No. 25-699

In the Supreme Court of the United States

AMAPLAT MAURITIUS LTD. AND
AMARI NICKEL HOLDINGS ZIMBABWE LTD.,
PETITIONERS,

v.

ZIMBABWE MINING DEVELOPMENT CORP.;
CHIEF MINING COMMISSIONER, MINISTRY OF MINES OF ZIMBABWE; AND REPUBLIC OF ZIMBABWE,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE D.C. CIRCUIT

BRIEF IN OPPOSITION

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INTRODUCTION

Section 1605(a)(1) of the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. § 1605(a)(1), provides that a foreign sovereign may "waive[] its immunity either explicitly or by implication." Petitioners ask the Court to address whether a signatory to the New York Convention that agrees to arbitrate in the jurisdiction of another Convention signatory also impliedly waives immunity against

enforcement of a foreign judgment confirming an underlying arbitral award. That question does not warrant this Court's review, for multiple reasons.

To start, the question is narrow and unimportant. Implied waiver of immunity based on the New York Convention against judgment-enforcement claims has arisen in remarkably few cases. Nor does the implied-waiver exception arise frequently as to award-confirmation claims. Indeed, arbitral and foreign-judgment creditors rarely ground subject-matter jurisdiction in implied waiver based on the New York Convention, likely because of the ready availability of other exceptions to sovereign immunity under the FSIA.

For similar reasons, any disagreement in the courts of appeals on the question presented does not require the Court's immediate intervention. Only the D.C. Circuit and Second Circuit have addressed the question presented. And in the thirty-odd years since the Second Circuit's decision first analyzing the issue in *Seetransport Wiking Trader Schiffarhtsgesellschaft MBH & Co. v. Navimpex Centrala Navala*, 989 F.2d 572 (2d Cir. 1993), that court's judgment-enforcement holding had been followed only once—by the *Seetransport* district court. At a minimum, additional percolation is warranted, both to permit other circuits to weigh in and to allow the Second Circuit to consider whether to revisit its analysis, obviating any split.

Even if the Court were inclined to consider implied waiver under the New York Convention, this case is an exceptionally poor vehicle. The question presented necessitates this Court's review of a predicate question—whether a foreign sovereign waives immunity at all by signing the New York Convention and agreeing to arbitrate. That predicate question was not resolved by the

decision below, nor is there any circuit split on it. And petitioners' constant attempts to reframe how respondents impliedly waived immunity leave the boundaries of this dispute even blurrier.

Finally, the decision below is also right on the merits. There is no basis in the text of the FSIA or the Convention for petitioners' proposed expansion of the implied-waiver exception. This Court should deny certiorari.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1605(a)(1) provides:

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the states in any case—

> (1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver.

STATEMENT

A. Statutory Background

"Under the [FSIA], foreign states are generally immune from suit in United States courts," subject to certain exceptions enumerated in the FSIA. *CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 605 U.S. 223, 225-26 (2025). This case is about the FSIA's waiver exception. Under that provision, a foreign state lacks immunity when it "has waived its immunity either explicitly or by implication." 28 U.S.C. § 1605(a)(1).

While the FSIA governs a foreign state's immunity from suit, it does not create an independent cause of action. As relevant here, the Federal Arbitration Act (FAA)

provides a cause of action to confirm and enforce arbitral awards made pursuant to the New York Convention. 9 U.S.C. §§ 201-208. The New York Convention (formally known as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997) "is a multilateral treaty that addresses international arbitration"; it "contain[s] recognition and enforcement obligations related to arbitral awards for contracting states and for parties seeking the enforcement of arbitral awards." *GE Energy Power Conversion Fr. SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 438 (2020). An arbitral creditor who receives an award made under the New York Convention can seek confirmation or enforcement of that award in the United States within the FAA's three-year limitations period. 9 U.S.C. § 207.

Arbitral creditors have a variety of other enforcement options outside the FAA. They can—and often do—seek confirmation in the seat of arbitration, either before or concurrently with enforcement in the United States. Creditors can also attempt to enforce a foreign judgment confirming any such award under state law, which generally provides a longer limitations period than the FAA.

B. Factual Background

The Zimbabwe Mining Development Corporation (ZMDC) is majority-owned by the Republic of Zimbabwe (Zimbabwe) and acts on its behalf to, *inter alia*, "invest in the mining industry" and "plan, co-ordinate and implement mining development projects." C.A.D.C. Joint Appendix (JA) 210-11, JA216-17 (citation omitted). In 2007 and 2008, ZMDC entered into memoranda of understanding (MOUs) with petitioners Amaplat Mauritius Ltd. and Amari Nickel Holdings Zimbabwe Ltd., mining companies incorporated in Mauritius. Pet.App.47a. Pursuant to the MOUs, ZMDC and petitioners were to

incorporate joint-venture companies to prospect for nickel and platinum deposits and develop mines. *Id.*

The MOUs also contained arbitration clauses. JA212. These clauses provided for the submission of any disputes to the ICC International Court of Arbitration in Paris (ICC Court) for arbitration under the ICC Court's procedural rules then in effect, with any resultant award to "be final and binding upon the Parties." *Id.* The ICC Court's rules provided that "[b]y submitting the dispute to arbitration under these Rules, the parties … shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made." Pet.App.127a. Neither the MOUs' arbitration clauses nor their remaining provisions addressed foreign sovereign immunity or waiver thereof. JA212; *see also* JA268-83, JA284-300.

