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

BRIEF IN OPPOSITION

Thomas M. Flanagan
Counsel of Record
Camille E. Gauthier
Jordan Bailey Redmon
FLANAGAN PARTNERS LLP
201 St. Charles Ave., Ste. 3300
New Orleans, LA 70170
(504) 569-0235
tflanagan@flanaganpartners.com

Russell J. Stutes, Jr.
Patrick Jody Lavergne
STUTES & LAVERGNE
600 Broad St.
Lake Charles, LA 70601

David Bruchhaus
Wesley A. Romero
MUDD, BRUCHHAUS & KEATING, LLC
422 E. College St., Ste. B
Lake Charles, LA 70605

Counsel for Respondents

QUESTION PRESENTED

Chapter 1 of the Federal Arbitration Act incorporates "background principles of state contract law" that govern nonsignatory enforcement of contracts. *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630 (2009). Nonconflicting provisions of Chapter 1 apply under Chapter 2, which implements the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. 9 U.S.C. § 208. In *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 440 (2020), this Court found no conflict between Chapter 1 and the Convention on nonsignatory-enforcement doctrines, observing that the Convention is "simply silent" on them.

American insurers seek to compel Louisiana public entities to arbitrate state-law claims. Each American insurer has its own arbitration agreement with each public entity. But each American insurer aims to abandon its own arbitration agreement and invoke the separate arbitration agreement each public entity has with two foreign insurers—neither of which faces any claim for relief. Assuming the Convention has any relevance without a justiciable controversy involving a foreign party, the question presented is:

Whether the Convention's "silen[ce]," *GE Energy*, 590 U.S. at 440, on equitable estoppel required the courts below to break with *Arthur Andersen* and Chapter 1 and compel arbitration by creating federal common law displacing "background principles of state contract law," *Arthur Andersen*, 556 U.S. at 630.

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INTRODUCTION

The petitioners, a group of insurers, seek review of a question that has not split the courts of appeals, is not cleanly presented in these cases involving no live claims brought by or against any foreign party, and is readily resolved by this Court's precedent.

1. The petitioners portray these consolidated cases as implicating weighty interests of international law. But the reality is more mundane. Louisiana insureds sued their American insurers under Louisiana law, alleging that those insurers mishandled claims for property damage under separate contracts of insurance delivered in Louisiana.

The respondents (insureds) are four Louisiana public entities. They own property damaged by hurricanes. Each respondent has a separate insurance contract with each petitioner. That is because of a contract-allocation endorsement, mandated by the petitioners, declaring that each policy between each petitioner and each respondent is "a separate contract between the Insured and each of the Underwriters."

The petitioners include eight American insurers. Two foreign insurers are nominally petitioners. But there is no justiciable controversy involving either of them. Three respondents released and never sued them. And the only respondent that did sue them dismissed them with prejudice before service.

Despite this all-American affair, the petitioners sought to compel arbitration under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517. But the Convention applies only if at least one contracting party is not an American citizen. 9 U.S.C. § 202. A federal district court denied the motion to compel arbitration, citing the contract-allocation endorsement and the absence of a foreign party to any contract. Because the contracts had only American parties, Louisiana law, not the Convention, applied. *See id.* And because Louisiana law voids arbitration clauses in Louisiana-delivered insurance contracts, each American insurer's arbitration agreement with each respondent was void. *See* La. Rev. Stat. § 22:868(A)(2).

To avoid those obstacles, the American petitioners tried to reach the Convention via equitable estoppel. They sought to enforce arbitration agreements in separate contracts that each respondent had with the two foreign insurers—insurers that either were released and never sued or were dismissed with prejudice before service. The district court rejected the effort.

Like the district court, a unanimous Fifth Circuit panel (Judges Haynes, Ho, and Oldham) was not persuaded. Because of the contract-allocation endorsement, there were separate contracts between each American petitioner and each respondent; none of those contracts featured a foreign party. And given the absence of any foreign party to any contract, "the Convention does not apply." *Town of Vinton v. Indian Harbor Ins. Co.*, 161 F.4th 282, 287 (5th Cir. 2025).

Nor could the American petitioners compel arbitration under the Convention via equitable estoppel. Despite the absence of any live claim against any foreign party, those petitioners urged the Fifth Circuit to craft a federal common law of equitable estoppel to supplant Louisiana law prohibiting estoppel.

The Fifth Circuit efficiently dispatched that argument. Citing *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009), the court explained that "[s]tate contract law determines whether a contract can be enforced by or against nonparties using equitable estoppel." *Town of Vinton*, 161 F.4th at 287–88. And under Louisiana law, equitable estoppel may not apply when Louisiana's positive law prohibits arbitration clauses in Louisiana-issued insurance policies. *Police Jury of Calcasieu Par. v. Indian Harbor Ins. Co.*, 2024-0449 (La. 10/25/24), 395 So. 3d 717, 729.

The petitioners sought rehearing en banc. But the petition failed; no judge asked for a poll. The petitioners now seek this Court's review, claiming the Fifth Circuit's conclusion "was erroneous" and "created a 4–1 circuit split." Pet. 1, 6. Not so.

2. The question presented does not implicate a circuit split. It is doubtful the Convention could govern a dispute with live claims by and against only American parties. *See Kim v. Jump Trading, LLC*, No. 25-1964, --- F.4th ---, 2026 WL 2348464, at *4 (7th Cir. Aug. 13, 2026) (Easterbrook, J.). But assuming it could, the Fifth Circuit's conclusion was inescapable: The Convention's "silen[ce]" on equitable estoppel, *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 440 (2020), does not federalize the "background principles of state contract law," *Arthur Andersen*, 556 U.S. at 630, that govern nonsignatory enforcement of arbitration agreements. That is especially true in litigation involving state-law claims asserted by and against American citizens—each with its own arbitration agreement. No court of appeals has held otherwise.

