No. 25-1383

In the Supreme Court of the United States

INDIAN HARBOR INSURANCE COMPANY, ET AL.,

Petitioners,

v.

TOWN OF VINTON, LOUISIANA, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Brief of *Amici Curiae* Dr. Crina Baltag, the Honorable Charles N. Brower, Professor Charles H. Brower II, Dr. Kabir Duggal, Professor Louis B. Kimmelman, Professor Alan S. Rau, Professor Robert H. Smit, and Professor Frédéric Sourgens, in Support of Petitioners

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<u>STATEMENT OF INTEREST OF *AMICI CURIAE*</u>[1]

Amici curiae are prominent scholars and/or practitioners of international arbitration law. This brief brings for the Court's consideration a perspective that the parties cannot: the collective judgment of scholars and practitioners who have spent their careers studying, teaching, arbitrating, and adjudicating disputes under the international arbitration framework, and who can speak to the practical and systemic consequences of permitting parochial state rules to displace federal common law in the enforcement of international arbitration agreements.

In particular, *amici* are positioned to explain why predictability and uniformity in the enforcement of arbitration agreements are essential pillars of the regime established by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 330 U.N.T.S. 3 (entered into force June 7, 1959) (the "Convention" or "New York Convention"), why a contrary rule would undermine the international commercial system's reliance on arbitration as a dependable means of dispute resolution, and why the Fifth Circuit's approach—which allows the forum state's anti-arbitration policies to determine whether nonsignatories may

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Additionally, pursuant to Supreme Court Rule 37.2, counsel of record for *amici* affirms that she served notice of their intent to file this brief on counsel of record for all of the parties on July 3, 2026.

enforce international arbitration agreements—is irreconcilable with the Convention's objectives. *Amici* respectfully urge the Court to grant the petition for *certiorari* and to reverse the decision below.[2]

Dr. Crina Baltag, FCIArb, PhD, LLM, MScis, is a Senior Lecturer (Associate Professor) at Queen Mary University of London's Centre for Commercial Law Studies and School of International Arbitration, where she teaches international commercial, investment, and construction arbitration, as well as international commercial litigation. She previously was Associate Professor in International Arbitration at Stockholm University and directed its Master in International Commercial Arbitration Law. Dr. Baltag is the Vice-Chair of the Board of the Arbitration Institute of the Stockholm Chamber of Commerce and the Chair of the Institute for Transnational Arbitration's Academic Council. A UNCITRAL delegate observer since 2018, she has published widely in international arbitration, and her *amicus* submissions have been accepted by the United States Supreme Court, including in *ZF Automotive US, Inc. v. Luxshare, Ltd.*

The Honorable Charles N. Brower has served since 1983 as Judge of the Iran-United States Claims Tribunal in The Hague and from 2014 to 2022 as the most-appointed American Judge *ad hoc* of the International Court of Justice. He also has served as Judge *ad hoc* of the Inter-American Court of Human Rights and as arbitrator or tribunal president at the

[2] The question whether, if the Court grants the petition for *certiorari* and reverses the decision below, Petitioners are entitled to arbitrate under the doctrine of equitable estoppel is not an issue raised in the petition for *certiorari* and *amici* take no position on it.

World Bank's International Centre for Settlement of Investment Disputes (ICSID). A Chartered Arbitrator and Arbitrator Member of London's Twenty Essex Chambers, Judge Brower is listed with multiple international arbitration institutions. He previously served as Deputy Legal Adviser and Acting Legal Adviser at the U.S. Department of State. In more than 60 years of international law and dispute resolution practice, he has authored or been cited in thousands of publications and advised the American Law Institute's foreign relations Restatement.

Charles H. Brower II is a Distinguished Service Professor of Law at Wayne State University Law School, Chair of the Institute for Transnational Arbitration, and Of Counsel to Miller Canfield's International Disputes Group. An elected member of the American Law Institute and listed in *Who's Who Legal: Arbitration* and its successor *Lexology Index: Arbitration* since 2014, he is the only scholar to have twice received the Smit-Lowenfeld Prize for outstanding international arbitration scholarship. Over more than twenty-five years, Professor Brower has served as arbitrator, counsel, or advocate under the AAA Commercial, AAA International, HKIAC, ICC, and SIAC Rules, and in advisory proceedings before the International Court of Justice. His scholarship has been cited by courts in the United States and Canada, including the Eleventh Circuit's unanimous *en banc* decision in *Corporación AIC, SA v. Hidroeléctrica Santa Rita SA*.

