No. 25-____

In the Supreme Court of the United States

INDIAN HARBOR INSURANCE CO., ET AL., PETITIONERS

v.

TOWN OF VINTON, ET AL.

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

PETITION FOR A WRIT OF CERTIORARI

Shay Dvoretzky
Counsel of Record
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
1440 New York Ave. NW
Washington, DC 20005
202-371-7000
shay.dvoretzky@skadden.com

Parker Rider-Longmaid
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
500 Boylston St.
Boston, MA 02116

Raza Rasheed
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
2000 Ave. of the Stars,
Ste. 200N
Los Angeles, CA 90067

Timothy G. Nelson
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
One Manhattan West
New York, NY 10001

Raffi Melkonian
Thomas C. Wright
Eric B. Boettcher
Landon J. Francois
WRIGHT CLOSE BARGER
& GUZMAN, LLP
One Riverway, Ste. 2200
Houston, TX 77056

Counsel for Petitioners

QUESTION PRESENTED

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Convention), implemented by Chapter 2 of the Federal Arbitration Act (FAA), *see* 9 U.S.C. §§ 201–208, governs enforcement of international arbitration agreements in federal court (to which it permits removal). In *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 445 (2020), the Court held that the Convention permits "enforcement of arbitration agreements by nonsignatories under domestic-law equitable estoppel doctrines." But the Court reserved the question of "which body of law governs that determination." *Id.*

The courts of appeals have split 4–1 over whether federal or state law governs that equitable estoppel inquiry. Recognizing Congress's desire to "unify the standards by which [international] agreements to arbitrate are observed" when it acceded to the Convention, *see Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974), the First, Second, Fourth, and Ninth Circuits have held that federal common law supplies the relevant equitable estoppel principles. Here, in contrast, the Fifth Circuit held that when a party petitions to compel arbitration under the Convention, state law controls the equitable estoppel analysis.

The question presented is whether federal common law or state law determines whether a nonsignatory to an arbitration agreement governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards can use equitable estoppel principles to enforce the agreement.

PARTIES TO THE PROCEEDINGS

Petitioners are Indian Harbor Insurance Co., Lexington Insurance Co., QBE Specialty Insurance Co., Steadfast Insurance Co., United Specialty Insurance Co., General Security Indemnity Co. of Arizona, Old Republic Union Insurance Co., Safety Specialty Insurance Co., Certain Underwriters at Lloyds London, subscribing to Policy Nos. AMR-60898-02, AMR-42386-05, and AMR-41923-05, and HDI Global Specialty SE. Petitioners were Defendants-Appellants below.

Respondents are the Town of Vinton, the Police Jury of Cameron Parish, Cameron Parish Recreation #6, and the School Board of Cameron Parish. Respondents were Plaintiffs-Appellees below.

None of the parties are publicly listed on a stock exchange.

CORPORATE DISCLOSURE STATEMENTS

Indian Harbor Insurance Company. Indian Harbor Insurance Company ("IHIC") is a Delaware Corporation with its principal place of business located in Stamford, Connecticut. IHIC is a direct subsidiary of XL Specialty Insurance Company, and is an indirect subsidiary of Greenwich Insurance Company, X.L. America, Inc., XL Financial Holdings (Ireland) Limited, XL Bermuda Ltd, XL Group Ltd, and AXA SA. The ultimate indirect parent of IHIC is AXA SA (Euronext: CS), a company domiciled in France. No public company has an interest of 10% or more in Axa S.A.

Lexington Insurance Co. Lexington Insurance Co. is a direct, wholly-owned (100%) subsidiary of AIG Property Casualty U.S., Inc., which is a wholly-owned

(100%) subsidiary of AIG Property Casualty Inc., which is a wholly-owned (100%) subsidiary of American International Group, Inc., which is a publicly-held corporation (NYSE: AIG). No public company has an interest of 10% or more in American International Group, Inc.

QBE Specialty Insurance Co. QBE Specialty Insurance Co. is a subsidiary company indirectly owned by QBE Insurance Group Ltd. (ASX: QBE). For investors in the U.S., the company's American Depository Receipts trade on the OTC market under the stock symbols "QBEIF" and "QBIEY." HSBC Custody Nominees (Australia) Ltd., JP Morgan Nominees Australia Pty Ltd., and Citicorp Nominees Pty Ltd. each have an interest of 10% or more in QBE Insurance Group Ltd.

Steadfast Insurance Company. Steadfast Insurance Company (hereinafter "Steadfast") is a wholly owned subsidiary of Zurich American Insurance Company, a New York corporation. Zurich American Insurance Company is a wholly owned subsidiary of Zurich Holding Company of America, Inc., a Delaware corporation. Zurich Holding Company of America, Inc., is wholly owned by Zurich Insurance Company Ltd, a Swiss corporation. Zurich Insurance Company Ltd is directly owned by Zurich Insurance Group Ltd (SIX: ZURN), a Swiss corporation. Zurich Insurance Group Ltd is the only publicly traded parent company, with a listing on the Swiss stock exchange, and a further trading of American Depositary Receipts (ZURVY). No public company has an interest of 10% or more in Zurich Insurance Group Ltd.

United Specialty Insurance Co. United Specialty Insurance Co. is a wholly-owned subsidiary of

State National Insurance Company, Inc., and a wholly-owned indirect subsidiary of Markel Group Inc. (NYSE: MKL). No public company has an interest of 10% or more in Markel Group Inc.

General Security Indemnity Co. of Arizona. General Security Indemnity Co. of Arizona is a wholly-owned subsidiary of SCOR Reinsurance Co. and a wholly-owned indirect subsidiary of SCOR SE (Euronext: SCR). No public company has an interest of 10% or more in SCOR SE.

Old Republic Union Insurance Co. Old Republic Union Insurance Co. is a wholly-owned subsidiary of Old Republic International Corp. (NYSE: ORI). BlackRock, Inc. (NYSE: BLK) has an interest of 10% or more in Old Republic International Corp.

Safety Specialty Insurance Co. Safety Specialty Insurance Co. is a wholly-owned subsidiary of Safety National Casualty Corp. and a wholly-owned indirect subsidiary of Tokio Marine Holdings, Inc. (TYO: 8766). The Master Trust Bank of Japan, Ltd., has an interest of 10% or more in Tokio Marine Holdings, Inc.

Certain Underwriters at Lloyd's, London subscribing to Policies Nos. AMR-60898-02, AMR-42386-05, and AMR-41923-05. Certain Underwriters at Lloyd's, London subscribing to Policy Nos. AMR-60898-02, AMR-42386-05, and AMR-41923-05 are composed of Syndicates 33, 382, 510, 609, 623, 727, 1183, 1200, 1301, 1686, 1856, 1861, 1886, 1969, 2003, 2010, 2015, 2121, 2468, 2623, 2987, 2988, 3268, 4444, 5000, and 5886, the ownership of which are as follows:

- Syndicate 33 is an unincorporated association; no public company has an interest of 10% or more in Syndicate 33;
- Syndicate 382 is an unincorporated association, the sole corporate member of which is Hardy Underwriting Ltd., the ultimate parent of which is CNA Financial Corp. (NYSE: CNA), which is itself controlled by Loews Corp. (NYSE: L). No public company has an interest of 10% or more in Loews Corp.;
- Syndicate 510 is an unincorporated association, a majority interest in which is held by Tokio Marine Underwriting Ltd., whose ultimate parent company is Tokio Marine Holdings, Inc. No other public company has an interest of 10% or more in Syndicate 510;
- Syndicate 609 is an unincorporated association, the sole corporate member of which is Atrium Corporate Capital Ltd. No public company has an interest of 10% or more in Atrium Corporate Capital Ltd.;
- Syndicate 623 is an unincorporated association, the majority interest in which is held by Beazley Furlonge Ltd., for which the parent company is Beazley Furlonge Holdings Ltd, and for which the ultimate shareholder is Beazley plc (LSE: BEZ). No other public company has an interest of 10% or more in Syndicate 623;
- Syndicate 727 is an unincorporated association; no public company has an interest of 10% or more in Syndicate 727;