The petitioners cite four cases forming the majority of a supposed 4–1 split. Pet. 4 (citing *InterGen N.V. v. Grina*, 344 F.3d 134 (1st Cir. 2003); *Smith/Enron Cogeneration L.P. v. Smith Cogeneration Int'l, Inc.*, 198 F.3d 88 (2d Cir. 1999), *abrogated on other grounds by Granite Rock Co. v. Int'l Brotherhood of Teamsters*, 561 U.S. 287 (2010); *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355 (4th Cir. 2012); *Setty v. Shrinivas Sugandhalaya LLP*, 3 F.4th 1166 (9th Cir. 2021)). But none of the petitioners' cases presented the question the Fifth Circuit decided.

On the facts, these consolidated cases are nothing like those. None of the petitioners' cases involved state-law claims brought by and against American citizens. Nor did any of the petitioners' cases confront whether to create a federal-common-law body of equitable estoppel in the face of conflicting state positive law precluding equitable estoppel. In fact, just two of the petitioners' cases involved a choice between the law of an American state and federal common law. What's more, none of the opinions forming the supposed split involved an invocation of equitable estoppel by a party that had its own arbitration agreement.

There are doctrinal problems, too. Two of the petitioners' cases (*InterGen* and *Smith/Enron*) pre-dated *Arthur Andersen's* recognition that Chapter 1 of the FAA incorporates state-law estoppel doctrines. 556 U.S. at 630–31. Because both *InterGen* and *Smith/Enron* pre-dated *Arthur Andersen*, they did not need to consider the effect of 9 U.S.C. § 208, which would have referred them back to Chapter 1 and state law. A third (*Aggarao*) of the petitioners' cases pre-dated *GE Energy*'s confirmation that there is no conflict between the Convention and Chapter 1 on equitable estoppel. 590 U.S. at 439–45. And the fourth case—the only one with the benefit of both *Arthur Andersen* and *GE Energy*—did not conduct a reasoned choice-of-law analysis that grapples with both cases.

3. These seven consolidated cases present a poor vehicle to decide a choice-of-law question under the Convention. Louisiana public entities assert Louisiana-law claims against American insurers—each with its own arbitration agreement—under separate and Louisiana-delivered insurance contracts. There is no live claim by or against a foreign party. It is hard to imagine a less suitable vehicle for vindicating the petitioners' asserted interests in "international comity [and] respect for the capacities of foreign and transnational tribunals." Pet. 34 (quotation omitted).

Another reason to decline review is that the Court's resolution of the question presented would not matter here. The respondents are public entities; normal rules of estoppel do not apply to them. And the petitioners could not satisfy the requirements of the intertwined-claims form of estoppel that they prefer. Three of the four respondents never sued the foreign insurers; the only respondent that did so quickly dismissed its claims with prejudice. No intertwined-claims form of estoppel would apply when, as here, no claims are asserted against the foreign insurers.

4. In all events, the Fifth Circuit's decision is correct. "[B]ackground principles of state contract law" control questions of nonsignatory enforcement of arbitration agreements under Chapter 1 of the FAA. *Arthur Andersen*, 556 U.S. at 630. And Congress in 9

U.S.C. § 208 directed that nonconflicting provisions of Chapter 1 govern actions and proceedings brought under Chapter 2, which implements the Convention. In *GE Energy*, this Court found no conflict between Chapter 1 and the Convention on nonsignatory enforcement because the Convention was "simply silent on the issue[.]" 590 U.S. at 440.

That silence resolves this case and precludes displacing the laws of the states. Because the Convention is silent on issues of nonsignatory enforcement of arbitration agreements, there is necessarily no "conflict[]" between Chapter 1 and the Convention on those issues. 9 U.S.C. § 208. And absent a conflict, Chapter 1 and *Arthur Andersen* control. "[T]raditional principles of state law" thus apply. *Arthur Andersen*, 556 U.S. at 631 (quotation omitted).

The petitioners' contrary arguments are unpersuasive. They ignore Congress' command that Chapter 1 estoppel rules—which incorporate state law per *Arthur Andersen*—apply in Chapter 2 cases given the absence of a conflict. *See* 9 U.S.C. § 208. And then, they simply assume the Convention demands "uniformity" on nonsignatory-enforcement doctrines that the Convention says nothing about. Pet. 5. Equally erroneously, the petitioners overlook the treatment of equitable estoppel by the Convention's 170-plus other signatories. The bottom line is that the Convention is "simply silen[t]" on equitable estoppel, *GE Energy*, 590 U.S. at 440, so the petitioners cannot show a "significant conflict" between the Convention and state estoppel rules. *Hencely v. Fluor Corp.*, 608 U.S. ---, 146 S. Ct. 1086, 1094 (2026) (quotation omitted).

In sum, the Fifth Circuit's unanimous decision does not create a circuit split, is a poor vehicle to decide the question presented, and is correct on the merits. The Court should deny review.

STATEMENT OF THE CASE

A. Legal Background

1. The FAA governs enforcement of arbitration agreements in contracts affecting interstate commerce. Chapter 1 has general provisions that require courts to enforce arbitration agreements as with other contracts. 9 U.S.C. §§ 1–16. Section 2 is the "primary substantive provision" of Chapter 1. *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). It makes arbitration agreements "enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

Chapter 2 of the FAA implements the Convention. 9 U.S.C. §§ 201–08. One provision of Chapter 2, Section 208, makes Chapter 1 of the FAA applicable "to actions and proceedings brought under [Chapter 2 of the FAA] to the extent that [Chapter 1 of the FAA] is not in conflict with [Chapter 2] or the Convention as ratified by the United States." 9 U.S.C. § 208.