Dr. Kabir Duggal is a New York partner in Akin Gump Strauss Hauer & Feld LLP's international arbitration practice, focusing on investment arbitration, commercial arbitration, and public international law as arbitrator, mediator, legal expert, and counsel. He is a Senior Fellow and Advisor at Columbia Law School's Center for International Commercial and Investment Arbitration, a Lecturer-in-Law at Columbia, an adjunct professor at Fordham, and a Course Director and faculty member for Columbia's Chartered Institute of Arbitrators course. Dr. Duggal advises the U.N. OHRLLS on its Investment Support Program, works with the U.S. Department of Commerce's Commercial Law Development Program, and has trained governments on public international law and dispute resolution. He has published over 60 books and articles, delivered more than 500 arbitration speeches worldwide, and his writings are cited by arbitral tribunals and the Swiss Supreme Court.

Louis B. Kimmelman is a Professor of Practice at Brooklyn Law School, an independent arbitrator, and a New York-qualified lawyer with over forty years of experience resolving international commercial, construction, and investor-state disputes. He teaches international arbitration and litigation at Brooklyn Law School and Georgetown University Law Center and is a Fellow of the Chartered Institute of Arbitrators. Until December 2020, he was a Sidley Austin LLP partner and had been a co-leader of its global international arbitration practice. He chairs the New York International Arbitration Center, is an Adviser to the American Law Institute's Restatement of the U.S. Law of Commercial and Investor-State Arbitration, and speaks and writes frequently on international dispute resolution.

Alan S. Rau is the Mark G. & Judy G. Yudof Chair Emeritus in Law at the University of Texas School of Law, where he began teaching in 1971. He has published extensively on U.S. arbitration law and international commercial arbitration, including dozens of articles, books, and casebooks. His *The Allocation of Power between Arbitral Tribunals and State Courts* (2018), published in the *Recueil des Cours*, grew out of Hague Academy lectures. Professor Rau advised the American Law Institute's Restatement of the U.S. Law of International Commercial and Investor-State Arbitration, has taught in Canada, China, Switzerland, France, and the United Kingdom, and has served as an arbitrator in domestic and international disputes.

Robert H. Smit is the Edwin B. Parker Professor of Professional Practice at Columbia Law School, Director of Columbia's Center for International Commercial and Investment Arbitration, and Co-Editor-in-Chief of Columbia's American Review of International Arbitration. He previously co-chaired Simpson Thacher & Bartlett LLP's International Arbitration Practice. Professor Smit advised the American Law Institute's Restatement of the U.S. Law of International Commercial and Investor-State Arbitration and is a former member of the ICC International Court of Arbitration. He has chaired leading New York City Bar, CPR, and IBA arbitration committees and continues to serve regularly as independent arbitrator in international commercial and investment arbitrations worldwide.

Frédéric Sourgens is the James McCulloch Chair in Energy Law at Tulane Law School and Faculty Director of the Tulane Energy Law & Policy Center. He is among the foremost U.S. scholars of international arbitration, with more than sixty publications, including approximately a dozen books on arbitration and related subjects. His major works include *Evidence in International Investment Arbitration* (Oxford University Press), co-authored with Kabir Duggal and Ian A. Laird, and *Experiencing International Arbitration: Resolving Cross-Border Disputes* (West Academic), co-authored with Michael Nolan. Professor Sourgens served as Editor-in-Chief of Oxford University Press's Investment Claims reporter of arbitral awards, holds arbitration-focused editorial positions, is listed on the American Arbitration Association's Specialty Energy Panel, and has served as an expert in major global energy disputes before international fora.