In 2010, ZMDC sought to cancel the MOUs. Pet.App.47a. Petitioners initiated arbitration proceedings against ZMDC and the Chief Mining Commissioner of the Zimbabwean Ministry of Mines (Commissioner) pursuant to the MOUs' arbitration clauses. Pet.App.47a-48a. The ICC Court designated Zambia as the place of arbitration. Pet.App.48a. ZMDC, the Commissioner, and petitioners signed Terms of Reference agreeing to the Zambian arbitration. Pet.App.48a, Pet.App.87a-88a. Zimbabwe was not a party to the Zambian arbitration. Pet.App.6a-7a.

The parties proceeded with arbitration for about a year and a half. Pet.App.48a-49a. ZMDC and the Commissioner repeatedly requested that the arbitral panel consider a preliminary challenge to the panel's jurisdiction, but the panel deferred doing so until the merits stage. Pet.App.48a. The panel began hearing evidence in August 2012. *Id.* Shortly thereafter, ZMDC and the Commissioner unsuccessfully challenged the arbitral tribunal—both before the panel and at the High Court of

Zambia—and withdrew from the proceedings. Pet.App.48a-49a; *see also* JA212-13. Arbitration eventually resumed without ZMDC or the Commissioner present, and in January 2014 the panel issued an award against ZMDC and the Commissioner for about $50 million. Pet.App.49a.

Petitioners did not seek confirmation of the arbitral award in the United States. Pet.App.49a; JA213-14. Instead, they first sought confirmation and to seize assets in satisfaction of the award in Belgium in 2014. JA1147-48; Reply to Plaintiffs' Opposition to the Motion to Dismiss, Ex. G at 3-8, *Amaplat Mauritius Ltd. v. Zim. Mining Dev. Corp.*, 717 F. Supp. 3d 1 (D.D.C. 2024) (No. 22-cv-58). Petitioners later sought confirmation in Zambia in July 2019, after the High Court of Zambia rejected ZMDC and the Commissioner's challenges to the arbitral panel's composition and authority. Pet.App.49a; JA69-70. The High Court issued a judgment in petitioners' favor one month later. Pet.App.49a; JA69-70. Petitioners allege that the High Court's judgment is final, valid, and enforceable in Zambia. JA213-14.

C. Procedural History

1. For roughly the next two years, ZMDC, the Commissioner, and petitioners engaged in settlement discussions. Pet.App.50a; JA214. When those negotiations ultimately proved unfruitful, petitioners filed suit in January 2022 in the District Court for the District of Columbia against ZMDC and the Commissioner, as well as Zimbabwe itself, though Zimbabwe had not been party to the underlying proceedings. Pet.App.7a, Pet.App.50a; JA11-21.

Petitioners' complaint requested recognition and enforcement of the High Court of Zambia's judgment under the D.C. Uniform Foreign-Country Money Judgments

Recognition Act, D.C. Code § 15-361 *et seq.* Pet.App.50a; JA12, JA19-20. Petitioners further requested that the district court find that Zimbabwe is the alter ego of ZMDC and the Commissioner and that the court enter a money judgment against respondents. Pet.App.50a. And they maintained that the district court had subject-matter jurisdiction because the FSIA's waiver and arbitration exceptions applied. JA13.

Petitioners' complaint did not request confirmation of the January 2014 arbitral award under the FAA. JA12, JA19-20. Nor did the complaint—filed eight years after the arbitral award in petitioners' favor—discuss why petitioners had not previously sought confirmation of the award in the United States. JA17-18; *see also* JA213-14.

Respondents moved to dismiss petitioners' complaint, challenging subject-matter and personal jurisdiction and arguing that petitioners had failed to state a claim. Pet.App.50a-51a. As relevant here, respondents disputed the applicability of the FSIA's waiver and arbitration exceptions to petitioners' judgment-enforcement claim. Pet.App.51a. Petitioners opposed the motions to dismiss, asserting that Zimbabwe's accession to the New York Convention—coupled with ZMDC and the Commissioner agreeing to arbitrate in Zambia, a Convention signatory—impliedly waived respondents' sovereign immunity under § 1605(a)(1) and further satisfied the arbitration exception under § 1605(a)(6). Pet.App.54a-56a, Pet.App.83a. But petitioners did not argue that respondents had explicitly waived their sovereign immunity under § 1605(a)(1). Pet.App.54a-56a; *see also* JA13-14.

