grave errors that resulted in the underlying default judgments of over \$10.2 billion.

2. Most critically, the United States Court of Appeals for the District of Columbia Circuit failed to apply this Court's recent decision in *Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co.*, 137 S. Ct. 1312 (2017), which held that plaintiffs must establish the jurisdictional elements of their claim under the FSIA as a *factual* matter, not as a

matter of mere possibility or as a “good argument to that effect,” even where the jurisdictional facts and merits are intertwined, as they are under § 1605A. 137 S. Ct. at 1316, 1319. Instead, the Court of Appeals applied an exceedingly low standard to affirm jurisdiction and liability against Sudan based only on the testimony of so-called terrorism experts acting as conduits for inadmissible hearsay. *E.g.*, Exh. A, at 37 (stating that: “Establishing material support and causation for jurisdictional purposes is a lighter burden than proving a winning case on the merits”) (citing *Agudas Chasidei Chabad of U.S. v. Russian Federation*, 528 F.3d 934, 940 (D.C. Cir. 2008)); *id.* at 59 (“But even if ‘particular statements in [an expert’s] opinion may not be adequately supported,’ the experts’ opinions ‘nonetheless’ provided ‘sufficient evidence in the record of the necessary jurisdictional facts.’ We agree with this conclusion.”) (citation omitted).

3. The decision of the Court of Appeals conflicts with this Court’s controlling precedent, in addition to decisions from other Circuit Courts. The decision is not merely an instance of injustice to Sudan, a foreign sovereign with which the United States has been warming relations. Exec. Order No. 13,761, 82 Fed. Reg. 5331 (Jan. 13, 2017) (lifting certain sanctions against Sudan). The decision also threatens reciprocal consequences for the United States as it defends itself in litigation in foreign courts. *E.g.*, *Helmerich*, 137 S. Ct. at 1321-22 (observing that lenient standards could be applied reciprocally “to embroil the United States in . . . litigation, based on legally insufficient assertions”).

4. The issues and record in these consolidated cases are sufficiently complex and weighty that the Court of Appeals issued a 129-page opinion. As a result, Sudan requires additional time to identify the issues for review and to prepare its Petition for a Writ of Certiorari. Counsel also must coordinate extensively with overseas client representatives during

the upcoming holiday period, as well as manage a heavy caseload with preexisting deadlines, which complicate counsel's ability to finalize the intended Petition by January 2.

5. An extension of time to file the Petition will not prejudice any of the parties because, regardless of whether the extension is granted, the case would not be heard until the next Term.

CONCLUSION

For the foregoing reasons, Sudan respectfully requests that this Court grant it a 59-day extension of time, to and including March 2, 2018, within which to file its Petition for a Writ of Certiorari.



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