SUMMARY OF ARGUMENT

The Court should grant the petition for *certiorari* because the decision below creates a Circuit split on a matter of substantial federal interest and importance. In concluding that the Petitioners were not entitled to invoke the doctrine of equitable estoppel in order to compel arbitration under an arbitration clause entered into by foreign insurers and that was, indisputably, covered by the New York Convention, the Fifth Circuit held that Louisiana state law, not federal common law, governs a nonsignatory's right to compel arbitration pursuant to the equitable estoppel doctrine. Specifically, the Fifth Circuit held that the arbitration clause at issue, as invoked by domestic insurers, concerned a subject matter that, under the local law of Louisiana, was not capable of settlement by arbitration and, for this reason, those domestic insurers were unable to use equitable estoppel to compel arbitration under that clause. In reaching that holding, the Fifth Circuit appeared to be of the view that its reliance on state law was mandated by this Court's decision in *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624 (2009).

The Fifth Circuit's holding was in error. It held that state law should govern issues of equitable estoppel even where the arbitration agreement at issue is covered by the Convention. That conclusion overlooked this Court's decision in *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 445 (2020), which expressly left open the question of whether, in cases concerning arbitration agreements subject to the Convention, state or federal common law applies to an equitable estoppel claim. In so doing, the Court below diverged, without explanation or analysis, from the clear consensus of courts considering the issue—including the Courts of Appeal for the First, Second, Fourth and Ninth Circuits—that federal common law should govern application of the equitable estoppel doctrine in Convention cases, thus contravening and undercutting the strong national and international interests in uniformity in decisions interpreting and applying the Convention. Moreover, that divergence was intentional: the Fifth Circuit "doubled down" on its position by both denying the petition for rehearing *en banc*[3] and continuing, in a subsequent decision, to adhere to it.[4]

This Court should grant the petition for *certiorari* and clarify that, in the context of arbitration clauses that are covered by the Convention, (a) issues of equitable estoppel are governed by federal common law and (b) in particular, federal, not state, law governs the question of whether the arbitration

[3] App. 78a-82a.

[4] *Crescent City Surgical Operating Co. v. Interstate Fire & Cas. Co.*, No. 25-30044, 2026 WL 1091579, at *4 (5th Cir. Apr. 22, 2026).

agreement on which the claim to equitable estoppel is predicated concerns a subject matter that is not arbitrable.

ARGUMENT

In *GE Energy*, this Court expressly left open the question of whether state law or federal common law governs when a nonsignatory invokes equitable estoppel principles in seeking to compel arbitration under an international arbitration agreement covered by Article II of the New York Convention. 590 U.S. at 445.

The correct answer to the question left open in *GE Energy* is straightforward: federal common law, not state law, governs whether an arbitration agreement subject to the New York Convention can be enforced by or against nonparties through equitable estoppel. But the court below, citing *Arthur Andersen* (which did not concern an arbitration agreement covered by the Convention) while ignoring *GE Energy* (which did), incorrectly held that state law should govern, without acknowledging or addressing that question.[5] It then applied Louisiana's categorical prohibition on arbitration clauses in insurance policies to deny the claim to equitable estoppel.

The decision below created a clear split between the Fifth Circuit on the one hand, and the First, Second, Fourth, and Ninth Circuits—and one judge of

[5] Until the Fifth Circuit issued the decision below in December 2025, there appeared to be a split in Louisiana district courts concerning this issue. *See Riverside Acad., Inc. v. Certain Underwriters at Lloyd's London*, No. CV 22-4395, 2025 WL 2625561, at *2 (E.D. La. Aug. 20, 2025) (discussing split and collecting cases).

the Eleventh Circuit by special concurrence on remand from *GE Energy*[6]—on the other. All of the latter apply federal common law to determine whether, in the context of an arbitration agreement that is covered by the Convention, the doctrine of equitable estoppel can be employed to compel arbitration.

This case presents an ideal vehicle to resolve the existing Circuit split. The issue is narrowly and concretely presented, and a ruling by this Court will provide needed guidance on a matter of substantial federal concern.

I. The Federal Interest that Exists Here Compels Application of Federal Common Law and Would Be Frustrated by the Application of State Law.