- Syndicate 1183 is an unincorporated association, the sole corporate member of which is Talbot 2002 Underwriting Capital Ltd. (UK), which is a wholly-owned (100%) subsidiary of Talbot Holdings, Ltd., which is a wholly-owned (100%) subsidiary of AIG Investments UK Limited, which is a wholly-owned (100%) subsidiary of AIG International Holdings GmbH, which is a wholly-owned (100%) subsidiary of AIG Property Casualty International, LLC, which is a wholly-owned (100%) subsidiary of AIG Property Casualty, Inc., which is a wholly-owned (100%) subsidiary of American International Group, Inc., which is a publicly-held corporation (NYSE: AIG). No public company has an interest of 10% or more in American International Group, Inc.;
- Syndicate 1200 is an unincorporated association; no public company has an interest of 10% or more in Syndicate 1200;
- Syndicate 1301 is an unincorporated association, the majority interest in which is held by Inigo Corporate Member Ltd., a wholly owned subsidiary of Inigo Ltd., a majority interest in which is itself held by Radian US Holdings Inc., a wholly-owned subsidiary of Radian Group Inc. (NYSE: RDN). BlackRock, Inc. has an interest of greater than 10% in Radian Group Inc. No other public company has an interest of 10% or more in Syndicate 1301, in Inigo Ltd., or in Radian Group Inc.;
- Syndicate 1686 is an unincorporated association, the sole corporate members of which are

subsidiaries of AXIS Capital Holdings Ltd. No public company has an interest of 10% or more in AXIS Capital Holdings Ltd.;

- Syndicate 1856 is an unincorporated association, the majority interest in which is held by IQUW Corporate Member Ltd., for which the ultimate parent is Starr International Company, Inc. No other public company has an interest of 10% or more in Syndicate 1856, and no public company has an interest of 10% or more in Starr International Company, Inc.;
- Syndicate 1861 is an unincorporated associations; no public company has an interest of 10% or more in Syndicate 1861;
- Syndicate 1886 is an unincorporated association; no public company has an interest of 10% or more in Syndicate 1886;
- Syndicate 1969 is an unincorporated association, the majority interest in which is held by subsidiaries of Apollo Partners, LLP. David Ibeson, Metacomet LLC, and SAC White are partners of Apollo Partners, LLP. No public company has an interest of 10% or more in Syndicate 1969;
- Syndicate 2003 is an unincorporated association, the sole corporate member of which is AXA XL Syndicate Ltd., for which the ultimate parent company is AXA XL;
- Syndicate 2010 is an unincorporated association, the majority interest in which is Cathedral Capital (1998) Ltd., for which the ultimate parent company is Lancashire Holdings Ltd. (LSE: LRE). No other public

company has an interest of 10% or more in Syndicate 210, and no public company has an interest of 10% or more in Lancashire Holdings Ltd.;

- Syndicate 2015 is an unincorporated association. The sole corporate member of Syndicate 2015 is SCOR Underwriting Limited, which is a direct wholly owned subsidiary of SCOR SE. Effective January 1, 2020, Syndicate 3500 accepted the reinsurance to close of the 2017 and prior underwriting years of account liabilities of Syndicate 2015. The sole corporate member of Syndicate 3500 is RiverStone Corporate Capital Ltd., whose ultimate parent company is RiverStone International Holdings Ltd., a majority ownership of which is itself held by CVC Capital Partners Strategic Opportunities II LP. No public company has an interest of 10% or more in CVC Capital Partners Strategic Opportunities II LP;
- Syndicate 2121 is an unincorporated association, the sole corporate member of which is Argenta Underwriting No. 9 Ltd., the ultimate parent company of which is Hannover Rück SE (FWB: HNR1). Talanx AG (FWB: TLX) owns a majority interest in Hannover Rück SE, and is itself majority-owned by Haftpflichtverband der Deutschen Industrie V.a.G. No other public company has an interest of 10% or more in Hannover Rück SE or Talanx AG, and no public company has an interest of 10% or more in Haftpflichtverband der Deutschen Industrie V.a.G.;

- Syndicate 2468 was an unincorporated association. On January 6, 2020, Syndicate 2468 was put into an orderly run-off. Effective January 1, 2023, the liabilities of Syndicate 2468's final remaining open year of account, 2020, were reinsured to close into Syndicate 3500;
- Syndicate 2623 is an unincorporated association, the majority interest in which is held by Beazley Furlonge Ltd., for which the ultimate parent is Beazley plc. No public company has an interest of 10% or more in Beazley plc. No other public company has an interest of 10% or more in Syndicate 2623;
- Syndicate 2987 is an unincorporated association, the sole corporate member of which is Brit UW Ltd. The ultimate owner of Brit UW Ltd. is Fairfax Financial Holdings Ltd. (TSX: FFH). No public company has an interest of 10% or more in Fairfax Financial Holdings Ltd.;
- Syndicate 2988 is an unincorporated association, a majority interest in which is held by Brit UW Ltd. The ultimate owner of Brit UW Ltd. is Fairfax Financial Holdings Ltd., and no other public company has an interest of 10% or more in Syndicate 2988;
- Syndicate 3268 is an unincorporated association, in which there are three entities that have more than 10% interest in the syndicate and have a publicly owned parent company: (1) Inter Hannover (No. 1) Ltd. is a wholly-owned subsidiary of Hannover Rück SE; (2) PartnerRe Corporate Member Ltd., whose

ultimate controlling party is Covea Cooperations S.A., and in which no public company has an interest of 10% or more; and (3) SCOR Underwriting Limited, a wholly owned subsidiary of SCOR SE;

- Syndicate 4444 is an unincorporated associations; no public company has an interest of 10% or more in Syndicate 4444;
- Syndicate 5000 is an unincorporated association; no public company has an interest of 10% or more in Syndicate 5000; and
- Syndicate 5886 is an unincorporated association; no public company has an interest of 10% or more in Syndicate 5886.

HDI Global Specialty SE. HDI Global Specialty is wholly owned by HDI Global SE, which is itself wholly owned by Talanx AG. Talanx AG is majority-owned by Haftpflichtverband der Deutschen Industrie V.a.G.

RELATED PROCEEDINGS

United States Court of Appeals (5th Cir.):

Town of Vinton et al. v. Indian Harbor Insurance Co. et al., Nos. 24-30035, 24-30748, 24-30749, 24-30750, 24-30751, 24-30756, & 24-30757 (Dec. 8, 2025)

United States District Court (W.D. La.):

Certain Underwriters at Lloyds London et al. v. School Board of Cameron Parish, No. 22-cv-5280 (Nov. 4, 2024)

School Board of Cameron Parish v. Indian Harbor Insurance Co. et al., No. 22-cv-5283 (Nov. 4, 2024)

Certain Underwriters at Lloyds London et al. v. Cameron Parish Recreation #6, No. 22-cv-5286 (Nov. 4, 2024)

Cameron Parish Recreation #6 v. Indian Harbor Insurance Co. et al., No. 22-cv-5287 (Nov. 4, 2024)

Certain Underwriters at Lloyds London et al. v. Police Jury of Cameron Parish, No. 22-cv-5345 (Nov. 4, 2024)

Cameron Police Jury v. Indian Harbor Insurance Co. et al., No. 22-cv-5348 (Nov. 4, 2024)

Town of Vinton v. Certain Underwriters at Lloyds London et al., No. 23-cv-240 (Dec. 14, 2023)

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TREATY AND OTHER AUTHORITIES

INTRODUCTION

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards—the New York Convention or simply Convention—is an international treaty that requires member states to enforce most arbitration agreements involving foreign parties. Congress implemented the Convention in Chapter 2 of the Federal Arbitration Act (FAA). *See* 9 U.S.C. §§ 201 -08. In *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 445 (2020), the Court held that the Convention permits "enforcement of arbitration agreements by nonsignatories under domestic-law equitable estoppel doctrines"—contract law rules designed to stop parties from effectively evading arbitration agreements by suing nonsignatories related to the parties. But the Court didn't decide "which body of law"—federal or state—"governs that" equitable estoppel "determination." *Id.* Here, the Fifth Circuit held that state law applies. That ruling was outcome-determinative, because the court then relied on it to deny Petitioners' motions to compel arbitration based on a Louisiana state law rule that bars insurance companies from using equitable estoppel to enforce arbitration agreements. It also was erroneous and created a 4–1 circuit split. So the time has now come for the Court to answer the important question it reserved in *GE Energy*.

1. This case concerns an insurance coverage dispute between ten insurance companies—eight domestic and two foreign (the Insurers)—and four local government units in Louisiana (Respondents). Respondents obtained coverage under a single program from all ten Insurers. Respondents claim that the Insurers breached the relevant insurance policies by paying too little to cover property damage they suffered from two hurricanes in 2020. Due to hurricane risk, most insurers won't cover coastal Louisiana properties anymore, making the policies at issue in this case some of the only options available. The relevant policies each contain broadly worded arbitration provisions. The crux of the dispute is whether the eight U.S.-based Insurers may enforce those arbitration agreements.