2. The Convention "is a multilateral treaty that addresses international arbitration." *GE Energy*, 590 U.S. at 438 (citing 21 U.S.T. 2517). The United States acceded to it in 1970, and Congress implemented it through Chapter 2 of the FAA. *Id.* at 439. The Convention "focuses almost entirely on arbitral *awards*." *Id.* at 438 (emphasis added). The only article that addresses arbitration *agreements* is Article II; it has just three short provisions. *See id.*

The first provision is Article II(1). It states that "[e]ach 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." 21 U.S.T. at 2519.

The second provision, Article II(2), states that "[t]he term 'agreement in writing' shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams." *Id.*

The third provision, Article II(3), states that "[t]he 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." *Id.*

3. *Arthur Andersen*, in 2009, addressed the interplay between Chapter 1 of the FAA and background principles of state contract law governing enforcement of contracts by or against nonparties. *See* 556 U.S. at 625–32. The Sixth Circuit had held that nonparties to an arbitration agreement are categorically ineligible for relief under Chapter 1. *See id.* at 629.

But this Court reversed, holding that a nonsignatory may seek relief under Chapter 1 "if the relevant state contract law allows him to enforce the [arbitration] agreement." *Id.* at 632. This Court explained that Chapter 1 does not "purport[] to alter background principles of state contract law regarding the scope of agreements (including the question of who is bound by them)." *Id.* at 630. Instead, the Court continued, Chapter 1 incorporates "traditional principles" of state law that "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 (quotation omitted). The rule of *Arthur Andersen*, then, is that state law controls questions of nonsignatory enforcement under Chapter 1.

4. *GE Energy,* in 2020, applied *Arthur Andersen*'s rule about nonsignatory-enforcement doctrines to the Convention context. *See* 590 U.S. at 437–45. The question presented was whether the Convention "conflicts with domestic equitable estoppel doctrines that permit the enforcement of arbitration agreements by nonsignatories." *Id.* at 435.

This Court held "no." *Id.* at 440–41. Though the contract featured a foreign party and thus implicated the Convention, the Court started with Chapter 1 of the FAA and *Arthur Andersen*, reiterating that Chapter 1 "does not 'alter background principles of state law regarding the scope of agreements (including the question of who is bound by them).'" *Id.* at 437 (quoting *Arthur Andersen*, 556 U.S. at 630). "The 'traditional principles of state law' that apply under Chapter 1," the Court continued, "include doctrines that authorize the enforcement of a contract by a nonsignatory." *Id.* (quoting *Arthur Andersen*, 556 U.S. at 631). The Court then turned to Chapter 2 and the

Convention. Noting that nonconflicting provisions of Chapter 1 apply to proceedings under Chapter 2, the Court asked whether "the equitable estoppel doctrines permitted under Chapter 1 … 'conflict with the Convention.'" *Id.* at 439 (quoting 9 U.S.C. § 208).

The Court found no conflict. Beginning with the treaty text, the Court observed that the Convention "does not address whether nonsignatories may enforce arbitration agreements under domestic doctrines such as equitable estoppel." *Id.* at 439. In fact, the Court stressed, "[t]he Convention is simply silent on the issue of nonsignatory enforcement." *Id.* at 440.

That silence was "dispositive." *Id.* "[T]he Convention was drafted against the backdrop of domestic law," so "it would be unnatural to read Article II(3)," the only provision addressing enforcement of arbitration agreements, "to displace domestic doctrines in the absence of exclusionary language." *Id.* (citation omitted). The bottom line, the Court underscored, is "the Convention requires courts to rely on domestic law to fill the gaps; it does not set out a comprehensive regime that displaces domestic law." *Id.* at 441.

5. As the Convention preserves aspects of domestic law, a federal statute, the McCarran–Ferguson Act, preserves state regulation of the business of insurance. The Act "declares that the continued regulation … by the several States of the business of insurance is in the public interest[.]" 15 U.S.C. § 1011. The Act goes on to provide 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[.]" *Id.* § 1012(b). The upshot is that the McCarran–Ferguson Act allows states like

Louisiana to "reverse preempt" otherwise applicable federal statutes (but not treaties) by enacting their own insurance regulations. *E.g.*, *McDonnel Grp. L.L.C. v. Great Lakes Ins. SE, UK Branch*, 923 F.3d 427, 431 (5th Cir. 2019).

6. One such regulation of the business of insurance is La. Rev. Stat. § 22:868(A). It states that "[n]o insurance contract delivered or issued for delivery in this state … shall contain any condition, stipulation, or agreement … [d]epriving the courts of this state of the jurisdiction or venue of action against the insurer." La. Rev. Stat. § 22:868(A)(2). The Louisiana Supreme Court interprets that law to prohibit arbitration clauses in Louisiana-issued insurance policies. *See Police Jury of Calcasieu Par. v. Indian Harbor Ins. Co.*, 2024-0449 (La. 10/25/24), 395 So. 3d 717, 729.

The FAA would ordinarily preempt a state law like La. Rev. Stat. § 22:868(A). But under the McCarran–Ferguson Act, regulations of the business of insurance like La. Rev. Stat. § 22:868(A) "reverse preempt" the FAA. *E.g.*, *Certain Underwriters at Lloyd's, London v. 3131 Veterans Blvd. LLC,* 136 F.4th 404, 410 (2d Cir. 2025). Courts of appeals have concluded that La. Rev. Stat. § 22:868(A) does not, however, reverse preempt treaties like the Convention. *E.g.*, *id.* at 410–11.

