

No. A _____

IN THE
SUPREME COURT OF THE UNITED STATES

BUDHA JAM, SIDIK KASAM JAM, RANUBHA JADEJA, NAVINAL PANCHAYAT, AND
MACHIMAR ADHIKAR SANGHARASH SANGATHAN,
Applicants,

v.

INTERNATIONAL FINANCE CORPORATION,
Respondent.

AND

MANJALIYA IKBAL, MANJALIYA HAJRABEN, PARIT ABEDABANU, JABEDABANU
MANEK AND MANJALIYA HARUN,
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 Jam, *et. al.* and Manjaliya Ikbal, *et. al.*, request an extension of forty-five (45) 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. Int'l Fin. Corp.*, 3 F.4th 405 (D.C. Cir. 2021), a copy of which is attached. App. 1-10. In support of this application, Applicants state:

1. The D.C. Circuit issued its opinion on July 6, 2021, and it denied a timely petition for rehearing *en banc* on August 13, 2021. App. 13. Without an extension, the petition for a writ of *certiorari* would be due on November 12, 2021 (November 11, the 90th day, is an official holiday). With the requested extension, the petition would be due on December 27, 2021. This Court's jurisdiction will be based on 28 U.S.C. § 1254(1).

2. This case is a serious candidate for review. Under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-11, a foreign sovereign is not immune from suit in any case "based upon" a commercial activity the sovereign carried on in the United States. 28 U.S.C. § 1605. The question presented is whether, in a case involving multiple actors with legal responsibility, a claim against a sovereign defendant is "based upon" a third party's conduct that most directly causes the injury, as the D.C. Circuit held below, or upon the

sovereign's own conduct that makes it liable, as every other court of appeals to address the question has concluded. *See, e.g., Petersen Energía Inversora S.A.U. v. Argentine Republic*, 895 F.3d 194 (2nd Cir. 2018); *Southway Constr. Co. v. Cent. Bank of Nigeria*, 198 F.3d 1210 (10th Cir. 1999); *Callejo v. Bancomer, S.A.*, 764 F.2d 1101 (5th Cir. 1985).

3. The question presented is an important and recurring issue. As prior cases show, sovereign entities sometimes participate with others in various sorts of harmful conduct, including fraud, *Dale v. Colagiovanni*, 443 F.3d 425, 428-29 (5th Cir. 2006); price-fixing, *In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917, 2018 U.S. Dist. LEXIS 16926 (N.D. Cal. Feb. 1, 2018); human trafficking, *Rodriguez v. Pan American Health Organization*, 502 F. Supp. 3d 200 (D.D.C. 2020); breach of contract, *Callejo*, 764 F.2d 1101; property expropriation, *Exxon Mobil Corp. v. Corporación CIMEX S.A.*, No. 19-cv-01277, 2021 U.S. Dist. LEXIS 75679 (D.D.C. Apr. 20, 2021) and evading sanctions. *United States v. Turkiye Halk Bankasi A.S.*, 2021 U.S. App. LEXIS 31806 (2d. Cir. October 22, 2021). If the FSIA immunizes sovereigns who do not most directly cause the harm from ordinary liability principles, then states and state-owned companies could conspire in or facilitate wrongdoing from U.S. territory, and leave victims, including American citizens and businesses, without recourse. Indeed, requiring that sovereigns must commit the most directly harmful act would immunize them even where both the sovereign and

the third party's conduct was commercial, and all of the conduct occurred in the United States.

4. This case presents an excellent opportunity to resolve this conflict. It arises out of a purely commercial activity, a private project financed by respondent, the International Finance Corporation (IFC), which is headquartered in Washington, D.C. Specifically, Applicants allege IFC provided \$450 million in loans for construction of the Tata Mundra Power Plant in Gujarat, India, that has destroyed Applicants' livelihoods. Applicants further allege that IFC financed the project despite knowing that it would cause irreversible harm and supervised and approved the plant's negligent design. IFC made all of these decisions at its headquarters in the United States. App. 3.

In 2015, Applicants—who are Indian farmers, fishermen, a trade union of fishworkers, and a local government entity—sued 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. Both the district court and the D.C. Circuit held that IFC is absolutely immune under the International Organizations Immunities Act, 22 U.S.C. § 288a(b), but this Court reversed, agreeing with Applicants that the Act allows organizations like IFC to be sued under the same circumstances that foreign sovereigns may be sued under the FSIA. *Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759 (2019).

The FSIA allows foreign sovereigns to be sued based on their commercial activities performed in the United States. *See* 28 U.S.C. § 1605(a)(2). Thus, if IFC's immunity is determined by reference to IFC's own conduct, Applicants' claims are actionable because they are based on IFC's commercial activities in the United States. But on remand, the district court dismissed the claims on the ground that they are "based upon" a third-party's operation of the plant. *Jam v. Int'l Fin. Corp.*, 481 F. Supp. 3d 1 (D.D.C. 2020). The D.C. Circuit affirmed, App. 1, and refused to rehear the case *en banc*. App. 13. The question presented is thus perfectly teed up for this Court and outcome determinative of the appeal.

4. This application for a 45-day extension seeks to accommodate Applicants' legitimate needs. The extension is needed for Applicants' undersigned counsel at the Stanford Law School Supreme Court Litigation Clinic to fully familiarize themselves with the proceedings below and research and draft the petition. The Clinic is currently involved in several other matters, including two to be argued in coming weeks: *Houston Community College System v. Wilson*, No. 20-804 (to be argued on November 2, 2021), and *Cummings v. Premier Rehab*, No. 20-219 (to be argued November 30, 2021). Without the requested extension, the Clinic may 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 December 27, 2021.

Respectfully submitted,



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