Louisiana law bars arbitration provisions in insurance policies delivered in Louisiana. *See* La. Rev. Stat. § 22:868(A)(2), (C). Ordinarily, state laws disfavoring arbitration are preempted by Chapter 1 of the FAA, but the federal McCarran-Ferguson Act provides that state insurance law controls over most federal statutes, *see* 15 U.S.C. § 1012(b). The McCarran-Ferguson Act doesn't apply to the New York Convention, however, as the courts of appeals have uniformly held. *Infra* p. 10. So the Insurers moved to compel arbitration under the Convention.

The Convention applies only when at least one of the parties to the arbitration agreement isn't a U.S. citizen. 9 U.S.C. § 202. Although Respondents obtained coverage from the Insurers under a single program, the lower courts interpreted the relevant policies as creating separate bilateral contracts between each Insurer and each Respondent. The courts thus held that none of the domestic Insurers are parties to any of the foreign Insurers' arbitration agreements. Accordingly, to meet the New York Convention's foreign parties requirement, the domestic Insurers sought to enforce the foreign Insurers' arbitration agreements using principles of equitable estoppel. They argued that Respondents shouldn't be able to avoid arbitration since they allege that all ten Insurers acted together to breach the policies based on the same conduct.

Under federal common law principles developed by the courts of appeals, the Insurers' equitable estoppel arguments would have succeeded. Indeed, the Fifth Circuit confirmed as much in a virtually identical case involving many of the same insurers, *see Bufkin Enterprises, L.L.C. v. Indian Harbor Insurance Co.*, 96 F.4th 726, 730-32 (5th Cir. 2024) (per curiam), decided before the Louisiana Supreme Court departed from those federal law rules, *Police Jury of Calcasieu Parish v. Indian Harbor Insurance Co.*, 395 So. 3d 717, 730 (La. 2024).

But the Fifth Circuit here held that state law, and not federal law, governs when nonsignatories seek to use equitable estoppel to compel arbitration under contracts subject to the New York Convention. App. 10a. The court thus applied "anti-arbitration" Louisiana caselaw holding that insurers can never use equitable estoppel to enforce other insurers' arbitration agreements. *Police Jury*, 395 So. 3d at 728, 730. That decision creates a circuit split, is wrong on its merits, and disrupts the important federal policies promoting enforcement of international arbitration agreements.

2. The Fifth Circuit's decision has split the courts of appeals 4–1 over whether federal or state law governs the equitable estoppel analysis in cases brought under the New York Convention. The First, Second, Fourth, and Ninth Circuits hold that federal common law applies, because the whole point of the Convention was to establish uniform policies for enforcing international arbitration agreements, and applying a patchwork of parochial state policies would undermine the United States' ability to honor that treaty commitment. *See InterGen N.V. v. Grina*, 344 F.3d 134, 143 (1st Cir. 2003); *Smith/Enron Cogeneration L.P., Inc. v. Smith Cogeneration International, Inc.*, 198 F.3d 88, 96 (2d Cir. 1999), *abrogated on other grounds by Granite Rock Co. v. International Brotherhood of Teamsters*, 561 U.S. 287 (2010); *Aggarao v. MOL Ship Management Co.*, 675 F.3d 355, 373-75 (4th Cir. 2012); *Setty v. Shrinivas Sugandhalaya LLP*, 3 F.4th 1166, 1168 (9th Cir. 2021). But the Fifth Circuit here held that "[s]tate contract law determines whether a contract can be enforced by or against non-parties using equitable estoppel" in cases brought under Convention. App. 9a.

The split is outcome-determinative. If the Fifth Circuit had applied federal common law principles, it would have required Respondents to arbitrate their claims against the Insurers as a matter of equitable estoppel. Indeed, the Fifth Circuit applied equitable estoppel to compel arbitration in a nearly identical case, involving many of the same insurers, that predated the Louisiana Supreme Court's holding that state law differs from federal law and doesn't allow insurers to invoke equitable estoppel to enforce arbitration agreements in insurance policies. *See Bufkin*, 96 F.4th at 730-32. But because the court instead applied Louisiana's anti–insurance-arbitration rules, the Insurers lost their arbitration rights. The Fifth Circuit then declined an opportunity to end the split it had just created when it denied rehearing en banc. App. 82a.

3. The Fifth Circuit's outlier rule is wrong. This Court's precedent holds that federal courts should provide a uniform rule of decision when an issue implicates "uniquely federal interests" and applying a patchwork of state laws would disrupt those interests. *Boyle v. United Technologies Corp.*, 487 U.S. 500, 507 (1988). Just so here. One of the "goal[s] of the Convention and the principal purpose[s] underlying American adoption and implementation of it, was to … unify the standards by which agreements to arbitrate are observed." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974). As Judge Tjoflat has explained, there is thus "a strong federal interest in making sure that the United States lives up to its treaty obligations" by providing the kind of uniform, predictable rules of decision the Convention was adopted to create. *Outokumpu Stainless USA, LLC v. Coverteam SAS*, No. 17-10944, 2022 WL 2643936, at *6 (11th Cir. July 8, 2022) (Tjoflat, J., concurring). "Applying varying state standards in cases falling within the Convention's ambit would be in tension with" Congress's "elemental purpose" of promoting uniformity. *InterGen*, 344 F.3d at 143.

The Fifth Circuit didn't even bother to conduct that choice of law analysis, asserting instead that *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009), resolves the question presented. App. 9a. It doesn't. *Arthur Andersen* held that state law controls the equitable estoppel analysis in cases brought under *Chapter 1* of the FAA based on language in that chapter contemplating that state law would apply. 556 U.S. at 630-31 (discussing 9 U.S.C. §§ 2, 3). But Chapter 1 doesn't implement the New York Convention. Rather, *Chapter 2* of the FAA implements the Convention, and that chapter doesn't contain the language from Chapter 1 that the Court relied on in *Arthur Andersen*. The Fifth Circuit's notion that *Arthur Andersen* resolved the question presented here, when this Court in *GE Energy* expressly left open whether federal or state law applies to cases brought under the Convention, 590 U.S. at 445, makes no sense.

4. The question presented is important. Litigants have frequently invoked equitable estoppel principles to enforce international arbitration agreements in the years since *GE Energy* was decided. *See infra* pp. 30-31. And as this case shows, whether federal or state law governs the equitable estoppel analysis is often outcome-determinative, particularly for insurers. Twenty states, the District of Columbia, and Puerto Rico have adopted some kind of rule barring or restricting arbitration with insurance companies. *See infra* pp. 31-32. If federal common law controls, those restrictions don't come into play. But if state law controls, whether insurers can invoke equitable estoppel principles will turn on where they were sued, undermining the Convention's goal of creating uniform standards to which all member states agreed.

This case is the perfect vehicle for resolving the question presented. The split is clear and outcome-determinative, and the question was squarely litigated and decided below. There aren't any factual disputes or alternative holdings that could complicate the Court's review.

Given the denial of rehearing en banc—from a court of appeals that routinely grants en banc review—only this Court can resolve the entrenched circuit split on this important question. The Court should grant review and reverse.

OPINIONS BELOW

The court of appeals' opinion (App. 1a-11a) is reported at 161 F.4th 282. One of the relevant district court orders is reported at 706 F. Supp. 3d 602. The other six are unreported, but available at 2024 WL 4668558, 2024 WL 4668559, 2024 WL 4668560, 2024 WL 5136902, 2024 WL 5145506, and 2024 WL 5162415.

JURISDICTION

1. The district court had jurisdiction over the Insurers' motions to compel arbitration under 28 U.S.C. § 1331, because "[a]n action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States." 9 U.S.C. § 203. As explained below, the Insurers' motions to compel arbitration fall under the Convention because they sought to enforce written arbitration agreements arising out of commercial relationships, and at least one party to the agreements isn't an American citizen. *Id.* §§ 202, 206.

2. This case encompasses seven civil actions. In four of the seven, the district court denied the Insurers' motions to compel arbitration. App. 17a-26a, 32a-41a, 47a-77a. The court of appeals had jurisdiction to review those orders under 9 U.S.C. § 16(a)(1)(C), which authorizes interlocutory appeals from orders declining to compel arbitration under the Convention. The district court dismissed the remaining three actions. App. 12a-16a, 27a-31a, 42a-46a. The court of appeals had jurisdiction to review those dismissals as final judgments under 28 U.S.C. § 1291.