7. In common law jurisdictions, the doctrine of equitable estoppel sometimes allows a contract to be enforced by or against a nonparty to the contract. *See* 21 Williston on Contracts § 57:19 (4th ed. May 2026 update). "Generally, in the arbitration context, equitable estoppel allows a nonsignatory to a written agreement containing an arbitration clause to compel arbitration where a signatory to the written agreement

must rely on the terms of that agreement in asserting its claims against the nonsignatory." *GE Energy*, 590 U.S. at 438 (quotation omitted).

Another form of equitable estoppel, sometimes called "intertwined claims" estoppel, may apply when "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). This form of equitable estoppel "contemplates … that both a signatory and non-signatory are included as defendants, and factually inseparable claims are brought against them both." *Isernia v. Danville Reg'l Med. Ctr., LLC*, No. 4:22-cv-22, 2024 WL 4697681, at *9 (W.D. Va. Nov. 6, 2024) (emphasis omitted).

As in other civil law systems, equitable estoppel is disfavored in Louisiana as a "doctrine of last resort." *Police Jury*, 395 So. 3d at 728–29. It may not be used "when in conflict with" Louisiana's "positive written law." *Id.* at 729. The Louisiana Supreme Court thus held in *Police Jury* that equitable estoppel may not be used under Louisiana law to avoid La. Rev. Stat. § 22:868(A)'s prohibition on arbitration provisions in Louisiana insurance contracts. *Id.* at 728–30.

Before *Police Jury*, a different Fifth Circuit panel made the *Erie* guess that Louisiana law would allow the use of equitable estoppel to evade La. Rev. Stat. § 22:868(A) and compel arbitration. *Bufkin Enters., L.L.C. v. Indian Harbor Ins. Co.*, 96 F.4th 726, 729–33 (5th Cir. 2024) (per curiam). In *Police Jury*, however, the Louisiana Supreme Court said that *Bufkin*'s "conclusion [is] flawed and not supported by Louisiana law." *Police Jury*, 395 So. 3d at 729.

B. Factual and Procedural Background

1. The petition covers seven consolidated cases that arise from state-law claims brought by Louisiana public entities and pending against American insurers.

The respondents are a Louisiana town, parish school board, parish recreation district, and parish police jury. Pet. App. 12a, 27a, 42a, 57a. Each one bought an insurance policy for its property. *Id.* Each policy has an arbitration provision, unsigned by the parties. *Id.* at 6a, 33a.

Some policies also have service-of-suit endorsements. *E.g.*, *id.* at 18a. For example, one such endorsement provides that if an insurer fails to pay any amount claimed due under the policy, the insurer "will submit to the jurisdiction of a Court of competent jurisdiction within the United States." *Id.*

Critically, each policy has a contract-allocation endorsement. That endorsement states that each "contract shall be constructed as a separate contract between the Insured and each of the Underwriters." *Id.* at 6a. In other words, each petitioner has a "separate contract" with each respondent. *Id.*

2. Each respondent sued the American–insurer petitioners in Louisiana state court, alleging that those insurers failed to properly adjust their insurance claims for hurricane damage to their property. Pet. App. 18a (school board), 33a (recreation district), 48a (police jury), 57a (town).

Three of the four respondents released and never sued the two foreign–insurer petitioners. Pet. App. 18a (school board), 33a (recreation district), 48a (police jury). The only respondent that sued the foreign insurers (the town) dismissed the foreign insurers with prejudice before they were served. Pet. App. 58a.

The American–insurer petitioners removed the cases to federal court. Pet. App. 18a (school board), 33a (recreation district), 48a (police jury), 58a (town). All petitioners then sued in federal court to compel arbitration against the three respondents that had never sued—and had released— the foreign insurers. Pet. App. 12a (school board), 27a (recreation district), 42a (police jury). The foreign insurers are named as plaintiffs in these suits. *Id.* But considering the releases, no claims remained that could have been litigated or arbitrated.

3. After removal, the American–insurer petitioners sought to compel arbitration. Pet. App. 18a (school board), 33a (recreation district), 48a (police jury), (58a) (town). Among other arguments not relevant here, they maintained that (A) the Convention applied facially because there was assertedly one overarching insurance policy to which all petitioners, foreign and domestic, were parties; and (B) alternatively, the Convention applied via the intertwined-claims formulation of equitable estoppel. *Id.*

The district court was unpersuaded. Pet. App. 26a (school board), 41a (recreation district), 56a (police jury), 76a (town). Citing the contract-allocation endorsement, the court concluded that the Convention did not apply facially because separate contracts existed between entirely American citizens—*i.e.*, the eight American–insurer petitioners and the four public-entity respondents. Pet. App. 20a–22a, 35a–37a, 49a–50a, 63a–65a. And the court concluded that the Convention did not apply via the intertwined-claims form of equitable estoppel, either. Pet. App. 24a–26a, 39a–41a, 54a–56a, 65a–68a.

4. After denying motions to compel arbitration of the four removed cases, the court turned to the three complaints to compel arbitration that the petitioners brought against the school board, the recreation district, and the police jury. Pet. App. 15a–16a, 30a–31a, 45a–46a. The district court dismissed each one. *Id.* In so doing, the district court explained that each respondent had released its claims against the foreign insurers and that the American–insurer petitioners may not compel arbitration under the Convention through equitable estoppel under Louisiana law. *Id.*

The petitioners appealed in all seven cases. Pet. App. 1a–4a. At the Fifth Circuit's direction, the seven appeals were consolidated for oral argument. *Id.* As the oldest case, the town's case, C.A. No. 24-30035, was designated as lead. *Id.* at 1a.