The district court denied respondents' motions to dismiss as to the Commissioner and granted them as to ZMDC and Zimbabwe. Pet.App.46a-47a. The court determined that the Commissioner is a "foreign state" under

§ 1603(a), that the § 1605(a)(6) arbitration exception is inapplicable to judgment-enforcement claims, and that the Commissioner impliedly waived sovereign immunity by agreeing to arbitrate in a New York Convention signatory (Zambia) given Zimbabwe's accession to the Convention. Pet.App.68a-89a. And relying on the Second Circuit's decision in *Seetransport*, the court held that this implied waiver extended to judgment-enforcement claims. Pet.App.88a-89a. As for ZMDC and Zimbabwe, the court dismissed petitioners' complaint for failure to adequately allege that ZMDC was Zimbabwe's alter ego, but it granted leave to amend. Pet.App.56a-67a.

Petitioners amended their complaint to add new allegations regarding ZMDC's status as Zimbabwe's alter ego, and respondents again moved to dismiss for lack of subject-matter and personal jurisdiction and for failure to state a claim. Pet.App.20a. In opposition, petitioners maintained that respondents had impliedly waived foreign sovereign immunity, once more without raising any explicit-waiver theory. JA351-52, JA365-66, JA383. The district court found petitioners had plausibly alleged that ZMDC was Zimbabwe's alter ego, rejected respondents' remaining arguments, and denied their motion to dismiss the amended complaint. Pet.App.23a-45a.

2. Respondents appealed the denials of the motions to dismiss to the D.C. Circuit. Pet.App.8a. Respondents urged reversal on several bases, including that judgment-enforcement claims do not fall within the implied-waiver exception. Pet.App.16a-17a. Yet again, petitioners argued for the applicability of the implied-waiver and arbitration exceptions, without ever asserting explicit waiver. Pet.App.2a.

The D.C. Circuit reversed as to the district court's determination that it had subject-matter jurisdiction,

concluding that neither FSIA exception applied to petitioners' judgment-enforcement claim. Pet.App.2a, Pet.App.18a. Regarding implied waiver, the court declined petitioners' invitation "to follow the Second Circuit's decision in *Seetransport*," which had "applied the implied waiver exception both to a cause of action to confirm an award and a cause of action to recognize a foreign court judgment confirming an award." Pet.App.12a.

The court noted that, according to the Second Circuit, "the basis for the first waiver" (as to award-confirmation claims) was "the text of the New York Convention." Pet.App.12a. The Second Circuit reasoned that the Convention "'expressly permits recognition and enforcement' of arbitral awards in signatory states," such that "a state that had signed the Convention" and later agreed "to arbitrat[e] in a jurisdiction that had done the same" "logically … had to have contemplated the involvement of the courts of any of the Contracting States in an action to enforce the award." Pet.App.12a-13a (omission in original) (quoting *Seetransport*, 989 F.2d at 578-79). While the D.C. Circuit had previously favorably cited *Seetransport*'s award-confirmation holding and applied that holding in an unpublished decision, the panel below emphasized that the court "had not yet formally adopted *Seetransport*'s conclusion." Pet.App.15a-16a (cleaned up). And because petitioners' complaint asserted only a judgment-enforcement claim, rather than an "award action[]," the court left the question of implied waiver based on "signing the New York Convention and agreeing to arbitrate … 'for another day.'" Pet.App.16a (quoting *NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain*, 112 F.4th 1088, 1100 (D.C. Cir. 2024), *reh'g en banc denied*, 2024 WL 4940503 (D.C. Cir. Dec. 2, 2024)).

As for judgment-enforcement claims, by contrast, the panel emphasized the Second Circuit's failure to "rely on

the text or scope of the New York Convention." Pet.App.13a. Rather, the Second Circuit extended the scope of implied waiver based on the Convention "to also encompass the claim for judgment recognition … merely because 'the cause of action [to enforce a foreign judgment] is so closely related to the claim for enforcement of the arbitral award.'" *Id.* (alteration in original) (quoting *Seetransport*, 989 F.2d at 583). But the D.C. Circuit explained that the courts of appeals have "virtually unanimous[ly] … constru[ed] the implied waiver provision narrowly," with the D.C. Circuit "'rarely' find[ing] waiver 'without strong evidence that this is what the foreign state intended.'" Pet.App.12a (quoting *Khochinsky v. Republic of Poland*, 1 F.4th 1, 8 (D.C. Cir. 2021)). Given that neither the New York Convention nor the FAA addresses recognition and enforcement of foreign-court judgments confirming arbitral awards, the panel held that the two causes of action being "'closely related' … is too insubstantial a connection to establish strong evidence of a sovereign's intent to waive its immunity" over judgment-enforcement claims, as is required to find implied waiver. Pet.App.13a-15a. In other words, "signing a treaty that governs arbitral awards, not foreign court judgments," does not sufficiently evidence an "intent to waive immunity" as to judgment enforcement. Pet.App.15a.

REASONS FOR DENYING THE PETITION

The question presented does not warrant this Court's review. Despite petitioners' assertions of its significance, the question of whether signing the New York Convention and agreeing to arbitrate impliedly waives immunity has arisen in remarkably few cases and has been dispositive in even fewer. Arbitral or foreign-judgment creditors who wish to sue a foreign sovereign in the United States frequently rely on the other exceptions set forth in the

FSIA. The impact of the question presented going forward is therefore likely to be minimal.