3. The court of appeals entered its judgment on December 8, 2025, App. 1a-11a, and denied rehearing en banc on January 12, 2026, App. 78a-82a. On April 9, 2026, Justice Alito extended the time to file a petition for a writ of certiorari to May 12, 2026, and on May 7, 2026, further extended the time to file a petition to June 11, 2026. *See* 28 U.S.C. § 2101(c);

No. 25A1099 (U.S.). This petition is timely filed on June 11, 2026. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Chapter 2 of the FAA and relevant portions of the New York Convention are reproduced in the appendix. *See* App. 83a-86a.

STATEMENT

A. Legal background

1. "The New York Convention is a multilateral treaty that addresses international arbitration." *GE Energy*, 590 U.S. at 438. It was adopted "to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries." *Scherk*, 417 U.S. at 520 n.15.

Relevant here, Article II(1) of the Convention provides that each contracting state "shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship." Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, Article II(1), 21 U.S.T. 2518, 2519 (New York Convention). To be enforceable under the Convention, an arbitration agreement must be "signed by parties or contained in an exchange of letters or telegrams." Article II(2), 21 U.S.T. at 2519. And unlike Chapter 1 of the FAA, which makes the validity of arbitration agreements turn on state contract law, *see* 9 U.S.C. § 2, the Convention provides that an agreement's "valid[ity]" is determined by "the law to which the parties have subjected it or, failing any indication thereon, the law of the country where" any award on the agreement "was made," Article V(1)(a), 21 U.S.T. at 2520.

2. "In 1970, the United States acceded to the New York Convention, and Congress enacted implementing legislation in Chapter 2 of the FAA." *GE Energy*, 590 U.S. at 439; *see also* 9 U.S.C. §§ 201–208. As this Court has explained, "Chapter 2 grants federal courts jurisdiction over actions governed by the Convention, § 203; establishes venue for such actions, § 204; authorizes removal from state court, § 205; and empowers courts to compel arbitration, § 206." *GE Energy*, 590 U.S. at 439.

Taken together, the Convention, Congress's reservations to it at accession, and Chapter 2 of the FAA provide that a court must compel arbitration when (1) there is "an agreement in writing" to arbitrate the dispute, New York Convention Article II(1)-(2), 21 U.S.T at 2519; (2) the agreement provides for arbitration "in the territory of" a convention signatory, *id.*; (3) the agreement arises out of a "commercial" legal relationship, 9 U.S.C. § 202; and (4) a party to the agreement isn't an American citizen or the agreement has a "reasonable" nexus with a foreign country, *id.* §§ 202, 206.

3. The FAA typically preempts anti-arbitration state laws like the Louisiana law at issue here, La. Rev. Stat. § 22:868. *See, e.g.*, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341 (2011). But the FAA doesn't preempt Louisiana's anti-arbitration policy for insurance disputes because the federal McCarran-Ferguson Act provides an exception to preemption, stating that "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance," with exceptions not relevant here. 15 U.S.C. § 1012(b). But the McCarran-Ferguson Act doesn't apply to the New York Convention, as every court of appeals to have considered the issue has held. *See Certain Underwriters at Lloyds, London v. 3131 Veterans Blvd LLC*, 136 F.4th 404, 411 (2d Cir. 2025) (overruling prior precedent); *Green Enterprises, LLC v. Hiscox Syndicates Ltd. at Lloyd's of London*, 68 F.4th 662, 667 (1st Cir. 2023); *CLMS Management Services L.P. v. Amwins Brokerage of Georgia, LLC*, 8 F.4th 1007, 1016 (9th Cir. 2021); *ESAB Group, Inc. v. Zurich Insurance PLC*, 685 F.3d 376, 390-91 (4th Cir. 2012); *Safety National Casualty Corp. v. Certain Underwriters at Lloyd's, London*, 587 F.3d 714, 721-25 (5th Cir. 2009) (en banc). Thus, if the Convention and Chapter 2 of the FAA supply a federal equitable estoppel rule, it must override any contrary state law.

4. Equitable estoppel is a contract law doctrine that "allows a nonsignatory to a written agreement containing an arbitration clause to compel arbitration." 21 Williston on Contracts § 57:19 (4th ed. May 2026 update). The doctrine applies where a signatory "must rely on the terms of that agreement in asserting its claims against the nonsignatory or where the signatory to the written agreement raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." *Id.* In *GE Energy*, this Court held that New York Convention permits "enforcement of arbitration agreements by nonsignatories under domestic-law equitable estoppel doctrines." 590 U.S. at 445. But it didn't decide "which body of law governs that determination." *Id.*

B. Factual and procedural background

1. Petitioners—the Insurers—are a group of insurance companies. Among other things, they offer surplus line policies—*i.e.*, "insurance for unique risks." App. 6a. Respondents are four local government units in Louisiana. App. 12a, 27a, 42a, 57a. Each of the Respondents purchased surplus lines policies from a group of Insurers. *Id.* Eight of those Insurers are U.S.-based companies. The other two—Certain Underwriters at Lloyd's, London (CUL) subscribing to the relevant policies, and HDI Global Specialty SE (HDI), are based abroad.

Respondents' policies contain two provisions relevant here. *First*, the policies contain a clause requiring that "[a]ll matters in difference between the Insured and the Companies … in relation to this insurance, including its formation and validity, and whether arising during or after the period of this insurance, shall be referred to an Arbitration Tribunal in the manner hereinafter set out." App. 6a. *Second*, the policies contain a Contract Allocation Endorsement stating that each policy "shall be constructed as a separate contract between the Insured and each of the Underwriters." *Id.*

2. In 2020, two hurricanes struck Louisiana, damaging Respondents' properties. App. 57a. Afterwards, Respondents submitted claims to the Insurers to cover their hurricane-related losses. App. 18a. The Insurers paid Respondents based on their evaluation of Respondents' claims. *Id.* But Respondents were dissatisfied, arguing that they were due more money under the policies. *Id.*

3. Respondents brought four different lawsuits against the domestic Insurers in Louisiana state court, claiming that they breached the policies, and seeking various damages, statutory penalties, and other relief. App. 18a, 32a, 48a, 58a. Respondents either didn't sue the foreign insurers, or dismissed them with prejudice before service. *Id.*

After they were served, the remaining Insurers removed the cases to the Western District of Louisiana and moved to compel arbitration. *Id.* The Insurers also filed complaints against three of the four Respondents in the Western District of Louisiana seeking to compel arbitration, for a total of seven actions. App. 12a, 27a, 42a. The district court denied the Insurers' petitions to compel arbitration in the four removed actions, and dismissed the three other actions as moot. App. 12a, 18a, 27a, 32a, 42a, 48a, 58a.

The Insurers appealed all seven dispositions.

4. The Fifth Circuit consolidated the appeals and affirmed.

a. Before the Fifth Circuit, the parties' primary dispute was whether Respondents' policies involved foreign parties, as necessary to compel arbitration under 9 U.S.C. § 202. Respondents argued that based on the policies' Contract Allocation Endorsements, they each had separate, bilateral contracts with each Insurer, meaning neither of the two foreign Insurers was a party to the domestic Insurers' contracts. App. 8a. The domestic Insurers, in turn, argued that there were foreign parties to the policies for two reasons. *First*, all ten Insurers were parties to each policy, meaning there were foreign parties because CUL and HDI aren't U.S. citizens. App. 9a. *Second*, even if the policies were construed to create separate bilateral contracts between each Insurer and each Respondent, the domestic Insurers could invoke the arbitration provisions in CUL's and HDI's contracts under principles of equitable estoppel because Respondents asserted interdependent and concerted conduct by the Insurers. App. 10a.

b. The Fifth Circuit agreed with Respondents.

i. The court first held that because of the Contract Allocation Endorsements' language that the policies should "be constructed as a separate contract between the Insured and each of the Underwriters," the policies' arbitration clauses "create[] separate agreements to arbitrate" between each Respondent and each insurer. App. 8a. Because none of the Insurers is party to any other Insurer's arbitration agreement, the Court reasoned, the domestic Insurers' contracts with Respondents don't contain the foreign parties needed to compel arbitration under the New York Convention. App. 9a.

ii. The court next rejected the domestic Insurers' arguments that they could invoke CUL's and HDI's arbitration agreements under principles of equitable estoppel. Without analysis, the court held that "[s]tate contract law determines whether a contract can be enforced by or against nonparties using equitable estoppel" "under the Convention." *Id.* The court reached that result even though the Insurers had pointed out in their briefing that every court of appeals that had considered the question had held that federal common law governs. CA5 Dkt. 98 at 20-24, 27-28. And that choice of law holding was dispositive, the court explained, because the Louisiana Supreme Court has held that "a domestic insurer *may not* resort to equitable estoppel under state law to enforce an arbitration clause in another insurer's policy." *Police Jury*, 395 So. 3d at 730 (emphasis in original);

App. 10a. In short, by picking state law to govern the equitable estoppel analysis, the court effectively removed equitable estoppel as an option for the Insurers.