It is well-established that, in areas affecting uniquely federal interests where the application of state law could frustrate a federal purpose, federal common law applies. *Boyle v. United Techs. Corp.*, 487 U.S. 500, 504-07 (1988) (identifying a "'uniquely federal' interest" in the "the civil liabilities arising out of the performance of federal procurement contracts"); *see also Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981). Under *Boyle*, state law is displaced where: (1) "uniquely federal interests" are implicated, 487 U.S. at 504, 507; and (2) "a 'significant conflict' exists between an identifiable 'federal policy

[6] On remand, Judge Tjoflat's special concurrence concluded that courts "must apply federal common law in determining whether equitable estoppel applies in New York Convention cases." *Outokumpu Stainless USA, LLC v. Coverteam SAS*, No. 17-10944, 2022 WL 2643936, at *6 (11th Cir. July 8, 2022) (Tjoflat, J., concurring).

or interest and the [operation] of state law,"' or "the application of state law would 'frustrate specific objectives' of federal legislation," *id.* at 507; *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1231-33 (11th Cir. 2004) (applying federal common law to resolve issues under an agreement between the United States and Germany addressing litigation against German companies arising from the Nazi era; "[b]ecause our foreign relations could be impaired by the application of state laws, which do not necessarily reflect national interests, federal law applies"); *see also* GARY BORN, *The Law of Nations: Federal Common Law*, *in International Law in American Courts* 933, 980 (2026) ("[T]he application of state law to issues of either public or private international law directly conflicts with federal interests in national unity, speaking with one voice, complying with international law, participating in the international legal system, properly applying the international comity doctrine, and facilitating the Nation's foreign trade. Even apart from the Supremacy Clause's textual directive, these contemporary federal interests require that international law be treated as federal common law."); *cf. United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 318 (1936) ("As a nation with all the attributes of sovereignty, the United States is vested with all the powers of government necessary to maintain an effective control of international relations." (internal citation omitted)).

Under this standard, in deciding whether equitable estoppel was available to nonsignatories to compel signatories to arbitrate under an agreement covered by the New York Convention, the Fifth Circuit should have applied federal common law, not state law that conflicts with the Convention's national purpose.

A. There Is a Unique Federal Interest in Arbitrability Issues Arising under the New York Convention.

As this Court made clear in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, the United States has an "emphatic federal policy in favor of arbitral dispute resolution," and this policy "applies with special force in the field of international commerce." 473 U.S. 614, 631 (1985). That same pro-arbitration policy is embodied in the New York Convention, an international treaty in which the United States and other signatories committed to the enforcement of international arbitration agreements and awards.[7] Similarly, the Convention's implementing U.S. legislation—Chapter 2 of Title 9 of the United States Code, 9 U.S.C. §§ 201-208—was driven by a goal "to set out uniform rules governing the recognition and enforcement of international arbitration awards." *InterGen N.V. v. Grina*, 344 F.3d 134, 143 (1st Cir. 2003).

The Convention and its implementing legislation do not explicitly address all issues that can arise in the context of international arbitration. Where gaps exist, in the context of the United States, a consistent body of federal common law, rather than the local law of states, which may have policies that

[7] This "emphatic" pro-arbitration policy is further reflected in the U.S.'s accession to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("Washington Convention"), Mar. 18, 1965, 17 U.S.T. 1270, and the Inter-American Convention on International Commercial Arbitration ("Panama Convention"), Jan. 30, 1975, 1438 U.N.T.S. 245.

are less favorable or even antagonistic to international arbitration, should apply to fill those gaps.[8] This conclusion follows from both the Convention's underlying purpose and its written terms.

i. The Convention Aims to Encourage Uniformity

One overarching aim of the New York Convention is to encourage uniformity in decisions relating to international arbitration. In *Scherk v. Alberto-Culver Co.*, this Court wrote that

> [t]he goal of the Convention, and the principal purpose underlying American adoption and implementation of it, was 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.