Moreover, only the Second Circuit has adopted petitioners' position that signing the New York Convention and agreeing to arbitrate in a signatory state effectuates an implied waiver of sovereign immunity from claims to enforce a foreign judgment arising from any subsequent arbitral award. *Seetransport*, 989 F.2d at 582-83. Until the D.C. Circuit addressed the question, no other circuit had weighed in over the intervening thirty-odd years. The Court should deny certiorari to allow other courts to consider the question presented or, alternatively, to give the Second Circuit a chance to consider the D.C. Circuit's recent opinion.

This case is a poor vehicle for deciding the question presented in any event. Not only would it require this Court to resolve an antecedent question the D.C. Circuit expressly opted not to resolve, petitioners have repeatedly shifted their explanation of how respondents supposedly waived their immunity.

Finally, this Court should deny review because the D.C. Circuit's decision is correct. The circuits agree that foreign sovereigns impliedly waive immunity only in a narrow set of circumstances. Extending the implied-waiver exception to capture cases like this would rewrite the FSIA, countermanding the careful scheme Congress enacted. This Court should not entertain petitioners' attempt to do so.

I. The Question Presented Does Not Warrant This Court's Review

1. The question presented has exceedingly little practical importance, as it arises only in an incredibly narrow set of circumstances. First, arbitration must occur in a nation that has signed the New York Convention. Second,

an arbitral award must be issued against a foreign sovereign or its instrumentality. Third, that sovereign must have itself acceded to the Convention. Fourth, a litigant must obtain a foreign-court judgment confirming the arbitral award without ever seeking to confirm the award in the United States within the FAA's three-year statute of limitations. Finally, none of the FSIA's other exceptions must apply.

Unsurprisingly, then, cases implicating the question presented are few and far between. To respondents' knowledge, *Seetransport*, the decision below, and the associated district court decisions are the only ones squarely addressing this issue. Even within the Second Circuit, the miniscule number of cases assessing *Seetransport*'s judgment-enforcement holding found it inapplicable to the particular foreign judgments at issue. *See Transatlantic Shiffahrtskontor GmBh v. Shanghai Foreign Trade Corp.*, 996 F. Supp. 326, 332-33 (S.D.N.Y. 1998), *reconsidered in other part*, 1998 WL 799671 (S.D.N.Y. Nov. 17, 1998), *rev'd*, 204 F.3d 384 (2d Cir. 2000); *PT Rahajasa Media Internet v. Ctr. for Provision & Mgmt. of Telecomms. & Informatics Fin.*, 2025 WL 1928082, at *2 & n.4 (S.D.N.Y. July 14, 2025).

Petitioners' characterization of the decision below as "abrogat[ing] decades of district court decisions within the circuit recognizing judgments consistently with *Seetransport*" both exaggerates the frequency with which this implied-waiver issue arises and distorts the holdings of the two cases petitioners actually cite. Pet. 18. In each case, the court held that there was subject-matter jurisdiction under the arbitration exception, not the implied-waiver exception. *A.D. Trade Belg. S.P.R.L. v. Republic of Guinea*, 2023 WL 2733773, at *2 & n.2 (D.D.C. Mar. 31, 2023); *Cont'l Transfert Tech. Ltd. v. Federal Government of Nigeria*, 697 F. Supp. 2d 46, 56 (D.D.C. 2010). And in

neither case did the court specifically analyze subject-matter jurisdiction with respect to the judgment-enforcement claims at issue. *A.D. Trade* involved "an absent defendant" against which the court entered a default judgment, 2023 WL 2733773, at *3-4, while in *Continental Transfert*, Nigeria asserted sovereign immunity "[a]lmost as an aside" and only in its motion to dismiss the original complaint, which did not assert a judgment-enforcement claim, 697 F. Supp. 2d at 54-56, 62.

The paucity of authority applying the implied-waiver exception to judgment-enforcement claims, moreover, is wholly consistent with "the virtually unanimous precedent [among the courts of appeals] construing the implied waiver provision narrowly" and generally finding implied waiver "in only three circumstances," none of which include judgment-enforcement claims like petitioners'. *Khochinsky*, 1 F.4th at 8-9 (citations omitted); *see Watson v. Kingdom of Saudi Arabia*, 159 F.4th 1234, 1272 n.5 (11th Cir. 2025); *Af-Cap, Inc. v. Republic of Congo*, 462 F.3d 417, 426 (5th Cir. 2006); *In re Republic of Philippines*, 309 F.3d 1143, 1151 (9th Cir. 2002); *In re Tamimi*, 176 F.3d 274, 278 (4th Cir. 1999); *Frolova v. USSR*, 761 F.2d 370, 377 (7th Cir. 1985). Although petitioners maintain (at 26-27) that one of the three—"agree[ing] to arbitration in another country"—would apply here, they have cited no authority so holding, and numerous circuit courts have specifically rejected the notion that an agreement to arbitrate in another country alone suffices to waive immunity. *See S & Davis Int'l, Inc. v. Republic of Yemen*, 218 F.3d 1292, 1301 (11th Cir. 2000); *Creighton Ltd. v. Government of Qatar*, 181 F.3d 118, 122-23 (D.C. Cir. 1999); *Seetransport*, 989 F.2d at 577.

