No. 25-1383

In the Supreme Court of the United States

INDIAN HARBOR INSURANCE CO., ET AL., PETITIONERS

v.

TOWN OF VINTON, ET AL.

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

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

The courts of appeals have split—the count is now 4–2—over whether federal or state law governs when a nonsignatory seeks to compel arbitration under an agreement governed by the New York Convention. After the petition was filed, the Seventh Circuit joined the Fifth Circuit's minority position here that state law applies. *See Kim v. Jump Trading, LLC*, No. 25-1964, 2026 WL 2348464, at *5 (7th Cir. Aug. 13, 2026) (published). The court acknowledged that "four circuits"—the First, Second, Fourth, and Ninth—"have held that federal common law provides the rule of equitable estoppel for agreements governed by Chapter 2," but expressly rejected those decisions, agreeing with the Fifth Circuit in this case instead. *Id.*

Respondents' counterarguments don't withstand scrutiny. Respondents claim there's no split because the First, Second, Fourth, and Ninth Circuit cases involved claims by or against foreign parties (unlike this case) and didn't confront outcome-determinative differences between federal and state law. But none of the decisions turned on, or is limited by, those claimed distinctions. Rather, those circuits held that a uniform federal rule of decision is necessary to effectuate the Convention's goal of promoting uniform enforcement of arbitration. Pet. 16-20. And those holdings apply no matter the parties or dispute in any particular case.

Respondents also claim that this case is a bad vehicle because (1) they dismissed their claims against the two foreign Insurers; (2) this case involves insurance contracts, which are traditionally regulated by the states; and (3) equitable estoppel can't be applied against government entities. Those arguments fail. *First*, the Fifth Circuit has already rejected the argument that dismissing foreign insurers in nearly identical circumstances thwarts domestic insurers' ability to invoke equitable estoppel. *See Bufkin Enterprises, L.L.C. v. Indian Harbor Insurance Co.*, 96 F.4th 726, 732 (5th Cir. 2024) (per curiam). *Second*, it doesn't matter that insurance contracts are traditionally regulated by the states because the New York Convention displaces state insurance regulation, as every court of appeals to have considered the question has held, Pet. 10, and as Respondents elsewhere (Opp. 11) acknowledge. *Finally*, governmental entities are immune only from estoppel arguments that would prevent them from enforcing the law or changing public policy, *see New Hampshire v. Maine*, 532 U.S. 742, 755-56 (2001)—not when trying to enforce commercial contracts.

The petition presents a critical, certworthy question and this case is an excellent vehicle for resolving it. The Fifth and Seventh Circuits' erroneous decisions threaten to undermine critical policies embodied in the Convention. The Court should grant review.

ARGUMENT

I. The circuits have split 4–2 over whether federal or state law controls the equitable estoppel analysis in cases governed by the New York Convention.

A. The Fifth Circuit's decision here created what has since deepened into a 4–2 circuit split over whether federal or state law governs the equitable estoppel analysis in New York Convention cases. The First, Second, Fourth, and Ninth Circuits hold that federal common law must supply the rule to honor the Convention's core purpose of creating uniform rules for enforcing international arbitration agreements.

See InterGen N.V. v. Grina, 344 F.3d 134, 143 (1st Cir. 2003); *Smith/Enron Cogeneration L.P., Inc. v. Smith Cogeneration International, Inc.*, 198 F.3d 88, 96 (2d Cir. 1999); *Aggarao v. MOL Ship Management Co.*, 675 F.3d 355, 373-75 (4th Cir. 2012); *Setty v. Shrinivas Sugandhalaya LLP*, 3 F.4th 1166, 1168 (9th Cir. 2021). By contrast, the Fifth Circuit below, now joined by the Seventh Circuit, holds that state law applies. App. 10a; *Kim*, 2026 WL 2348464, at *5.

The split is acknowledged and entrenched. Only this Court can resolve it.

B. Respondents' attempts to downplay the split lack merit.

1. Respondents first argue (Opp. 19) that there is no split because the First, Second, Fourth, and Ninth Circuit cases involved claims brought by or against foreign parties, while Respondents dismissed their claims against the two foreign insurers in this case. But that distinction makes no difference, as the Seventh Circuit recently recognized in acknowledging the split. *Kim*, 2026 WL 2348464, at *5. The First, Second, Fourth, and Ninth Circuits apply federal common law to honor the Convention's central goal of "unify[ing] the standards by which agreements to arbitrate are observed." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974); Pet. 16-20. Those holdings didn't turn on the litigating parties' citizenship. Neither does the rule's rationale. What matters under the Convention and Chapter 2 of the FAA is whether a foreign national is a party to the underlying arbitration agreement, *see* 9 U.S.C. § 202, not whether there is a foreign party in the litigation in which the arbitration agreement is invoked.