417 U.S. 506, 520 n.15 (1974); *see also David L. Threlkeld & Co. v. Metallgesellschaft Ltd. (London)*, 923 F.2d 245, 250 (2d Cir. 1991) ("The goal of the Convention is to promote the enforcement of arbitral agreements in contracts involving international commerce so as to facilitate international business transactions on the whole"). Likewise, in *Mitsubishi*, the Court highlighted the "need of the international commercial system for *predictability* in the resolution

[8] *Cf. Mitsubishi*, 473 U.S. at 639 n.21 ("[t]he utility of the Convention in promoting the process of international commercial arbitration depends upon the willingness of national courts to let go of matters they normally would think of as their own.").

of disputes" concerning arbitration agreements covered by the New York Convention, and the necessity "for national courts to subordinate domestic notions of arbitrability to the international policy favoring commercial arbitration." 473 U.S. at 629, 639 (emphasis added); *see also Setty v. Shrinivas Sugandhalaya LLP*, 3 F.4th 1166, 1168 (9th Cir. 2021) ("The New York Convention and its implementing legislation emphasize the need for uniformity in the application of international arbitration agreements."); *Certain Underwriters at Lloyd's v. Argonaut Ins. Co.*, 500 F.3d 571, 580-81 (7th Cir. 2007) ("The Supreme Court has recognized that in the context of the *New York Convention*, uniformity of the law is of *paramount* importance"; concluding application of state-specific law would undermine this purpose); *InterGen*, 344 F.3d at 143 (noting that the New York Convention "demands national uniformity" (quoting *Bhd. of Locomotive Eng'rs v. Springfield Terminal Ry. Co.*, 210 F.3d 18, 26 (1st Cir. 2000))); *Smith/Enron Cogeneration Ltd. P'ship, Inc. v. Smith Cogeneration Int'l, Inc.*, 198 F.3d 88, 96 (2d Cir. 1999) (same), *abrogated on other grounds by Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287 (2010); *McCreary Tire & Rubber Co. v. CEAT S.p.A.*, 501 F.2d 1032, 1037 (3d Cir. 1974) (enactment of Chapter 2 of 9 U.S.C. "demonstrates the firm commitment of the Congress to the elimination of vestiges of judicial reluctance to enforce arbitration agreements, at least in the international commercial context"); Gary Born, *International Commercial Arbitration* § 5.01[B][2] (3d ed. 2021) ("one of the primary objectives of the Convention, as it was finally drafted, was to ensure the repudiation of 19th century legislative and judicial rules that singled out arbitration agreements for discriminatory disfavor and instead to guarantee that international arbitration agreements would be valid and enforceable in national courts, pursuant to uniform international standards," consistent with the Convention's "central objective of prescribing uniform international rules that facilitate the enforcement of international arbitration agreements.").

The Convention's goal of promoting uniformity in the enforcement of arbitration agreements subject to it is also recognized internationally. *See* G.A. Res. 62/65, *Fiftieth Anniversary of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, pmble., ¶¶ 2, 4, U.N. Doc A/RES/62/65 (Dec. 6, 2007) (noting the Convention's goal of "uniform interpretation," which provides "legal certainty" that decreases the risk of doing business "thus promoting international trade"); Filip J.M. De Ly, *Uniform Interpretation: What Is Being Done?*, *in* 61 *Autonomous Versus Domestic Concepts under the New York Convention* 13, 13 (Franco Ferrari and Friedrich Jakob Rosenfeld eds., 2021) (discussing "what efforts have been made in order to promote the uniform interpretation of the New York Convention"); Albert Jan van der Berg, *The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation*, p. 1 (Kluwer, 1981) ("The significance of the New York Convention for international commercial arbitration makes it even more important that the Convention is interpreted uniformly by the courts."); Int'l Council for Com. Arb. (ICCA), *ICCA's Guide to the Interpretation of the 1958 New York Convention: A Handbook for Judges*, p. 14, 64 (2d ed., 2024); *Hebei Imp. & Exp. Corp. v. Polytek Eng'g Co.*, [1999] 2 H.K.C.F.A.R. 111, ¶ 28 (H.K.) ("When a number of states enter into a treaty to enforce each other's arbitral awards, it stands to reason that they would do so in the realization that they, or some of them, will very likely have very different outlooks in regard to internal matters. And they would hardly intend, when entering into the treaty or later when incorporating it into their domestic law, that these differences should be allowed to operate so as to undermine the broad uniformity which must be the obvious aim of such a treaty and the domestic laws incorporating it."); *see also Kabab-Ji S.A.L v. Kout Food Gr.*, [2021] UKSC 48, ¶ 32 ("In keeping with that aim [of establishing a single, uniform set of rules governing the recognition and enforcement of international arbitration agreements and awards], it is desirable that the rules set out in article V(1)(a) for determining whether there is a valid arbitration agreement should not only be given a uniform meaning but should be applied by the courts of the contracting states in a uniform way.").