5. A panel of Judges Haynes, Ho, and Oldham affirmed. *Id.* at 1a–11a. Two holdings are relevant here.

First, the unanimous panel held that the Convention did not apply. Citing the contract-allocation endorsement, the panel saw "no basis for departing from" the "consensus" that the policy's "separate contracts language creates separate agreements to arbitrate[.]" *Id.* at 8a–9a. Because there were separate agreements to arbitrate between the town and each domestic insurer, the panel held that there were no foreign parties to any arbitration agreement, and that the "Convention does not apply." *Id.* at 9a.

Second, the unanimous panel held that arbitration could not be compelled under the Convention through equitable estoppel. *Id.* at 10a. Citing *Arthur Andersen*, the panel explained that "[s]tate contract law determines whether a contract can be enforced by or against nonparties using equitable estoppel." *Id.* at 9a. Then turning to Louisiana law, the panel concluded that La. Rev. Stat. § 22:868(A) "applies and 'prohibits the use of arbitration clauses in Louisiana-issued insurance policies.'" *Id.* at 10a (quoting *Police Jury*, 395 So. 3d at 729). "And because equitable estoppel cannot contravene Louisiana positive law," the panel reasoned, La. Rev. Stat. § 22:868(A) "precludes the use of estoppel to compel arbitration here." *Id.*

Because the court resolved the consolidated appeals under La. Rev. Stat. § 22:868(A), it did not reach alternative grounds for affirmance based on the service-of-suit endorsements and the absence of a signed arbitration agreement, as would be required under Article II of the Convention. *E.g.*, C.A. No. 24-30035, Doc. 102, at 49–56 (Mar. 20, 2025).

6. The petitioners sought rehearing *en banc*, which the Fifth Circuit denied without a poll. *Id.* at 82a.

REASONS FOR DENYING THE PETITION

The Fifth Circuit's unanimous decision does not merit this Court's review. It does not implicate a split of authority. It is a poor vehicle to explore Convention choice-of-law questions. And it is correct in any event.

1. There is no split. The petition covers seven cases that feature only state-law claims asserted by and

against American citizens. And each of the parties that wishes to invoke a Convention-covered arbitration agreement through equitable estoppel has its own arbitration agreement—which Louisiana positive law voids. No court of appeals has said that federal common law displaces a forum state's law of equitable estoppel in those circumstances. And certainly none has said so after *Arthur Andersen* explained that Chapter 1 of the FAA incorporates state doctrines of equitable estoppel, and after *GE Energy* confirmed the Convention's silence on that very issue.

For the supposed split, the petitioners rely on cases that presented questions different from that resolved by the Fifth Circuit and, in most of the cases, rest on an outdated or incomplete choice-of-law analysis.

2. These consolidated cases are ill-suited to resolve the question presented. No live claim is asserted by or against a foreign party. And the cases arise in an insurance context where state regulatory interests retain unusual strength vis-à-vis federal authority. The parties resisting estoppel, moreover, are not ordinary plaintiffs; they are Louisiana public entities not subject to ordinary estoppel rules. And the Court's answer to the question presented would not even matter, because estoppel would fail even under the federal common law the petitioners prefer.

3. The Fifth Circuit's decision also has the virtue of being correct. Under *Arthur Andersen*, state law governs nonsignatory-enforcement doctrines like equitable estoppel under Chapter 1 of the FAA. 556 U.S. at 630–31. And Congress directed that Chapter 1 applies in cases brought under Chapter 2 unless Chapter 1 is "in conflict with" the Convention. 9 U.S.C. § 208. *GE*

Energy shows there is no conflict here. 590 U.S. at 439–45. It follows that *Arthur Andersen*'s Chapter 1 rule—state law—governs equitable estoppel. Neither the Convention nor Chapter 2 contemplates setting aside large swaths of domestic nonsignatory-enforcement doctrines for the sake of achieving "uniformity" within one country on a topic the Convention ignores.

I. No Circuit Split Exists.

The circuits have *not* split on whether the Convention requires federalizing the "traditional principles of state law" that govern nonsignatory enforcement of contracts on state-law claims asserted by and pending against only American citizens. *Arthur Andersen*, 556 U.S. at 631 (quotation omitted). Contending otherwise, the petitioners point to four cases that (A) confronted questions different from the one the Fifth Circuit decided and (B) pre-dated, or did not conduct, the choice-of-law principles this Court established in *Arthur Andersen* and *GE Energy*.

A. The question the Fifth Circuit decided was not presented in *Smith/Enron*, *InterGen*, *Aggarao*, or *Setty*.

The question before the Fifth Circuit was whether equitable estoppel under state law or federal common law applies to decide whether American nonsignatories—each with its own arbitration agreement—may invoke a foreign insurer's contract to compel public-entity plaintiffs to arbitrate state-law claims against American citizens, in violation of a state's positive law. That question was not raised in any of the cases the petitioners cite to support the supposed 4–1 split.

1. None of the petitioners' cases considered choice of law in the context of state-law claims brought by and pending against only American citizens. *See Smith/Enron*, 198 F.3d at 90–99; *InterGen*, 344 F.3d at 137–50; *Aggarao*, 675 F.3d at 360–80; *Setty*, 3 F.4th at 1167–69. On the contrary, each of the petitioners' cases was a quintessentially international dispute.

Start with the Second Circuit and *Smith/Enron*. The court considered choice of law in the context of a petition by an American company and a Turks and Caicos-based company to enjoin a British Virgin Islands-based company from litigating in the Dominican Republic. *Smith/Enron*, 198 F.3d at 90–91.

The First Circuit's opinion in *InterGen* was similar. A Dutch company brought claims against a Swiss company, its United Kingdom-based subsidiary, and its American agent arising from allegedly defective turbines it bought for use in the United Kingdom. *InterGen*, 344 F.3d at 138–40.

Aggarao from the Fourth Circuit was another international dispute. A Filipino citizen sued Japanese and Liberian companies for injuries suffered aboard a ship in American waters. 675 F.3d at 360–65.

