

No. 21-401

In the
Supreme Court of the United States

ZF AUTOMOTIVE US, INC., GERALD DEKKER, AND
CHRISTOPHE MARNAT,

Petitioners,

v.

LUXSHARE, LTD.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

**SUPPLEMENTAL BRIEF
FOR PETITIONERS**

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939 F.3d 710 (6th Cir. 2019).....1

Luxshare, Ltd. v. ZF Automotive US, Inc.,
15 F.4th 780 (6th Cir. 2021)1

ARGUMENT

Petitioners file this supplemental brief to advise the Court that on November 4, the Sixth Circuit denied petitioners' unopposed motion for summary affirmance. *See* CA6 ECF No. 39-2.

Importantly, the Sixth Circuit did not dispute that petitioners' appeal is doomed to fail under that court's binding precedent in *Abdul Latif Jameel Transportation Co. v. FedEx Corp. (In re Application to Obtain Discovery for Use in Foreign Proceedings)* ("*Abdul Latif*"), 939 F.3d 710 (6th Cir. 2019); *see* Pet. 17-18; Pet. Reply 5. Instead, the Sixth Circuit denied the motion purely on procedural grounds, noting that under Sixth Circuit Rule 27(e), "this court generally does not consider the merits of an appeal in a summary fashion." *See* CA6 ECF No. 39-2 at 1.

The Sixth Circuit's procedural denial of the summary affirmance motion does not undermine the case for certiorari. Although as a technical matter the court of appeals has not issued a formal judgment, there is no doubt—and the parties agree—that *Abdul Latif* governs the meaning of Section 1782 in that court, and that Luxshare necessarily prevails under that precedent. *See* Pet. 17-18; Pet. Reply 5 (citing Luxshare statements).

Following the Sixth Circuit's ruling, on November 5, petitioners filed their Sixth Circuit merits brief (thirty-three days early). That brief again concedes that *Abdul Latif* is binding and that the district court's order must therefore be affirmed. CA6 ECF No. 40 at 9-11. Given the parties' agreement on these points—and the Sixth Circuit's own prior recognition that *Abdul Latif* forecloses petitioners' interpretation of Section 1782, *see Luxshare, Ltd. v. ZF Automotive*

US, Inc., 15 F.4th 780, 783 (6th Cir. 2021)—there is no question that petitioners will lose their Sixth Circuit appeal.

In these circumstances—and in light of the Court’s grant in, and subsequent dismissal of, *Servotronics, Inc. v. Rolls-Royce PLC*, No. 20-794—this Court should exercise its discretion to grant certiorari before judgment. *See* Pet. 13-19; Pet. Reply 3-4. Denying review would leave intact the entrenched circuit split over Section 1782 that gave rise to *Servotronics*, and would deprive courts and parties of clear guidance on this important issue of federal law. Certiorari is warranted.¹

¹ The Sixth Circuit’s denial of summary affirmance also noted the pending petition in *AlixPartners, LLP v. Fund for Protection of Investor Rights in Foreign States*, No. 21-518 (docketed Oct. 7, 2021). As petitioners have explained, however, *AlixPartners* does not involve a private arbitration and thus would not necessarily resolve the issue in this case or the circuit split that gave rise to *Servotronics*. *See* Pet. Reply 10-12. If the Court wants to clarify the meaning of Section 1782 in the context of investor-state relationships, it should grant the *AlixPartners* petition in addition to—not instead of—the petition here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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