Manifestly, resolving issues of equitable estoppel in arbitration agreements covered by the New York Convention through application of federal common law would further the Convention's goal of promoting uniformity of decision.

ii. The Convention Requires the United States to Speak With One Voice

The New York Convention addresses arbitration agreements in Article II. That Article provides, as relevant here:

> 1. *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, whether

> contractual or not, concerning a subject matter capable of settlement by arbitration.
>
> . . .
>
> 3. The *court of a Contracting State*, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

New York Convention, Art. II(1), (3) (emphasis added). As further reflected in Article VIII of the Convention, the term "Contracting State" refers to a "State" that has acceded to the New York Convention. And, Article XI(a) of the New York Convention provides that "[w]ith respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States."[9] *See also* Restatement (Fourth) of

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[9] To be clear, in a federal system, the "one voice" principle refers to the establishment of minimum standards for the recognition and enforcement of arbitration agreements. If an individual state within a federal system chooses to adopt a rule that gives greater effect to arbitration agreements than the federal minimum, that would not offend the Convention's pro-arbitration policy. *See* UNCITRAL Secretariat, *Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Introduction*, p. 2, ¶¶ 5-7 (2016 ed.).

Foreign Relations Law § 301(3) (2018).

These provisions plainly evidence the understanding and expectation that, with respect to matters implicating the New York Convention, each Contracting State will speak with one voice. *See Japan Line, Ltd. v. Cnty. of Los Angeles*, 441 U.S. 434, 449 (1979) (negative Foreign Commerce Clause protects the National Government's ability to speak with "one voice" in regulating commerce with foreign countries (internal quotation marks omitted)).

As regards the United States, the "Contracting State" is *the United States*, not any of the individual states that exist within it. For matters not governed by statute, the United States speaks through federal common law.

B. Allowing the Decision Below to Stand Would Frustrate the Purposes of the New York Convention.

In *Scherk*, this Court warned that "[a] parochial refusal by the courts of one country to enforce an international arbitration agreement" would not only frustrate the purposes of the New York Convention in encouraging the uniform recognition and enforcement of international arbitration agreements, "but would invite unseemly and mutually destructive jockeying by the parties to secure tactical litigation advantages." 417 U.S. at 516-17.[10] The decision below is precisely

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[10] *See also id.* at 520 n.15 ("[i]n their discussion of [Article II of the New York Convention], the 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

such a "parochial refusal."

There is no dispute that the arbitration agreements that the Petitioners sought to invoke through equitable estoppel are covered by the New York Convention, as they are found in international insurance policies between Louisiana governmental entities and two foreign insurers. Under Article II(1) of the Convention, the relevant Contracting State—here, the United States—is required to recognize those arbitration agreements so long as they concern "a subject matter capable of settlement by arbitration."

In its decision below, the Fifth Circuit denied equitable estoppel on the ground that the Petitioners, as domestic insurers, were not entitled to invoke the foreign insurers' arbitration agreements by way of equitable estoppel because, under Louisiana's anti-arbitration state law, arbitration agreements in insurance policies are precluded. App. 9a-11a. In reaching that conclusion, the Fifth Circuit noted that the arbitration agreements were contained in international insurance agreements but, notwithstanding, focused on whether arbitration in policies issued in Louisiana was precluded under state law. App. 9a. Relying on the Louisiana Supreme Court's decision in *Police Jury of Calcasieu Par. v. Indian Harbor Ins. Co.*, 395 So. 3d 717, 729 (La. 2024), the court below stated that "equitable estoppel cannot contravene Louisiana public law [which] precludes the use of estoppel to compel arbitration here." App. 10a.