Finally, the Ninth Circuit's opinion in *Setty* involved a suit by an Indian company and its Indian owner against another Indian company and an American distributor. 3 F.4th at 1167–68.

Each of the petitioners' cases was a paradigmatic Convention case; foreign parties were at the center. Not so here. These consolidated cases involve state-law claims asserted by American parties and pending against American parties, each with its own arbitration agreement.

2. What's more, none of the petitioners' cases involved a considered choice between federal common law and a state's positive law prohibiting equitable estoppel. Instead, each of the petitioners' cases applied federal common law by default or selected federal common law over foreign law, without identifying any conflict on the question of equitable estoppel.

The Second Circuit's opinion in *Smith/Enron* did not involve a choice between federal common law of equitable estoppel and the conflicting positive law of a state. 198 F.3d at 95–96. Ultimately, *Smith/Enron* involved a choice between federal common law and the law of the Turks and Caicos Islands (albeit by way of New York choice-of-law rules). *Id.* The Second Circuit gave no indication that the positive law of New York or of the Turks and Caicos Islands conflicted with federal common law or otherwise would have precluded application of equitable estoppel there. *Id.*

In the same vein, the First Circuit's opinion in *InterGen* did not discuss the state law that would have applied if federal common law did not. 344 F.3d at 143–44. Like the Second Circuit in *Smith/Enron*, the First Circuit in *InterGen* offered no indication of a conflict between state positive law and federal common law on the application of equitable estoppel. *Id.*

The Fourth Circuit's opinion in *Aggarao* did not involve an affirmative selection of federal common law among alternatives that could have governed equitable estoppel. 675 F.3d at 373. Instead, the Fourth Circuit seemingly applied federal common law by default, without considering state law. *Id.*

The Ninth Circuit's opinion in *Setty* involved a choice between federal common law and Indian law. 3

F.4th at 1168. *Setty* did not discuss Indian law on equitable estoppel or indicate that India had positive law that would have precluded application of equitable estoppel on the facts raised there. *Id.*

B. The petitioners' cases pre-date or do not apply the choice-of-law principles established in *Arthur Andersen* and *GE Energy*.

None of the petitioners' cases conducted a choice-of-law analysis grappling with the framework established in *Arthur Andersen* and refined in *GE Energy*.

All but one of the petitioners' cases pre-dates this Court's framework for analyzing what law governs nonsignatory enforcement of arbitration agreements. And the one opinion that had the benefit of the Court's choice-of-law framework did not apply it.

1. Two of the petitioners' four cases—the Second Circuit's opinion in *Smith/Enron* and the First Circuit's opinion in *InterGen*—pre-date this Court's opinion in *Arthur Andersen*. *Arthur Andersen* confirmed that "traditional principles of state law" control the question whether an arbitration agreement may be enforced by or against a nonparty to the agreement under Chapter 1 of the FAA. 556 U.S. at 631 (quotation omitted). But because *Arthur Andersen* had not yet been decided, neither *Smith/Enron* nor *InterGen* can be read to conclude that the Convention creates an exception to *Arthur Andersen*'s rule that traditional principles of state contract law govern nonsignatory enforcement of arbitration agreements.

2. Another case, *Aggarao* from the Fourth Circuit, pre-dates *GE Energy*. 675 F.3d at 373. And although *Aggarao* was decided after *Arthur Andersen*, it did not

cite that case or otherwise analyze whether federal common law should displace state law on nonsignatory enforcement, presumably because no party urged application of state law.

3. The petitioners' last case, *Setty* from the Ninth Circuit in 2021, is the only one that post-dates A*rthur Andersen* and *GE Energy*. 3 F.4th at 1168–69. But *Setty* does not help the petitioners because it did not conduct a meaningful choice-of-law analysis that accounts for both *Arthur Andersen* and *GE Energy*. Instead, *Setty* overlooked *Arthur Andersen* in favor of two Ninth Circuit cases—one that *Arthur Andersen* had tacitly abrogated, *Letizia v. Prudential Bache Secs., Inc.*, 802 F.2d 1185 (9th Cir. 1986), and another that did not even concern equitable estoppel, *Casa del Caffe Vergano S.P.A. v. ItalFlavors, LLC*, 816 F.3d 1208 (9th Cir. 2016).

II. These Consolidated Cases Are a Poor Vehicle.

These consolidated cases do not implicate a question worthy of the Court's review, and in any event, would not allow the Court cleanly to decide the choice-of-law question presented. That is because the subject matter (insurance) and the parties asserting and defending claims (all American citizens) make these cases unrepresentative of choice-of-law cases under the Convention. As important, the Court's answer to the question would not matter here: The petitioners' equitable-estoppel arguments would fail under even the federal common law that they prefer.

A. The factual and legal context of these cases makes them ill-suited for certiorari.

1. The Fifth Circuit held that each of the American–insurer petitioners has its own arbitration agreement with each respondent, Pet. App. 9a, and the petitioners do not challenge that separate-contracts holding here.

As a result of that unchallenged holding, these cases implicate no international interest. Louisiana public entities bring Louisiana-law claims against American insurers, each with its own contract, for failure to pay for property damage under insurance policies delivered in Louisiana. These domestic disputes are a poor vehicle for vindicating the petitioners' asserted interests in "international comity [and] respect for the capacities of foreign and transnational tribunals." Pet. 34 (quotation omitted).

2. Context aside, the subject matter in which these cases arise counsels against using them to decide the federal versus state choice-of-law question under the Convention. These cases implicate state-law insurance regulation. And through the McCarran–Ferguson Act, Congress has recognized that state regulatory interests are especially strong when it comes to the business of insurance. *See* 15 U.S.C. § 1012(a). If the Court is inclined to consider the choice-of-law question presented, it should at a minimum await a case that does not present the unusually strong state regulatory interests that are presented here.