The practical importance of the question presented is further undermined by the ready availability of other FSIA exceptions for judgment-enforcement claims.

While there are vanishingly few cases applying the implied-waiver exception to such claims, courts regularly apply the *express*-waiver and commercial-activity exceptions, including to claims to enforce judgments confirming arbitral awards.[1]

The availability of these exceptions undercuts petitioners' parade of horribles (at 35-37) regarding the effects of the decision below. Judgment creditors that have, for instance, obtained explicit waivers of sovereign immunity may still avail themselves of the longer limitations periods provided by state judgment-enforcement statutes, even if the FAA's three-year statute of limitations has run as to the underlying arbitral award. And in situations where none of the FSIA's exceptions would apply to a claim to enforce a judgment confirming an arbitral award, the party prevailing in arbitration can, as petitioners' own authority notes, simply join the "many award creditors [who] prefer to file promptly in the United States to obtain access to robust discovery tools" or secure "access to the U.S. enforcement regime."[2]

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[1] *See*, *e.g.*, *Comm'ns Imp. Exp., S.A. v. Republic of Congo*, 118 F. Supp. 3d 220, 227 (D.D.C. 2015); *Nat'l Union Fire Ins. Co. of Pittsburgh v. People's Republic of Congo*, 729 F. Supp. 936, 940 (S.D.N.Y. 1989); *Alcazar Cap. Partners Co. v. Kurdistan Regional Government of Iraq*, 2025 WL 3079011, at *5 (S.D.N.Y. Nov. 4, 2025); *Williams v. Federal Government of Nigeria*, 2024 WL 3759649, at *10-14 (S.D.N.Y. Aug. 12, 2024) (express waiver), *aff'd*, 2025 WL 1065928 (2d Cir. Apr. 9, 2025) (nonprecedential); *Servaas Inc. v. Republic of Iraq*, 686 F. Supp. 2d 346, 356 (S.D.N.Y. 2010) (commercial activity), *aff'd*, 653 F. App'x 22 (2d Cir. 2011) (nonprecedential).

[2] Robert Kry, *Enforcement Deadlines for Foreign Arbitral Awards and Judgments*, Transnat'l Litig. Blog (July 29, 2025), https://tlblog.org/enforcement-deadlines-for-foreign-arbitral-awards-and-judgments/ [https://perma.cc/L5RN-CW6R] (cited Pet. 19, 36).

Petitioners contend that requiring award creditors to seek confirmation of their arbitral awards in the United States within the FAA's statute-of-limitations period is unfair because "merely converting arbitral awards into enforceable judgments can take time" and "litigants may not know assets are in the United States in time." Pet. 36. But the fact that it took petitioners several years to secure a judgment in Zambia confirming the arbitral award, Pet. 5, 36, does not explain why petitioners could not have simultaneously sought confirmation in the United States, as they did in Belgium, *see supra* p. 6. Nor did petitioners ever allege that they were unable to have discovered the presence of respondents' assets in the United States any earlier than they did. JA17-18, JA213-14.

2. Petitioners attempt to give their petition greater gravity by claiming (at 19-21) that this Court's review is necessary to clean up "confusion" that the decision below has engendered regarding "the fundamental question of implied waiver as to *award* enforcement." But this "fundamental question" also arises infrequently and is of limited practical significance, so the Court need not weigh in on it. There is no split regarding implied waiver as to award-confirmation claims based on the New York Convention, *see infra* p. 19, and only two circuit court decisions have ever applied this exception in such circumstances. *Seetransport*, 989 F.2d at 582-83; *Tatneft v. Ukraine*, 771 F. App'x 9, 10 (D.C. Cir. 2019) (nonprecedential). That should come as no surprise: Only rarely will a case arise in which the implied-waiver exception but not the arbitration exception is applicable. To the extent a foreign sovereign impliedly waives its immunity against an award-confirmation claim by signing the New York Convention and agreeing to arbitrate in a Convention signatory, the only circumstance in which the arbitration exception would not also apply to that claim is if the agreement was not "made by the foreign state with or for the

benefit of a private party." 28 U.S.C. § 1605(a)(6). Accordingly, courts regularly hold that both exceptions apply or decide subject-matter jurisdiction based solely on the arbitration exception.[3] This underlying question thus does not merit review, especially given the Court's recent denial of certiorari as to a petition squarely raising it. *Ukraine v. Pao Tatneft*, 589 U.S. 1138 (2020).

II. This Case Does Not Implicate Any Developed or Meaningful Circuit Split

Petitioners assert (at 13-14) that the decision below created a split with "longstanding precedent of the Second Circuit" governing a foreign sovereign's implied waiver of immunity from judgment-enforcement claims. Petitioners also attempt (at 17-21) to shoehorn in another purported split over a different question: Whether signing and agreeing to arbitrate under the New York Convention impliedly waives immunity over claims to confirm arbitral awards. Neither asserted split justifies certiorari: the first is undeveloped and requires percolation, and there is no disagreement on the second.