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agreements") (citing G. Haight, *Convention on the Recognition and Enforcement of Foreign Arbitral Awards: Summary Analysis of Record of United Nations Conference, May/June 1958*, pp. 24-28 (1958)).

In so doing, the Fifth Circuit did not speak with the "one voice" of the relevant Contracting State, the United States; instead, it spoke with the state-specific voice of Louisiana in furtherance of an anti-arbitration policy that was enacted by the local state legislature to advance local state interests, but does not reflect U.S. federal policy as regards international arbitration.

Under federal common law, there would have been no such bar against application of the equitable estoppel doctrine or *per se* prohibition on use of arbitration agreements in insurance policies that are covered by the Convention. *E.g.*, *Bufkin Enter. LLC v. Indian Harbor Ins. Co.*, 96 F.4th 726, 732 (5th Cir. 2024);[11] *ESAB Grp., Inc. v. Zurich Ins. PLC*, 685 F.3d 376, 391 (4th Cir. 2012) (holding that insurance disputes are not exempt from the Convention under South Carolina's anti-arbitration law and upholding order compelling arbitration); *Arrive Nola Hotel, LLC*, 776 F. Supp. 3d at 417 (following *Bufkin* even after *Police Jury* was issued and holding that the *Boyle* test

[11] The court below wrote that *Bufkin* "expressly relies on Louisiana courts and federal courts applying Louisiana law." But *Bufkin* applied federal equitable estoppel principles and determined that Louisiana law does not apply where "the arbitration agreement between the parties is subject to the Convention *through* equitable estoppel." 96 F.4th at 733. *See also Arrive Nola Hotel, LLC v. Certain Underwriters at Lloyds, London*, 776 F. Supp. 3d 404, 418 (E.D. La. 2025) (noting that *Bufkin* applied federal common law on the equitable estoppel issue); *Par. of LaFourche v. Indian Harbor Ins. Co.*, No. CV 23-3472, 2025 WL 754333, at *5 (E.D. La. Mar. 10, 2025) ("*Bufkin* instructs district courts to apply federal common law equitable estoppel to compel domestic insurers to arbitrate, even when the domestic insurers are nonsignatories to an agreement with foreign insurers.").

was satisfied because "[a]pplying the Louisiana statute banning arbitration, therefore, stands to frustrate the purposes of the Convention—to provide for the arbitral resolution of disputes and for the United States to faithfully live up to that obligation."). On the other hand, for such agreements, were state law to govern either the equitable estoppel doctrine in general or what matters are considered arbitrable when invoked under that doctrine, the *same* international arbitration agreements could be held both enforceable and unenforceable, depending on the states in which litigation is instigated, creating an uneven and fractured playing field and resulting in different outcomes based solely on state law.[12]

Also, within the United States as a whole, state common law on the applicability and parameters of equitable estoppel in the context of application differs significantly between states and can be more restrictive than federal common law.[13] Thus,

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[12] Along similar lines, a Louisiana District Court recently held that, while under the Convention foreign insurers were entitled to have claims asserted against them resolved through arbitration in accordance with the policy's arbitration agreement, under Louisiana state law domestic insurers were precluded from invoking that same arbitration agreement under the doctrine of equitable estoppel. *Riverside Acad., Inc.* 2025 WL 2625561, at *3 (applying *Police Jury* to the effect of not allowing domestic insurers to arbitrate but leaving a stay of litigation in place for the foreign insurers).

[13] *See generally* Matthew Berg, *Equitable Estoppel to Compel Arbitration in New York: A Doctrine to Prevent Inequity*, 13 Cardozo J. Conflict Resol. 169, 173 (2011) (describing two "strands" of equitable estoppel and how different state courts adopt them and concluding "[i]t is clear, therefore, that there are considerable disagreements over equitable estoppel theory within each particular state, among the states, and between the states and the federal government."); 22 A.L.R.6th 387,

promoting the Convention's goal of uniformity of decisions requires that federal common law apply when an equitable estoppel issue arises in the context of an arbitration agreement that is covered by the Convention.