B. The Court's answer to the question presented would not matter here.

These cases are ill-suited for certiorari because the petitioners would lose even if courts applied the intertwined-claims form of equitable estoppel they prefer.

1. The respondents are public entities to which the ordinary rules of estoppel do not apply. Estoppel applies differently against the government. *See Heckler v. Cmty. Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 60 (1984) ("[I]t is well settled that the Government may not be estopped on the same terms as any other litigant."). And courts of appeals have extended that principle to state public entities, like the respondents here. *E.g.*, *Nagle v. Acton–Boxborough Reg. Sch. Dist.*, 576 F.3d 1, 3–4 (1st Cir. 2009) (applying principle to school district).

2. The petitioners envision an aggressive application of intertwined-claims equitable estoppel. Traditional equitable estoppel in the arbitration context is the form described in *GE Energy*, which allows a nonsignatory to compel a signatory to arbitrate claims for which the signatory "must rely" on the arbitration agreement. 590 U.S. at 438 (quotation omitted). That form of equitable estoppel would fail here: None of the respondents' claims against the American–insurer petitioners requires reliance on the separate contracts each respondent had with the foreign insurers.

With that traditional form of equitable estoppel unavailable, the petitioners rely on intertwined-claims equitable estoppel drawn from Chapter 1 of the FAA. Secondary authorities suggest that this form of estoppel may apply if "the signatory to the written agreement raises allegations of substantially interdependent and concerted misconduct by both the non-signatory and one or more of the signatories to the contract." 21 Williston on Contracts § 57:19 (4th ed. May 2026 update). But the intertwined-claims form of estoppel ordinarily "contemplates … that both a signatory and non-signatory are included as defendants, and factually inseparable claims are brought against them both." *Isernia v. Danville Reg'l Med. Ctr., LLC*, No. 4:22-cv-22, 2024 WL 4697681, at *9 (W.D. Va. Nov. 6, 2024) (emphasis omitted).

The problem for the petitioners is that no claims are pending against any of the foreign insurers. The only respondent that sued the foreign insurers (the town) dismissed them with prejudice even before service. Pet. App. 58a. Because there is no claim against any foreign insurer, the petitioners' estoppel arguments would fail under intertwined-claims estoppel.

3. Contending otherwise, the petitioners invoke the Fifth Circuit's mistaken *Erie* guess in *Bufkin* to support the notion that their equitable-estoppel argument would have succeeded under federal common law. The petitioners are wrong.

To start, as the Fifth Circuit explained, *Bufkin* outlined and applied equitable estoppel under what it regarded as Louisiana law; it did not create (and was not asked to create) federal common law on equitable estoppel. *See Town of Vinton*, 161 F.4th at 288 (observing that *Bufkin* "expressly relies on Louisiana courts and federal courts applying Louisiana law"). In fact, the same insurers (the petitioners) acknowledged the role of Louisiana law in their *Bufkin* briefing. *See* C.A. No. 23-30171, Doc. 35, at 30 (Aug. 7, 2023). Only after an unfavorable ruling from the Louisiana Supreme Court did they change positions.

But even if *Bufkin* had applied federal common law without saying so, its analysis would hold no sway here for at least one legal reason and two factual ones.

On the law, *Bufkin*'s estoppel analysis was undermined by this Court's later decision in *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22 (2025). *Royal Canin* recognized a plaintiff's right to "reconfigure[] her suit" to defeat federal jurisdiction. *Id.* at 44. But *Bufkin* treated a similar effort to "reconfigure[]" a suit (by dismissing foreign parties) as "gamesmanship" triggering estoppel. *See Bufkin*, 96 F.4th at 732 (reasoning that rejecting estoppel would "indulg[e]" a plaintiff's "pleading-and-then-dismissing gamesmanship"). After *Royal Canin*, that reasoning fails.

On the facts, these cases differ from *Bufkin* in at least two material respects. First, these cases feature public-entity plaintiffs to which the ordinary rules of estoppel do not apply. *Bufkin*, by contrast, involved a private plaintiff subject to ordinary estoppel rules. *See Bufkin*, 96 F.4th at 727. Second, unlike the plaintiff in *Bufkin*, three of the four respondents never sued a foreign insurer. Pet. App. 18a (school board), 33a (recreation district), 48a (police jury). So the "linchpin" for *Bufkin*'s analysis—rejecting a private plaintiff's "pleading-and-then-dismissing gamesmanship"—could not apply to those respondents. *Bufkin*, 96 F.4th at 732 (quotation omitted).

III. The Decision Below is Correct.

In any event, the Court's intervention is unnecessary because the Fifth Circuit's decision is correct.

The Convention's "silen[ce]," *GE Energy*, 590 U.S. at 440, on nonsignatory-enforcement doctrines does not displace the "background principles of state contract law," *Arthur Andersen*, 556 U.S. at 630, that otherwise govern nonsignatory enforcement of contracts under Chapter 1 of the FAA and 9 U.S.C. § 208.

A. The Convention's silence on equitable estoppel does not displace the state-law contract principles that otherwise apply under *Arthur Andersen* and Chapter 1.

1. "[B]ackground principles of state contract law" control the question whether a nonsignatory to an arbitration agreement may enforce that arbitration agreement against a signatory under Chapter 1 of the FAA. *Arthur Andersen*, 556 U.S. at 630. And Congress has directed that "Chapter 1 [of the FAA] applies to actions and proceedings brought under [Chapter 2 of the FAA] to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States[.]" 9 U.S.C. § 208. In *GE Energy*, this Court found no conflict between Chapter 1 and the Convention on domestic nonsignatory-enforcement doctrines, observing that the Convention was "simply silent on the issue[.]" 590 U.S. at 440.