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[3] *See*, *e.g.*, *NextEra*, 112 F.4th at 1100; *Process & Indus. Devs. Ltd. v. Federal Republic of Nigeria*, 27 F.4th 771, 775 n.3 (D.C. Cir. 2022); *JSC DTEK Krymenergo v. Russian Federation*, 2025 WL 1148347, at *6 & n.5 (D.D.C. Apr. 17, 2025), *aff'd sub nom. Stabil LLC v. Russian Federation*, 2026 WL 406632 (D.C. Cir. Feb. 3, 2026); *Archirodon Constr. (Overseas) Co. v. Gen. Co. for Ports of Iraq*, 2024 WL 3844800, at *6 (D.D.C. Aug. 16, 2024); *Crescent Petroleum Co. Int'l v. Nat'l Iranian Oil Co.*, 2024 WL 1885498, at *3 (D.D.C. Apr. 30, 2024); *Preble-Rish Haiti, S.A. v. Republic of Haiti*, 2023 WL 4267215, at *8 (S.D.N.Y. June 29, 2023); *A.D. Trade*, 2023 WL 2733773, at *2 n.2; *Chiejina v. Federal Republic of Nigeria*, 2022 WL 3646377, at *4 n.9 (D.D.C. Aug. 24, 2022); *Stati v. Republic of Kazakhstan*, 199 F. Supp. 3d 179, 187-90 (D.D.C. 2016); *Frontera Res. Azer. Corp. v. State Oil Co. of Azer. Republic*, 479 F. Supp. 2d 376, 379-80 (S.D.N.Y. 2007), *vacated and remanded on other grounds*, 582 F.3d 393 (2d Cir. 2009).

1. As petitioners tell it (at 13-14), the panel below split with "longstanding" Second Circuit precedent. While the panel below departed from the Second Circuit's judgment-enforcement holding in *Seetransport*, any resultant split is underbaked at best. Other than the *Seetransport* district court, no court in the Second Circuit has followed *Seetransport*'s thinly reasoned judgment-enforcement holding. The D.C. Circuit's divergence does not create a considered, developed split meriting this Court's review, and this Court should deny certiorari to permit further percolation.

In *Seetransport*, the plaintiff brought claims seeking (1) confirmation and enforcement of an arbitral award and (2) recognition and enforcement of a decision of the Court of Appeals of Paris dismissing an attempt to vacate that same award. 989 F.2d at 578-79, 581-82. While the Second Circuit ultimately dismissed the first claim as untimely, it held that it had subject-matter jurisdiction over the claim. *Id.* at 578-81. The foreign state defendant was an instrumentality or agency of Romania, a signatory of the New York Convention; thus, the Second Circuit reasoned, it "had to have contemplated the involvement of the courts of any of the Contracting States in an action to enforce the award," and had impliedly waived its immunity. *Id.* at 578-79, 581-82. The Second Circuit next concluded that it had jurisdiction over the judgment-enforcement claim. Without engaging the FSIA's text (or the New York Convention's), it analogized its jurisdiction over the judgment-enforcement claim to pendent jurisdiction, reasoning that it had jurisdiction simply because the two claims were so "closely related." *Id.* at 582-83.

The question presented addresses only the latter holding: that when a signatory to the New York Convention agrees to arbitrate in the jurisdiction of another Convention signatory, it also impliedly waives immunity

from claims to enforce a foreign judgment confirming an underlying arbitral award. But the Second Circuit and its district courts have never applied (let alone extended) *Seetransport*'s judgment-enforcement holding since, nor has any other circuit.[4] Indeed, despite asserting *Seetransport*'s significance, petitioners identify no case in the Second Circuit even applying the judgment-enforcement holding. While the holding may be "longstanding," it is effectively a nullity. In practice, then, any disagreement between the D.C. Circuit and the Second Circuit is immaterial.

Seetransport's anemic reception also demonstrates that additional percolation is warranted. No other circuits have addressed this issue. Of the two to do so, only one—the decision below—engaged with the text of the statute and treaties at issue. And the Second Circuit may well revisit its holding if presented with an opportunity. Because the Second Circuit was the first to address this issue and no circuit weighed in until the D.C. Circuit did so, the Second Circuit has never had the opportunity to engage with the reasoning of its sister circuits. Granting certiorari would deny it the chance to do so. In addition, the Second Circuit's decision in *Seetransport* lacked the benefit of focused briefing on the judgment-enforcement question—indeed, the parties hardly addressed the issue at all. *See* Appellant's Brief at 42, *Seetransport*, 989 F.2d 572 (No. 92-7580); Brief for Plaintiff-Appellee at 43, *Seetransport*, 989 F.2d 572 (No. 92-7580). If an appropriate case arises, the Second Circuit could resolve the split by adopting the D.C. Circuit's position, obviating any reason for this Court's review. Or the Second Circuit could

[4] However, the Second Circuit has extended *Seetransport*'s award-confirmation holding to the ICSID Convention. *Blue Ridge Invs., L.L.C. v. Republic of Argentina*, 735 F.3d 72, 83-84 (2d Cir. 2013).

reaffirm its position and address the D.C. Circuit's arguments, providing a more developed background for this Court's consideration. Either way, this Court's consideration of the judgment-enforcement question would be premature.