II. THE DECISION BELOW IS CONTRARY TO THE WEIGHT OF FEDERAL AUTHORITY.

Consistent with the principles articulated in Section I above, the clear weight of federal authority is that, in deciding equitable estoppel issues relative to arbitration agreements covered by the Convention, federal common law, not state law, should apply. *E.g.*, *Outokumpu Stainless USA, LLC*, 2022 WL 2643936, at *6 (Tjoflat, J., concurring); *Setty*, 3 F.4th at 1168 (explaining that "[i]n cases involving the New York Convention, in determining the arbitrability of federal claims by or against non-signatories to an arbitration agreement, we apply 'federal substantive law,' for which we look to 'ordinary contract and agency principles.'");[14] *Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355 (4th Cir. 2012) (applying general principles of equitable estoppel to compel a nonsignatory to an arbitration agreement to arbitrate his claims); *InterGen*, 344 F.3d at 143-44 ("As between

Application of Equitable Estoppel to Compel Arbitration By or Against Nonsignatory—State Cases (originally published in 2007) (collecting state cases and explaining the different accepted forms of equitable estoppel among the various states).

[14] District courts in the Ninth Circuit have followed *Setty* to apply federal common law principles to equitable estoppel in Convention cases. *See Am. Chung Nam, LLC v. Mitsui O.S.K. Lines, Ltd.*, No. 2:23-CV-07676-SB-JPR, 2023 WL 8845213, at *8 (C.D. Cal. Dec. 19, 2023); *MouseBelt Labs Pte. Ltd. v. Armstrong*, 674 F. Supp. 3d 728, 740 (N.D. Cal. 2023).

state law and federal common law, we conclude that uniform federal standards are appropriate" to question of whether nonsignatories can be bound by arbitration agreement under theories of judicial estoppel, equitable estoppel, third-party beneficiary, agency, and alter ego); *Smith/Enron*, 198 F.3d at 96 ("When we exercise jurisdiction under Chapter Two of the FAA, we have compelling reasons to apply federal law, which is already well-developed, to the question of whether an agreement to arbitrate is enforceable."); *Olsen Sec. Corp. v. Certain Underwriters at Lloyd's London*, No. CV 22-3120, 2025 WL 1370445, at *7 (E.D. La. May 12, 2025); *Anderson v. MSC Cruises, S.A.*, No. 24-cv-60715, 2025 WL 957194, at *5 (S.D. Fla. Mar. 31, 2025) ("Since there are 'uniquely federal interest[s]' involved, the Court should apply federal common law to threshold questions of arbitrability."); *Arrive Nola Hotel, LLC*, 776 F. Supp. 3d at 417; *Par. of LaFourche v. Indian Harbor Ins. Co.*, No. CV 23-3472, 2025 WL 754333, at *6 (E.D. La. Mar. 10, 2025); *Prcic v. Carnival Corp.*, 641 F. Supp. 3d 1313, 1318 (S.D. Fla. 2022); *see also* discussion of *Bufkin*, pp. 19-20 & n.11 above.[15]

The decision below is a stark outlier. It

[15] *Amici* respectfully disagree with the position adopted by the *Restatement of the Law, The U.S. Law of International Commercial and Investor-State Arbitration*, which states that "[b]ecause estoppel and waiver are often pleaded together with doctrines relating to contract formation, the Restatement adopts the view that they are governed by state law." Restatement (Third) U.S. Law of Int'l Comm. Arb. ("Restatement"), § 2.3. The issue of whether a third party can invoke an arbitration agreement that is covered by the Convention should be resolved based on the principles discussed in Section I above, which are not discussed in the Restatement, not on the how or where the issue may be raised in litigants' pleadings.

(a) applied Louisiana state law to resolve whether a domestic nonsignatory to an arbitration agreement covered by the Convention could invoke that agreement under principles of equitable estoppel and, as part of that determination, (b) held that the arbitration agreement at issue, when invoked by domestic insurers, concerned a subject matter that is not arbitrable. It did so without considering whether any competing federal interests were implicated so as to require the application of federal common law. That holding is irreconcilable not only with the governing Supreme Court precedent cited in Section I above and the Convention's purpose and written terms, but also with the general body of federal jurisprudence, and should not be allowed to stand.

CONCLUSION

For the reasons stated above, the petition for *certiorari* should be granted.

Respectfully submitted,

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