The petitioners cannot overcome that "silen[ce]." *Id.* Because the Convention says nothing about equitable estoppel, Chapter 1's treatment of that doctrine is not "in conflict with" the Convention's treatment of equitable estoppel. 9 U.S.C. § 208. Since Chapter 1's estoppel rules do not conflict with the Convention on equitable estoppel, *Arthur Andersen*'s directive to apply "traditional principles of state law," controls. *Arthur Andersen*, 556 U.S. at 631 (quotation omitted).

But the Court need not take the respondents' word for it. The Seventh Circuit—with Judge Easterbrook writing—recently recognized as much. *See Kim,* 2026 WL 2348464, at *5–6. As that court explained, "[e]stoppel is one of those subjects omitted from Chapter 2—but, per *Arthur Andersen*, is covered in Chapter 1 through the incorporation of state law. It follows that state law controls disputes about estoppel under Chapter 2 as well." *Id.* at *5.

2. The absence of any conflict between Chapter 1 and the Convention on nonsignatory enforcement also dooms the petitioners' project to federalize the full range of state-law nonsignatory-enforcement doctrines. Silence neither supplies nor commands a rule; it commands acknowledgment that no rule exists. Identifying a "uniquely federal interest" (which is essential but absent here) is not enough. *Hencely*, 146 S. Ct. at 1094. "Instead, this Court's precedents require a significant conflict … between an identifiable federal policy or interest and the operation of state law." *Id.* (quotation omitted). Because the Convention is silent on nonsignatory-enforcement doctrines, the petitioners cannot show a "significant conflict," *id.* (quotation omitted), or any conflict at all, between the Convention and Louisiana law on those doctrines.

3. The petitioners' contrary arguments are unpersuasive. The petitioners insist *Arthur Andersen* announced a narrow Chapter 1 rule, and the Fifth Circuit erred by extending it to Chapter 2. But treating *Arthur Andersen* as "just a Chapter 1 rule" overlooks two points. One, 9 U.S.C. § 208 makes nonconflicting Chapter 1 rules applicable to Chapter 2 cases. And two, *GE Energy* found no conflict between Chapter 1

and Chapter 2 on equitable estoppel. It follows that Chapter 2 cases are subject to Chapter 1's state-law estoppel rules. *See Kim*, 2026 WL 2348464, at *4–6.

B. The Convention does not demand uniformity on estoppel doctrines on which the Convention is silent and on which no international consensus exists.

A pillar of the petitioners' arguments is that the Convention requires "uniformity" on the matter of equitable estoppel. The Fifth Circuit's choice to apply traditional principles of state contract law, the argument goes, dishonors a "powerful federal interest in uniformity and complying with the United States' treaty obligations[.]" Pet. 15. The problem for the petitioners is that the Convention is silent on equitable estoppel. The petitioners fail to show that the Convention demands "uniformity" on equitable-estoppel doctrines the Convention says nothing about.

No one denies an interest in uniformity on matters the Convention actually addresses. *See Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 n.15 (1974). But the Convention "does not address whether nonsignatories may enforce arbitration agreements under domestic doctrines such as equitable estoppel," *GE Energy*, 590 U.S. at 439, so it does not require federalizing the range of nonsignatory-enforcement doctrines.

Along those lines, the petitioners overlook that their choice-of-law theory would federalize more than just equitable estoppel. That doctrine does not travel alone; it is one of seven associated nonsignatory-enforcement doctrines this Court has recognized, including "assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, [and] waiver…." *Id.* at 437 (quotation omitted). On the view of the petitioners, the Convention requires a break with Chapter 1 and the creation of federal common law to supplant all of those state-law doctrines for the sake of a "uniform" approach to matters the Convention does not address. That is not interpretation. It is independent, unguided drafting.

Nor do the petitioners show that federalizing equitable-estoppel would advance their asserted interest in uniformity. More than 170 nations are parties to the Convention; the United States is just one. *See* New York Convention, *Contracting States*, https://perma.cc/LTY3-5EWL (last visited Aug. 25, 2026). As the Seventh Circuit explained, uniformity must be evaluated by reference to the "rules of other countries that have signed the [Convention]." *Kim*, 2026 WL 2348464, at *5. The petitioners discuss none of them.

That is likely because no uniform approach to equitable estoppel exists. As professors of international arbitration explained in a brief filed in *GE Energy*, "[t]here is no international consensus on the use of equitable estoppel for non-signatories to arbitration agreements." Brief of *Amici Curiae* Professor Benjamin G. Davis and Professor Nader M. Ibrahim, Ph.D., in Support of Respondents, No. 18-1048, at 25 (U.S. Nov. 16, 2019). Indeed, those scholars stressed, "recourse to estoppel is limited to the United States, and is unknown in civil law countries." *Id.* Even within the United States, neither Congress nor the judiciary has seen any need to impose a uniform rule on estoppel.

CONCLUSION

The petition should be denied.

Respectfully submitted,

Russell J. Stutes, Jr.
Patrick Jody Lavergne
STUTES & LAVERGNE
600 Broad St.
Lake Charles, LA 70601

David Bruchhaus
Wesley A. Romero
MUDD, BRUCHHAUS
& KEATING, LLC
422 E. College St., Ste. B
Lake Charles, LA 70605

Thomas M. Flanagan
Counsel of Record
Camille E. Gauthier
Jordan Bailey Redmon
FLANAGAN PARTNERS LLP
201 St. Charles Ave., Ste. 3300
New Orleans, LA 70170
(504) 569-0235
tflanagan@flanaganpartners.com

Counsel for Respondents

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