2. Respondents next claim there is no split because the First, Second, Fourth, and Ninth Circuit cases didn't involve "a considered choice between federal common law and a state's positive law prohibiting equitable estoppel," because those courts didn't "identify[] any conflict" between state and federal law. Opp. 20-21. That argument *admits* that there's a split—it just criticizes the holdings Respondents don't like. No matter whether there's conflict in any given circumstance between state and federal law, the rule in those circuits is to apply federal law. And those circuits apply federal common law precisely to *avoid* subjecting international arbitration agreements to a patchwork of parochial anti-arbitration state-law rules that might prohibit arbitration when federal law would allow it—even if *some* states might have estoppel rules that align with the federal rule. Pet. 16-20.

3. Falling back, Respondents next try to whittle down the split. Those efforts fail, too.

a. Respondents claim (Opp. 21) that the First and Second Circuit decisions—*InterGen* and *Smith/Enron*—aren't part of the split because they pre-date *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009), which held that state law controls the equitable estoppel analysis under Chapter 1 of the FAA. But as the petition explains (at 28-30), *Arthur Andersen* doesn't apply to cases governed by Chapter 2 of the FAA and the New York Convention. *Arthur Andersen* turned on language in Chapter 1 of the FAA incorporating "an external body of [state] law," 556 U.S. at 630, that doesn't exist in Chapter 2 or the Convention. And this Court recognized in *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, that it hasn't decided "which body of law governs that determination." 590 U.S. 432, 445 (2020). Respondents' argument amounts to an assertion that *Arthur Andersen* decided the question presented here, even though *GE Energy* made pellucidly clear that's not true—so neither the First nor the Second Circuit would treat *Arthur Andersen* as upsetting its longstanding precedent. *See* Pet. 28-30. And, of course, as Respondents concede (Opp. 21-22), the Fourth Circuit and Ninth Circuit decisions in the split post-date *Arthur Andersen*, anyway.

b. Respondents argue (Opp. 21-22) that the Fourth Circuit hasn't actually decided the question presented because *Aggarao* doesn't contain a detailed choice of law analysis. But the Fourth Circuit previously held in *International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 417 n.4 (4th Cir. 2000), that "[b]ecause the determination of whether … a nonsignatory, is bound by the … contract" under equitable estoppel principles in New York Convention cases "presents no state law question of contract formation or validity," courts must "look to the 'federal substantive law of arbitrability' to resolve this question." The Seventh Circuit recognized as much in *Kim*, 2026 WL 2348464, at *5. So there's no question that the Fourth Circuit holds, contrary to the Fifth and Seventh Circuits, that federal common law applies when a nonparty attempts to use equitable estoppel to enforce an arbitration agreement subject to the Convention.

c. Finally, Respondents note (Opp. 22) that the Ninth Circuit's decision in *Setty* doesn't analyze *Arthur Andersen*. But again, *Arthur Andersen* doesn't resolve whether federal or state law governs the equitable estoppel analysis in New York Convention cases, as *GE Energy* makes clear. And even if *Arthur Andersen* were somehow relevant to the question presented, the Ninth Circuit's decision would still conflict with the Fifth Circuit's decision here and the Seventh Circuit's decision in *Kim*.

In sum, six courts of appeals have intractably split over whether federal or state law governs the equitable estoppel analysis in New York Convention cases. This Court should intervene to resolve the conflict.

II. The Fifth and Seventh Circuits' outlier rule is wrong.

A. The Fifth Circuit was wrong to apply Louisiana state law, rather than federal common law, to the equitable estoppel analysis. Federal common law applies when a subject implicates a "uniquely federal interest" and applying state law would conflict with federal policy. *Boyle v. United Technologies Corp.*, 487 U.S. 500, 507 (1988). Enforcement of arbitration agreements under the New York Convention is exactly the kind of context that demands a uniform federal rule. Applying a patchwork of state equitable estoppel rules would conflict with the Convention's uniquely federal interest in uniform standards for enforcing international arbitration agreements. *Scherk*, 417 U.S. at 520 n.15. So the First, Second, Fourth, and Ninth Circuits are correct to apply a uniform federal rule of decision, rather than whatever parochial anti-arbitration policies states might declare.