2. Petitioners suggest (at 19-21) that certiorari is warranted because the decision below created "confusion" over an antecedent question: whether signing the New York Convention and agreeing to arbitrate under it can ever effectuate an implied waiver of sovereign immunity. Not only is that question not properly before this Court, there is no disagreement amongst the circuits over it.

Petitioners incorrectly contend that the Fifth, Seventh, Ninth, and Eleventh Circuits have all adopted *Seetransport*'s holding that signing the New York Convention constitutes an implied waiver for actions to confirm or enforce arbitral awards. But three of petitioners' cited cases do not address implied waiver under the Convention at all. *See Walker Int'l Holdings Ltd. v. Republic of Congo*, 395 F.3d 229, 234 (5th Cir. 2004) (express waiver in contract and ICC Court rules); *Autotech Techs. LP v. Integral Rsch. & Dev. Corp.*, 499 F.3d 737, 743-44 (7th Cir. 2007) (implied waiver because of express contractual agreement to arbitrate in United States, agreement to application of Illinois law, and failure to timely raise immunity defense); *Joseph v. Off. of Consulate Gen. of Nigeria*, 830 F.2d 1018, 1022-23 (9th Cir. 1987) (implied waiver because contract "contemplate[d] participation of the United States courts"). And the Eleventh Circuit—the only one to address the New York Convention—did not apply *Seetransport*'s award-enforcement holding, although it did favorably reference its reasoning. *See S & Davis*, 218 F.3d at 1301 (no implied waiver because Yemen was not party to the New York Convention).

Even if petitioners' supposed consensus existed, the decision below did not diverge from it. The D.C. Circuit expressly declined to decide whether to adopt *Seetransport*'s implied-waiver rule because this case does not squarely present that question. Pet.App.15a-16a. To the extent the Court wants to address the award-confirmation issue implicated in *Seetransport*, it should await a case that properly presents it.

III. This Case Is a Poor Vehicle

The petition also suffers from numerous vehicle problems. As an initial matter, the question presented necessitates this Court's resolution of a predicate issue that was not addressed by the decision below. Additionally, petitioners' inconsistency regarding which conduct by respondents effectuated an implied waiver further countenances against review.

1. Petitioners candidly admit (at 19) that "whether arbitrating under the New York Convention effectuates *any* implicit waiver of sovereign immunity" is, with respect to the question presented, a "more fundamental (and predicate) question." *See also* Pet. 20 ("This Court cannot find an implied waiver as to foreign judgment enforcement without first confronting the question of implied waiver as to award enforcement."). The Second Circuit shares that perspective, having determined that there was subject-matter jurisdiction over a judgment-enforcement claim precisely because it "is so closely related to the claim for enforcement of the arbitral award" as to fall "within the scope of [the] implicit waiver of sovereign immunity" as to the award-confirmation claim. *Seetransport*, 989 F.2d at 582-83. This Court therefore cannot decide whether a foreign sovereign waives its immunity with respect to judgment-enforcement claims by signing the New York Convention and agreeing to arbitrate in a Convention signatory without first deciding

whether that conduct waives immunity with respect to claims to confirm the underlying award. But the decision below expressly declined to address this predicate question. Pet.App.16a. The Court would therefore find itself tasked with answering this question in the first instance, rendering this case an unsuitable vehicle for the actual question presented.

2. Petitioners' moving of the goalposts regarding which conduct by respondents effectuated an implied waiver further undermines this case as a vehicle. Although petitioners' definition of the question presented (at i) focuses on a foreign sovereign's signing of the New York Convention and its agreement to arbitrate a dispute governed by the Convention, petitioners claim that "[t]here are at least three indications that Zimbabwe waived immunity here." Pet. 26. One is accession to the Convention, but the other two are "agree[ing] to binding arbitration" and "agreeing to the ICC's Arbitration Rules." Pet. 26-27. Petitioners' contention that a bare agreement to arbitrate effectuates an implied waiver not only is unsupported, *see supra* p. 13, but it would also swallow entirely the question presented, rendering irrelevant the text and scope of the Convention and what foreign sovereigns intended or contemplated when acceding to it. As for the "ICC's Arbitration Rules," petitioners never raised an explicit-waiver theory before the district or circuit courts, *see supra* pp. 7-8, so their claim of waiver based on ICC Arbitration Rule 28(6)—and their citation to a case "hold[ing] that the [foreign sovereign] *explicitly* waived its sovereign immunity" by "agree[ing] to abide by the rules of the ICC," *Walker*, 395 F.3d at 234 (emphasis added)—has been forfeited and regardless cannot support a claim of *implied* waiver.

IV. The Decision Below Is Correct

In any event, the Court's intervention is unnecessary because the D.C. Circuit's decision is correct. Zimbabwe retained its sovereign immunity because the mere act of "[s]igning the New York Convention … is insufficient to show Defendants' intent to waive immunity from judgment recognition actions." Pet.App.11a.