5. The Insurers petitioned for rehearing en banc. They explained that the panel decision splits from the decisions of other courts of appeals that apply federal common law, rather than state law, to the equitable estoppel analysis in New York Convention cases. CA5 Dkt. 169 at 7-11. But the Fifth Circuit denied rehearing and cemented the split. App. 82a.

REASONS FOR GRANTING THE PETITION

The Fifth Circuit's decision creates a 4–1 circuit split over whether federal or state law governs the equitable estoppel analysis in New York Convention cases. The First, Second, Fourth, and Ninth Circuits hold that federal common law must supply the rule of decision to honor the Convention's core purpose of creating uniform rules for enforcing international arbitration agreements. *See InterGen*, 344 F.3d at 143; *Smith/Enron*, 198 F.3d at 96; *Aggarao*, 675 F.3d at 373-75; *Setty*, 3 F.4th at 1168. The Fifth Circuit, in contrast, holds that the law of the forum state applies. App. 10a. The conflict is clear and outcome-determinative. The Fifth Circuit's own precedent shows that the Insurers' equitable estoppel argument would have succeeded under federal common law, but it was doomed by the Fifth Circuit's decision to apply Louisiana's anti-arbitration rules instead.

The Fifth Circuit's decision is wrong. Again, one of the "goal[s] of the Convention, and the principal purpose[s] underlying American adoption and implementation of it, was to … unify the standards by which agreements to arbitrate are observed." *Scherk*, 417 U.S. at 520 n.15. The only way to honor that powerful federal interest in uniformity and complying with the United States' treaty obligations is to apply uniform federal rules for the equitable estoppel analysis. There is no surer way to undermine Congress's purpose in acceding to the Convention than to subject international arbitration agreements to a patchwork of state law enforcement rules, many of which are explicitly hostile to arbitration by design.

The question presented is important, and this case is the ideal vehicle for resolving it. The question presented arises frequently and is often outcome-determinative, as this case shows. Whether state or federal law applies implicates important federal policies, arising from treaty obligations, designed to ensure uniformity and predictability in enforcing international arbitration agreements. And this case is the ideal vehicle because the question presented was squarely litigated and decided below, and once resolved, it will determine whether the Insurers can compel arbitration of Respondents' claims.

The Court should grant review.

I. The circuits have split 4–1 over whether federal or state law controls the equitable estoppel analysis in cases governed by the New York Convention.

The Fifth Circuit's decision created an outcome-determinative 4–1 circuit split on "which body of law"—state or federal—"governs" the equitable estoppel "determination" in cases arising under the New York Convention. *GE Energy*, 590 U.S. at 445. Only this Court can resolve the split.

A. Four courts of appeals hold that federal equitable estoppel principles determine whether nonsignatories can enforce arbitration agreements subject to the Convention.

The First, Second, Fourth, and Ninth Circuits hold that federal common law principles control when a nonsignatory invokes equitable estoppel to enforce an arbitration agreement governed by the New York Convention.

1. Begin with the Second Circuit, the first court to expressly consider the question presented. In *Smith/Enron*, a company called SCI entered into a joint venture with certain affiliates of the Enron energy conglomerate "to construct, finance and manage" a power plant in the Dominican Republic. 198 F.3d at 90. The parties' main project agreement contained a broad provision requiring arbitration of project-related disputes in New York. *Id.* When the parties' relationship broke down, however, SCI sued the Enron entities in the Dominican Republic alleging that it was fraudulently induced to enter the partnership and seeking sizable damages. *Id.* at 91. The Enron entities, in turn, "filed a petition in the Southern District" of New York under the New York Convention "to compel arbitration of the dispute with SCI and to enjoin SCI from prosecuting the Dominican Lawsuit." *Id.* The district court granted the petition. *Id.*

The Second Circuit affirmed. The court first addressed and rejected SCI's arguments that the district court should have applied New York's choice of law rules and Turks and Caicos' substantive law to determine whether the Enron entities could enforce the arbitration agreement. *Id.* at 96. The court explained that because "this [was] a federal question case under [the New York Convention] and not a diversity case," there was "no persuasive reason to apply the law of New York simply because it [was] the forum of [the] litigation." *Id.* The court then held that when courts "exercise jurisdiction under Chapter 2 of the FAA," they "have compelling reasons to apply federal law … to the question of whether an agreement to arbitrate is enforceable." *Id.* "[P]roceeding otherwise," the court explained, "would introduce a degree of parochialism and uncertainty into international arbitration that would subvert the goal of simplifying and unifying international arbitration law." *Id.*

Once it had "determined that federal law applie[d]," the court went on to hold that the Enron entities were entitled to compel arbitration under federal equitable estoppel principles. *Id.* at 97-98.

2. The First Circuit has likewise held that federal equitable estoppel principles determine whether nonsignatories can enforce arbitration agreements in New York Convention cases. In *InterGen*, a Dutch energy company, InterGen, developed a power plant project in the United Kingdom. 344 F.3d at 138. As part of the project, InterGen's affiliates bought turbines from affiliates of another energy company called ALSTOM. *Id.* The contracts between InterGen's affiliates and ALSTOM's affiliates each contained arbitration clauses. *Id.* at 139.

When the turbines failed to work as advertised, InterGen sued ALSTOM in Massachusetts state court alleging that ALSTOM had defrauded InterGen into selecting defective goods for its power plant. *Id.* ALSTOM removed the case to federal district court and moved to compel arbitration under the New York

Convention. *Id.* at 140. Among other things, ALSTOM argued that equitable estoppel principles allowed it to enforce its affiliates' arbitration agreements with InterGen's affiliates against InterGen. The district court declined to compel arbitration. *Id.*

The First Circuit affirmed. The court first held that "federal common law" "govern[ed]" whether InterGen was bound by its affiliates' arbitration agreements. *Id.* at 143. The court explained that because cases under the New York Convention invoke "federal question" jurisdiction, courts must "look to federal choice of law principles" to select the appropriate substantive law. *Id.* Under federal choice of law rules, "[i]f the federal statute in question demands national uniformity, federal common law provides the determinative rules of decision." *Id.* The Convention demands uniform federal rules, the court explained, because "[a] central goal of the New York Convention—and the driving force behind Congress's enactment of chapter 2 [of the FAA]—was to set out uniform rules governing the recognition and enforcement of international arbitration awards." *Id.* "Applying varying state standards in cases falling within the Convention's ambit would [thus] be in tension with" the Convention's "elemental purpose." *Id.* The court accordingly applied federal common law to ALSTOM's equitable estoppel arguments, ultimately concluding that InterGen wasn't bound by its affiliates' arbitration agreements. *Id.* at 145-46.

3. The Ninth Circuit likewise holds that federal common law determines whether nonsignatories can use equitable estoppel to enforce arbitration agreements governed by the New York Convention. In *Setty*, an Indian businessman and his company sued an incense manufacturer for trademark infringement.

3 F.4th at 1167. The manufacturer moved to compel arbitration under the Convention, invoking an arbitration agreement in a partnership deed that the manufacturer hadn't signed. The district court declined to compel arbitration. *Id.*

The Ninth Circuit affirmed. The court first rejected the manufacturer's argument that "Indian law applie[d]" to determine whether it could invoke the arbitration clause as a nonsignatory. *Id.* at 1168. Like the First and Second Circuits, the Ninth Circuit explained that because "[t]he New York Convention and its implementing legislation emphasize the need for uniformity in the application of international arbitration agreements," courts must "apply 'federal substantive law'" "in determining the arbitrability of federal claims by or against non-signatories to an arbitration agreement." *Id.* The court thus applied federal equitable estoppel principles to conclude that the manufacturer couldn't invoke the arbitration agreement. *Id.* at 1169.

4. Finally, the Fourth Circuit applies the same rule as the First, Second, and Ninth. In *Aggarao*, a Filipino seaman sued a Japanese shipping company and two car companies after he was severely injured in an accident at sea. 675 F.3d at 360. The defendants moved to compel arbitration under the New York Convention pursuant to an arbitration clause in the seaman's employment contract with the shipping company, arguing that the car companies could enforce the arbitration agreement using equitable estoppel principles even though they weren't parties to the employment contract. *Id.* at 361. Applying federal common law principles explained in its prior decisions in *Brantley v. Republic Mortgage Insurance Co.*, 424 F.3d 392, 396 (4th Cir. 2005), and *American Bankers*

Insurance Group, Inc. v. Long, 453 F.3d 623, 627 (4th Cir. 2006), the Fourth Circuit held that the seaman was required to arbitrate his claims with the car companies. 675 F.3d at 373-74.