B. Chapter 2 of the FAA specifies that "Chapter 1 applies to actions and proceedings brought under [Chapter 2] to the extent that chapter is not in conflict with [Chapter 2] or the Convention as ratified by the United States." 9 U.S.C. § 208. Respondents claim (Opp. 27-30) that because the Convention doesn't discuss enforcement of arbitration agreements by nonsignatories, it can't conflict with Chapter 1's nonsignatory enforcement rules and doesn't express any policy favoring a uniform rule of decision. Respondents thus conclude that because state law governs the equitable estoppel analysis in Chapter 1 cases, it must govern in Chapter 2 cases as well.

Respondents' argument fails because the New York Convention does express a strong policy favoring a uniform rule of decision, and applying state law to govern the equitable estoppel analysis in Convention cases would create a significant conflict with that policy. The Convention was designed to ensure that member states couldn't "decline enforcement" of otherwise-enforceable arbitration agreements based on "parochial views of their desirability or in a manner that would diminish the mutually binding nature of the agreements." *Scherk*, 417 U.S. at 520 n.15. The Convention thus specifies that each contracting state "*shall* recognize an agreement in writing" to arbitrate. New York Convention Article II(1), 21 U.S.T. at 2519 (emphasis added); 9 U.S.C. § 202. It also states that for "federal or non-unitary" countries like the United States, "the obligations of the federal Government" under the treaty "shall … be the same" as unitary countries. New York Convention Article XI, XI(a), 21 U.S.T. at 2521. And as amici explain, the Convention's structure envisions that contracting nations "will speak with one voice" on matters of arbitration enforcement. *See* Crina Baltag, et al. Br. 9-16; American Property Casualty Insurance Ass'n Br. 16-23. The message is clear: The Convention was designed to create uniform and predictable rules for enforcing international arbitration agreements, and countries with both national and regional governments (like the United States) must ensure that local governments do not use anti-arbitration policies to thwart the Convention's goals.

Indeed, allowing states to use "parochial rules" like Louisiana's anti-arbitration legislation to "excuse" non-enforcement of arbitration agreements "would frustrate one of the *primary* objectives of the United States in becoming a signatory to the Convention: securing uniform standards by which agreements to arbitrate international disputes are governed." *Certain Underwriters at Lloyd's London v. Argonaut Insurance Co.*, 500 F.3d 571, 580 (7th Cir. 2007) (emphasis in original). So because Chapter 1's rule selecting state law for the equitable estoppel analysis is "in conflict with … the Convention," it doesn't apply. 9 U.S.C. § 208.

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

A. The question presented is critically important because it arises frequently and is often outcome-determinative. As the petition explains (at 30-34), dozens of states have doctrines prohibiting or disfavoring arbitration by insurers or making equitable estoppel less available under state law than it is under federal common law. Given those significant differences, whether federal or state equitable estoppel law applies will frequently determine whether nonsignatories can compel arbitration under arbitration agreements governed by the Convention. The question presented thus has critical implications for whether "the United States lives up to its treaty obligations" by providing the kind of uniform, predictable rules of decision the Convention was adopted to create. *Outokumpu Stainless USA, LLC v. Coverteam SAS*, No. 17-10944, 2022 WL 2643936, at *6 (11th Cir. July 8, 2022) (Tjoflat, J., concurring).

This case is an excellent vehicle for resolving the circuit conflict. The parties litigated below whether state or federal law controls the equitable estoppel analysis, and the Fifth Circuit squarely decided that question. The Fifth Circuit's decision to apply state law was outcome-determinative, given that it previously held that equitable estoppel was available in a materially identical case involving many of the same insurers at issue here. *See Bufkin*, 96 F.4th at 730-32. And there are no factual disputes or alternative holdings that would complicate the Court's review.

B. Respondents don't dispute that the question presented is critically important. Instead, they wrongly argue that this case is a poor vehicle.