B. The Fifth Circuit holds that state law determines whether nonsignatories can invoke equitable estoppel to enforce arbitration agreements subject to the Convention, and that rule is outcome-determinative here.

Splitting from the First, Second, Fourth, and Ninth Circuits, the Fifth Circuit held that "[s]tate contract law," not federal common law, "determines whether a contract" governed by the New York Convention "can be enforced by or against nonparties using equitable estoppel." App. 9a. Given Louisiana law's hostility toward insurance arbitration, that choice of law effectively decided the Insurers' petitions to compel arbitration. *See* App. 10a.

1. If Respondents had sued the Insurers in the First, Second, Fourth, or Ninth Circuits, the court would have granted the Insurers' motion to compel arbitration.

a. The New York Convention and Chapter 2 of the FAA provide that a court must compel arbitration when (1) there is "an agreement in writing" to arbitrate the dispute, New York Convention Article II(1)-(2), 21 U.S.T at 2519; (2) the agreement provides for arbitration "in the territory of" a convention signatory, *id.*; (3) the agreement arises out of a "commercial" legal relationship, 9 U.S.C. § 202; and (4) a party to the agreement isn't an American citizen, *id.* §§ 202, 206. Respondents don't dispute that the first three elements are satisfied here. And the Fifth Circuit held that each of the Insurers have individual bilateral contracts with Respondents that don't include any foreign parties. App. 9a. So the only question is whether the domestic Insurers can use principles of equitable estoppel to enforce the arbitration provisions in Respondents' contracts with CUL and HDI, the foreign Insurers. If so, the foreign-parties condition would be satisfied because CUL and HDI aren't U.S. citizens.

b. Under the federal common law principles that govern New York Convention cases in the First, Second, Fourth, and Ninth Circuits, equitable estoppel allows a nonsignatory to an arbitration agreement to compel arbitration with a signatory "when the signatory … raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." *Grigson v. Creative Artists Agency L.L.C.*, 210 F.3d 524, 527 (5th Cir. 2000); *see also* 21 Williston on Contracts § 57:19 (4th ed. May 2026 update).

That's this case. Respondents' conclusory complaints lump the domestic Insurers, CUL, and HDI together, and allege that all of the "Insurance Companies"—domestic and foreign alike—"failed to satisfy and fulfill their respective duties and obligations under" Respondents' surplus lines policies. *See, e.g.*, W.D. La. 23-cv-240 Dkt. 1-1 at 3. Because the complaint "raises allegations of substantially interdependent and concerted misconduct by both the nonsignator[ies]" (the domestic Insurers) "and one or more of the signatories to the contract" (CUL and HDI), federal equitable estoppel principles allow the Insurers to enforce the arbitration agreements in Respondents' contracts with CUL and HDI. *Grigson*, 210 F.3d at 527.

Indeed, the Fifth Circuit has already recognized that the Insurers' petitions to compel arbitration would succeed under federal common law principles in a materially identical case involving many of the same insurers at issue here. In *Bufkin*, an apartment building owner sued a group of foreign and domestic insurers after they denied hurricane damage–related claims. 96 F.4th at 728. Invoking the New York Convention, the insurers moved to compel arbitration under the policy's arbitration provision. As in this case, the building owner argued that the domestic insurers couldn't invoke the Convention because the policy created separate contracts with each insurer. *Id.* at 730-31. The domestic insurers countered that they could enforce the foreign insurers' arbitration agreements under equitable estoppel principles. *Id.*

The Fifth Circuit agreed with the domestic insurers. The court predicted (incorrectly, as it turned out) that Louisiana courts would follow federal equitable estoppel principles in determining whether nonsignatories can enforce an arbitration agreement. *Id.* at 730. Applying federal principles, the court held that equitable estoppel allowed the domestic insurers to enforce the foreign insurers' arbitration agreements because the building owner's complaint did "not differentiate between conduct of foreign and domestic insurers," meaning it "alleged substantially interdependent and concerted conduct by the domestic and foreign insurers." *Id.* at 731-32.

This case is almost a carbon copy of *Bufkin*. *See supra* pp. 11-12. It is thus crystal clear that the Insurers would have been entitled to compel arbitration if the Fifth Circuit had applied federal equitable estoppel principles.

2. The Insurers' petitions to compel arbitration failed solely because the Fifth Circuit applied state, rather than federal, equitable estoppel law.

a. Like many states' laws (*see infra* pp. 31-32), the Louisiana Insurance Code "void[s]" any language in insurance policies—like arbitration provisions—that would "[d]epriv[e] the courts of [Louisiana] of the jurisdiction or venue of action against the insurer." La. Rev. Stat. § 22:868(A)(2), (C). Because common law doctrines like equitable estoppel can't override Louisiana statutory law, the Louisiana Supreme Court has held that "a domestic insurer *may not* resort to equitable estoppel under state law to enforce an arbitration clause in another insurer's policy." *Police Jury*, 395 So. 3d at 730 (emphasis in original).

b. As noted (at 10), the federal McCarran-Ferguson Act permits state law to regulate insurance, including agreements to arbitrate insurance-related disputes. But the McCarran-Ferguson Act doesn't apply to the New York Convention, meaning the Convention supersedes contrary state law. The dispositive question for the Insurers' motions to compel arbitration was thus whether the Convention looks to federal common law or state law to determine whether a nonsignatory can enforce an arbitration agreement against a signatory.

The Fifth Circuit picked state law, contrary to the precedent of the First, Second, Fourth, and Ninth Circuits. The Fifth Circuit applied Louisiana's rule that "a domestic insurer *may not* resort to equitable estoppel under state law to enforce an arbitration clause in another insurer's policy," *id.*, because it concluded that "[s]tate contract law determines whether a contract can be enforced by or against nonparties using equitable estoppel" in cases governed by the "Convention." App. 9a. That was fatal to the Insurers' motion to compel arbitration because without the ability to compel arbitration under CUL's and HDI's policies, the domestic Insurers lacked an arbitration agreement with foreign parties that could allow them to invoke the Convention. *See* 9 U.S.C. § 202. And without the Convention, the domestic Insurers lack any vehicle to enforce their arbitration agreements that can overcome § 22:868.

The bottom line is that the Fifth Circuit's decision to apply state law to the equitable estoppel analysis, in conflict with the First, Second, Fourth, and Ninth Circuits' decisions, decided the Insurers' motions to compel arbitration. If the Fifth Circuit had applied the federal common law of equitable estoppel, the Insurers would have been entitled to invoke the arbitration clauses in CUL's and HDI's policies under the New York Convention. But because the Fifth Circuit instead applied Louisiana's ban on using equitable estoppel to enforce arbitration agreements in insurance policies, the Insurers couldn't compel arbitration.

C. Only this Court can resolve the conflict.

Only this Court can resolve the circuit split and ensure that courts enforce the New York Convention the same way nationwide. The courts of appeals won't resolve the split on their own. The Insurers cited the First, Second and Ninth Circuit's decisions applying federal common law in both their panel-stage brief and their petition for rehearing en banc. CA5 Dkt. 98 at 20-24, 27-28; Dkt. 169 at 7-11. Even so, the Fifth Circuit panel held that state—rather than federal—equitable estoppel law governs in Convention cases. App. 10a. And the full Fifth Circuit denied rehearing en banc, entrenching the split. App. 82a. The Court should grant review.

II. The Fifth Circuit's outlier rule is wrong.

The Fifth Circuit was wrong to apply Louisiana state law, rather than federal common law, to the equitable estoppel analysis. Federal common law applies when a subject implicates a "uniquely federal interest" and applying state law would conflict with federal policy. *Boyle*, 487 U.S. at 507. Enforcement of arbitration agreements under the New York Convention is a perfect example. Applying a patchwork of state equitable estoppel rules would conflict with the New York Convention's uniquely federal interest in unified standards for enforcing international arbitration agreements. *Scherk*, 417 U.S. at 520 n.15. So the First, Second, Fourth, and Ninth Circuits are correct to apply a uniform federal rule of decision, rather than whatever parochial anti-arbitration policies states might declare.

To reach the opposite result, the Fifth Circuit purported to rely on this Court's decision in *Arthur Andersen*. That was error. *Arthur Andersen* held that state law governs the equitable estoppel analysis for cases brought under Chapter 1 of the FAA based on language in Chapter 1 referencing state law. 556 U.S. at 630-31. There is no similar language in Chapter 2 of the FAA or the New York Convention, meaning there is no basis for applying *Arthur Andersen*'s rationale to Convention cases.

A. Federal common law controls the equitable estoppel analysis because applying state law would frustrate the New York Convention's uniquely federal objectives.

The First, Second, Fourth, and Ninth Circuits got it right—federal common law controls the equitable estoppel analysis in New York Convention cases. This Court has held that when Congress doesn't specify a rule of decision, federal courts should create one rather than default to state law if (1) the issue implicates a "uniquely federal interest"; and (2) "'significant conflict' exists between an identifiable 'federal policy or interest and the operation of state law.'" *Boyle*, 487 U.S. at 507. Both conditions are satisfied here.

First, enforcing the Convention implicates uniquely federal interests. To state the obvious, "[t]he New York Convention is an international treaty with international obligations." *Outokumpu*, 2022 WL 2643936, at *6 (Tjoflat, J., concurring). One of the "goal[s] of the Convention" and "the principal purpose[s] underlying American adoption and implementation of it[] was to … unify the standards by which agreements to arbitrate are observed." *Scherk*, 417 U.S. at 520 n.15. As Judge Tjoflat has explained, there is thus "a strong federal interest in making sure that the United States lives up to its treaty obligations" by providing the kind of uniform, predictable rules of decision the New York Convention was adopted to create. *Outokumpu*, 2022 WL 2643936, at *6 (Tjoflat, J., concurring).

Second, using state rules of decision would create a significant conflict with the New York Convention's policy of implementing uniform rules for enforcing international arbitration agreements. "[T]he delegates to the Convention voiced frequent concern that courts of signatory countries in which an agreement to arbitrate is sought to be enforced should not be permitted to decline enforcement of such agreements on the basis of parochial views of their desirability or in a manner that would diminish the mutually binding nature of the agreements." *Scherk*, 417 U.S. at 520 n.15. To avoid that result, the Convention provides that each contracting state "*shall* recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship." New York Convention Article II(1), 21 U.S.T. at 2519 (emphasis added); 9 U.S.C. § 202. The treaty also specifies that for "federal or non-unitary" countries like the United States that have "legislative jurisdiction" to adopt the Convention on behalf of the country, "the obligations of the federal Government" under the treaty "shall … be the same" as unitary countries—making clear member countries can't avoid their obligations merely because local government units don't like the Convention's pro-arbitration policy. New York Convention Article XI, XI(a), 21 U.S.T. at 2521; *see also* Restatement (Fourth) of Foreign Relations Law § 301(3) (2018) ("Treaties create international legal obligations for the United States, and limitations on the domestic enforceability of treaties do not alter the United States' obligation under international law to comply with relevant treaty provisions.").

Allowing states to use "parochial rules" like Louisiana's anti-arbitration legislation to "excuse" non-enforcement of arbitration agreements "would frustrate one of the *primary* objectives of the United States in becoming a signatory to the Convention: securing uniform standards by which agreements to arbitrate international disputes are governed." *Certain Underwriters at Lloyd's London v. Argonaut Insurance Co.*, 500 F.3d 571, 580 (7th Cir. 2007) (emphasis in original).

In short, there are "compelling reasons to apply federal law" to the equitable estoppel analysis. *Smith/Enron*, 198 F.3d at 96. "Applying varying state standards in cases falling within the Convention's ambit would be in tension with" the Convention's "elemental purpose." *InterGen*, 344 F.3d at 143.

B. ***Arthur Andersen*** doesn't support the Fifth Circuit's rule.

In deciding that state law controls the equitable estoppel analysis in New York Convention cases, the Fifth Circuit failed to conduct the choice of law analysis this Court's precedents require. Instead, the court of appeals concluded, without analysis or discussion, that this Court's decision in *Arthur Andersen*—which wasn't a Convention case—required it to apply state law. App. 9a.

That was wrong. In *Arthur Andersen*, the Sixth Circuit held that nonparties can never compel arbitration under Chapter 1 of the FAA. 556 U.S. at 629. In reversing the Sixth Circuit's decision, this Court held that the FAA's mandate that arbitration agreements are valid and enforceable "save upon such grounds as exist at law or in equity for the revocation of a contract," created "substantive federal law" that "explicitly retains" the "background principles of state contract law." *Id.* at 630. Because § 2 of the FAA "explicitly" references "an external body of law"—"such grounds 'as exist at law or in equity'"—"'[s]tate law' … is applicable to determine which contracts are binding under § 2 and enforceable under § 3." *Id.* at 630-31. The Court recognized that "'traditional principles' of state law allow a contract to be enforced by or against nonparties to the contract through 'assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel.'" *Id.* at 631. So, the Court reasoned, "the Sixth Circuit's holding that nonparties to a contract are categorically barred from" enforcing arbitration agreements was "error." *Id.*

Arthur Andersen doesn't apply to cases governed by Chapter 2 of the FAA and the New York Convention. To start, *Arthur Andersen* didn't involve an international arbitration agreement and didn't purport to analyze which body of law applies to nonparties' efforts to enforce international arbitration agreements. Indeed, this Court recognized in *GE Energy* that it hasn't decided "which body of law governs that determination." 590 U.S. at 445. It would be passing strange for the Court to purport to leave that question open if it had decided it in *Arthur Andersen*.

Moreover, unlike Chapter 1 of the FAA, Chapter 2 contains no language incorporating "an external body of [state] law." *Arthur Andersen*, 556 U.S. at 630. To the contrary, the Convention's language and drafting history shows that it was intended to create uniform standards for enforcing international arbitration agreements and avoid "parochial" anti-arbitration policies. *Scherk*, 417 U.S. at 520 n.15. So *Arthur Andersen*'s rationale for recognizing that state law governs nonparty enforcement under Chapter 1 of the FAA doesn't apply to Chapter 2.

Arthur Andersen doesn't resolve the question presented. The Fifth Circuit's unreasoned decision to extend *Arthur Andersen* to Chapter 2 of the FAA and the New York Convention was wrong.

III. The question presented is important, and this case is the ideal vehicle for resolving it.

A. The question presented arises frequently and is often dispositive.

1. Since this Court held that the New York Convention permits "enforcement of arbitration agreements by nonsignatories under domestic-law equitable estoppel doctrines" in *GE Energy*, 590 U.S. at 445, litigants frequently invoke equitable estoppel principles to enforce international arbitration agreements. *See, e.g.*, *Epicenter Loss Recovery LLC v. Burford Capital Ltd.*, No. 24-721, 2026 WL 810651, at *2 (9th Cir. Mar. 24, 2026) (mem.); *Anderson v. MSC Cruises S.A.*, No. 24-cv-60715, 2025 WL 957194, at *6 (S.D. Fla. Mar. 31, 2025); *Desarrolladora La Ribera, S. de R.L. de C.V. v. Anderson*, No. 24-cv-67, 2024 WL 5186600, at *23-24 (S.D.N.Y. Dec. 20, 2024); *MouseBelt Labs Pte. Ltd. v. Armstrong*, 674 F. Supp. 3d 728, 741-42 (N.D. Cal. 2023). That is particularly true in insurance cases, where policyholders frequently obtain coverage from both domestic and foreign insurers, and the domestic insurers invoke equitable estoppel to enforce the policyholders arbitration agreements with foreign insurers under the Convention. *See, e.g.*, *Arrive NOLA Hotel, LLC v. Certain Underwriters at Lloyds, London*, 776 F. Supp. 3d 404, 418 (E.D. La. 2025); *ADK Plaza-Centrum, LLC v. Independent Specialty Insurance Co.*, 740 F. Supp. 3d 485, 489-90 (E.D. La. 2024); *Parish of LaFourche v. Indian Harbor Insurance Co.*, Nos. 23-cv-3472, 23-cv-

3475, & 23-cv-3479, 2025 WL 754333, at *10 (E.D. La. Mar. 10, 2025); *Stonelake Condominium Ass'n v. Certain Underwriters at Lloyd's London*, 726 F. Supp. 3d 639, 648-49 (M.D. La. 2024); *General Mills Supplies, Inc. v. Underwriters at Lloyd's, London*, 712 F. Supp. 3d 793, 802 (E.D. La. 2024); *Chicken Mart, Inc. v. Independent Specialty Insurance Co.*, No. 23-cv-6661, 2024 WL 758396, at *4 (E.D. La. Feb. 23, 2024); *Manheim v. Independent Specialty Insurance Co.*, 704 F. Supp. 3d 730, 736 (E.D. La. 2023); *Bopp v. Independent Specialty Insurance Co.*, 657 F. Supp. 3d 859, 864 (E.D. La. 2023); *Kronlage Family L.P. v. Independent Specialty Insurance Co.*, 651 F. Supp. 3d 832, 842 (E.D. La. 2023); *Academy of Sacred Heart of New Orleans v. Certain Underwriters at Lloyd's London*, 651 F. Supp. 3d 822, 830 (E.D. La. 2023).