1. Respondents say (Opp. 23) this case is a bad vehicle because they dismissed their claims against the two foreign Insurers, so the case doesn't present an "international interest." But for starters, Respondents don't dispute that the underlying contracts—Respondents' agreements with the two foreign Insurers—are international arbitration agreements covered by the Convention. This case thus squarely implicates the New York Convention's interest in uniform enforcement of international arbitration agreements. What's more, Respondents fail to appreciate that the question presented doesn't turn on the "international interest" in any particular case, but rather on the interest in uniform Convention rules.

2. Respondents claim (Opp. 23) this case is a bad vehicle because it involves insurance-related questions that are typically reserved for the states under the McCarran-Ferguson Act, 15 U.S.C. § 1012(a).

Respondents suggest that the Court "await a case that does not present the … state regulatory interests" associated with insurance. Opp. 23. That makes no sense. Respondents accept that the underlying arbitration agreements are governed by the Convention, and that the McCarran-Ferguson Act doesn't apply to the Convention, as every court of appeals that has considered the question has held. *See* Pet. 10 (collecting decisions). Cases governed by the Convention don't implicate state regulatory interests. States have no legitimate interest in regulating arbitration agreements governed by a treaty that preempts state-law interference.

3. Respondents say this case is a bad vehicle because they are public entities and "[e]stoppel applies differently against the government." Opp. 24. But governments can be subject to estoppel that requires them to live up their contractual commitments like private parties. As this Court has clarified, in a case discussing Respondents' chief authority, governments can't be estopped from "enforcing the law" or changing "public policy," but they can be estopped outside those contexts. *See New Hampshire*, 532 U.S. at 755-56 (discussing *Heckler v. Community Health Services of Crawford County*, 467 U.S. 51, 60 (1984)). And state government units generally must honor their contractual commitments just like private parties. *See* U.S. Const. art. I, § 10, cl. 1; *United States Trust Co. of New York v. New Jersey*, 431 U.S. 1, 17 (1977). Respondents likely stop at insinuation because there is no serious question that they can be compelled to arbitrate under equitable estoppel principles. But if the meritless argument nonetheless becomes one they want to make, they can make it on remand, after the Court resolves the acknowledged 4–2 split.

4. Finally, Respondents claim (Opp. 24-25) the Insurers couldn't prevail under federal common law because: (a) the "intertwined claims" theory of equitable estoppel on which the Insurers rely is available only when a plaintiff sues both signatories and non-signatories to an arbitration agreement; and (b) Respondents dismissed their claims against the two foreign Insurers—the signatories to the underlying agreements—to evade the Convention. But that's a remand issue, and Respondents' argument lacks merit anyway.

No federal appeals court has agreed that the intertwined claims theory turns on the parties named in the suit. And as Respondents acknowledge, the Fifth Circuit rejected just that argument in *Bufkin*. "It is of no moment that" the plaintiffs were "no longer pursuing claims against the foreign insurers," the court explained, because federal common law "simply asks whether the signatory to the arbitration agreement … raises allegations of substantially interdependent and concerted misconduct by both a non-signatory (the domestic insurers) and one or more signatories to the contract (the foreign ones)." *Bufkin*, 96 F.4th at 732. That's this case. Respondents' conclusory complaints lump the domestic and foreign Insurers together, and allege that all the "Insurance Companies"—domestic and foreign alike—"failed to satisfy and fulfill their respective duties and obligations under" Respondents' policies. *See, e.g.*, W.D. La. 23-cv-240 Dkt. 1-1 at 3.

Respondents claim (Opp. 25-26) *Bufkin* is distinguishable because it applied Louisiana law. But *Bufkin* predicted (incorrectly) that Louisiana courts would follow federal common law principles and thus applied those principles. *See* 96 F.4th at 730-32; Pet. 22. Respondents also claim (Opp. 26) that *Bufkin* conflicts with this Court's subsequent decision in *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 44 (2025). But *Royal Canin* merely held that plaintiffs can defeat federal question jurisdiction by amending their complaint to remove federal claims. *Id.* It didn't say anything about equitable estoppel or reject the Fifth Circuit's analysis in *Bufkin*.

* * *

Respondents cannot make the circuit split—which the Seventh Circuit just acknowledged and deepened—disappear. They cannot dispute the importance of the question presented, which their (incorrect) arguments about *Arthur Andersen* only underscore. And their grab-bag of vehicle arguments reveals only already-rejected contentions. The Court should intervene without delay.

CONCLUSION

The Court should grant review.

Respectfully submitted.

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September 9, 2026