Whether the court applies federal or state equitable estoppel principles is often outcome-determinative, as this case shows. *Supra* pp. 21-24. Eleven states and Puerto Rico appear to mostly or entirely ban arbitration of insurance disputes. *See* Ark. Code Ann. § 16-108-233(b)(3); Haw. Rev. Stat. § 431:10-221(a)(2); Ky. Rev. Stat. Ann. § 417.050(2); La. Stat. Ann. § 22:868(A)(2); Mo. Rev. Stat. § 435.350; Neb. Rev. Stat. § 25-2602.01(f)(4); Okla. Stat. title 12, § 1855(D); S.C. Code Ann. § 15-48-10(b)(4); S.D. Codified Laws § 21-25A-3; Va. Code Ann. § 38.2-312(2); Wash. Rev. Code § 48.18.200(1)(b); P.R. Laws Ann. title 26, § 1119(1)(b). Another nine states and the District of Columbia restrict what kinds of insurance disputes are arbitrable. *See* Cal. Health & Safety Code § 1363.1; Md. Code Ann., Cts. & Jud. Proc. § 3-206.1(b); Miss. Code Ann. § 83-11-109; Mont. Code Ann. § 27-5-114(2)(c); R.I. Gen. Laws § 27-4-13; Utah Code Ann. § 31A-21-314(2)(b); 044-23 Wyo.

Code R. § 23-7; D.C. Code § 16-4403; *see also American Services Insurance Co. v. Passarelli*, 752 N.E.2d 635, 639 (Ill. App. 2001); *Nealy v. State Farm Mutual Automobile Insurance Co.*, 695 A.2d 790, 794 (Pa. Super. 1997). If federal common law applies to the equitable estoppel analysis in Convention cases, as the First, Second, Fourth, and Ninth Circuits have held, then these state laws don't come into play. But if state law governs the analysis, as the Fifth Circuit held below, then insurance companies in these states will seldom if ever be able to invoke "domestic-law equitable estoppel doctrines," *GE Energy*, 590 U.S. at 445, to compel arbitration in Convention cases.

The question presented is also important and outcome-determinative in cases that don't involve insurers. Federal equitable estoppel principles allow nonsignatories to compel arbitration when a signatory "must rely on the terms of that agreement in asserting its claims against the nonsignatory or where the signatory to the written agreement raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." 21 Williston on Contracts § 57:19 (4th ed. May 2026 update); *Grigson*, 210 F.3d at 527; *MS Dealer Service Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999), *overruled on other grounds by Arthur Andersen*, 556 U.S. at 631. But several states have narrower estoppel rules. For example, Illinois, Indiana, and New Jersey courts have rejected the federal concept of equitable estoppel and held that the doctrine applies only when one party has induced another to detrimentally rely on a promise to arbitrate. *See Ervin v. Nokia, Inc.*, 812 N.E.2d 534, 541-42 (Ill. App. 2004); *Guarantee Trust Life Insurance Co. v. Platinum Supplemental Insurance, Inc.*, 68 N.E.3d

481, 491-92 (Ill. App. 2016); *Doe v. Carmel Operator, LLC*, 160 N.E.3d 518, 525-26 (Ind. 2021); *Hirsch v. Amper Financial Services, LLC*, 71 A.3d 849, 860 (N.J. 2013). The Kentucky courts have adopted the same rule. *Ping v. Beverly Enterprises, Inc.*, 376 S.W.3d 581, 595 (Ky. 2012). The Texas courts reject the concerted conduct prong of the federal equitable estoppel test. *See In re Merrill Lynch Trust Co.*, 235 S.W.3d 185, 191-94 (Tex. 2007). And Alabama courts have held that nonsignatories may compel arbitration under equitable estoppel principles only where "the arbitration provision contains sufficiently broad language that it indicates that the nonsignatory was contemplated as a party." *Smith v. Mark Dodge, Inc.*, 934 So. 2d 375, 380 (Ala. 2006).

Because of these significant differences, whether courts apply federal or state equitable estoppel law will frequently determine whether nonsignatories can compel arbitration under arbitration agreements governed by the Convention. For example, in *Kim v. Jump Trading, LLC*, No. 23-cv-2921, 2025 WL 1359136, at *2 (N.D. Ill. May 9, 2025), the plaintiff alleged that the defendants and a foreign company called TFL conspired to manipulate the market price for a cryptocurrency. The plaintiff had an arbitration agreement with TFL, but not the defendants. The defendants moved to compel arbitration under the Convention, arguing that they could enforce TFL's arbitration agreement under principles of equitable estoppel because the plaintiff alleged that TFL and the defendants all participated in the same scheme. *Id.* That argument would have prevailed under federal common law. *See Grigson*, 210 F.3d at 527. But the district court instead applied Illinois state law, and therefore declined to compel arbitration because the plaintiff had not induced the defendants "to rely on the agreement's arbitration provision." *Kim*, 2025 WL 1359136, at *6-8.

2. The question presented has critical implications for important federal policies.

a. Arbitration agreements are supposed to ensure a predictable, reliable, and efficient means of resolving commercial disputes. For that reason, the FAA reflects an "emphatic federal policy in favor of arbitral dispute resolution." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985). Likewise, the Convention's goal was to create uniform standards for enforcing international arbitration agreements. *Scherk*, 417 U.S. at 520 n.15.

The justifications for protecting arbitration agreements "appl[y] with special force in the field of international commerce." *Mitsubishi Motors*, 473 U.S. at 631. Enforcing arbitration agreements promotes "international comity [and] respect for the capacities of foreign and transnational tribunals." *Id.* at 629. Moreover, because of the complexity of international transactions, "the need of the international commercial system for predictability in the resolution of disputes" is particularly critical. *See id.*

b. The Fifth Circuit's decision severely undermines the policies of certainty and uniformity the Convention and Chapter 2 of the FAA were designed to promote. Under the Fifth Circuit's rule, whether nonsignatories can enforce an international arbitration agreement turns on where they are sued, and whether the forum state has any parochial, anti-arbitration policies that might come into play. It is hard to imagine a more unpredictable, less uniform system for enforcing arbitration agreements and associated treaty obligations.

3. This Court often grants certiorari to ensure the consistent enforcement of arbitration agreements—particularly in the international context. *See, e.g.*, *GE Energy*, 590 U.S. at 445; *Mitsubishi Motors*, 473 U.S. at 631; *see also BG Group, PLC v. Republic of Argentina*, 572 U.S. 25, 32 (2018) (granting review "[g]iven the importance of the matter for international commercial arbitration"). It should do so here as well.

B. This case is an ideal vehicle for resolving the question presented.

The parties litigated below whether state or federal laws controls the equitable estoppel analysis, and the Fifth Circuit squarely decided that question. The Fifth Circuit's decision was outcome-determinative. *Supra* pp. 21-24. And there are no factual disputes or alternative holdings that would complicate the Court's review. This petition thus presents the ideal opportunity for the Court to take up the question it reserved in *GE Energy* and decide "which body of law governs" the equitable estoppel "determination" in cases invoking the Convention. 590 U.S. at 445.

CONCLUSION

The Court should grant the petition.

Respectfully submitted.

Shay Dvoretzky
Counsel of Record
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
1440 New York Ave. NW
Washington, DC 20005
202-371-7000
shay.dvoretzky@skadden.com

Parker Rider-Longmaid
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
500 Boylston St.
Boston, MA 02116

Raza Rasheed
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
2000 Ave. of the Stars,
Ste. 200N
Los Angeles, CA 90067

Timothy G. Nelson
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
One Manhattan West
New York, NY 10001

Raffi Melkonian
Thomas C. Wright
Eric B. Boettcher
Landon J. Francois
WRIGHT CLOSE BARGER
& GUZMAN, LLP
One Riverway, Ste. 2200
Houston, TX 77056

Counsel for Petitioners

June 11, 2026