1. The implied-waiver exception provides subject-matter jurisdiction "in any case … in which [a] foreign state has waived its immunity … by implication." 28 U.S.C. § 1605(a)(1). Petitioners do not contest that any implied waiver should be construed narrowly. *Khochinsky*, 1 F.4th at 8; Pet.App.11a. Nor do petitioners dispute that a foreign sovereign must have "indicated its amenability to suit." *Princz v. Federal Republic of Germany*, 26 F.3d 1166, 1174 (D.C. Cir. 1994). "[A]ctual intent" is "what matters." *Wye Oak Tech., Inc. v. Republic of Iraq*, 24 F.4th 686, 697 (D.C. Cir. 2022).

Petitioners look for an implied waiver in the New York Convention. "The interpretation of a treaty, like the interpretation of a statute, begins with its text." *Medellín v. Texas*, 552 U.S. 491, 506 (2008). And where the Convention is "simply silent" on an issue, the "silence is dispositive." *GE Energy*, 590 U.S. at 440.

That rule controls the outcome here. As the D.C. Circuit found, nothing in the Convention addresses the enforcement of judgments, especially foreign judgments confirming an arbitral award. Pet.App.13a. That silence makes sense given that the Convention "is a multilateral treaty that addresses international arbitration" and "focuses almost entirely on arbitral awards." *GE Energy*, 590 U.S. at 438. Indeed, while the Convention provides that an "interested party" can "avail himself of an arbitral award in the manner and to the extent allowed by the law

or the treaties of the country where such award is sought to be relied upon," Pet.App.106a (Article VII(1)), there is no comparable provision regarding the enforcement of judgments. Even the Second Circuit has recognized that "the [New York] Convention does not apply to the enforcement of judgments that confirm foreign arbitration awards." *Victrix S.S. Co. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713 n.2 (2d Cir. 1987).

Chapter 2 of the FAA, which was adopted by Congress "in order to implement the Convention," *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974), further reinforces the limited and arbitration-focused nature of the Convention. The first provision of the Chapter, 9 U.S.C. § 201, mandates that the Convention "shall be enforced" in accordance with the remaining provisions of the Chapter. Those provisions, in turn, lay out standards for enforcing agreements to arbitrate and providing for appointment of arbitrators (§ 206), confirming awards (§ 207), and the jurisdictional and venue rules regarding the preceding subjects (§§ 202-205). There is nothing in any of these provisions about enforcement of foreign judgments.

In this respect, the New York Convention and its implementing legislation differ significantly from other treaties that *do* deal with the recognition of judgments, including the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. Pet.App.14a. As the D.C. Circuit noted, at least one of those other treaties "explicitly covers both judgments and awards, unlike the New York Convention." Pet.App.14a (citing Interamerican Convention on Territorial Effectiveness of Foreign Arbitration Awards, art. 1, June 14, 1980, OAS T.S. 51). Notably, however, Zimbabwe, Zambia, and the United States have not ratified that

treaty or any other treaty on the enforcement of judgments. *Id.* The D.C. Circuit did not err in declining to read into the New York Convention judgment-related obligations that expressly appear in other treaties to which the United States is not a party.

2. Rather than focus on the Convention's text, petitioners emphasize (at 21-22) the supposed similarity between an action to enforce an award and one to enforce a foreign judgment. Again, the text of the relevant provisions does not support petitioners' position. Chapter 1 of the FAA distinguishes between an arbitral award and a judgment, providing "that a judgment of the court shall be entered upon the award made pursuant to the arbitration." 9 U.S.C. § 9. And even the Second Circuit has recognized that "an arbitral award cannot be considered a 'judgment.'" *Fotochrome, Inc. v. Copal Co.*, 517 F.2d 512, 517 (2d Cir. 1975). The D.C. Circuit has done the same, holding that an arbitral award and a court judgment are "distinct." *Comm'ns Imp. Exp. S.A. v. Republic of Congo* (*Comimpex*), 757 F.3d 321, 330 (D.C. Cir. 2014) (citation omitted).

The distinction between arbitral awards and judgments is not merely semantic. A foreign-court judgment "has traditionally been governed by state law." *Id.* (citations omitted). By contrast, federal law is the basis for confirming an international award. 9 U.S.C. § 207. Petitioners do not engage with these differences, despite the D.C. Circuit's citation to *Comimpex*. Pet.App.15a.

3. Petitioners (at 32) also contend that *Seetransport* is evidence of a supposed "[p]ost-ratification understanding[]" that the Convention impliedly waives sovereign immunity with respect to foreign judgments. Although *Seetransport* may be instructive regarding the Second Circuit's understanding of the Convention, there is no evidence that the decision reflects *Zimbabwe's* intentions.

Contra Pet. 32. Zimbabwe was not a party to the *Seetransport* litigation and did not otherwise make any representations in connection with that litigation. Indeed, although *Seetransport* was decided around the same time that Zimbabwe joined the Convention, it is not clear whether or when Zimbabwe even became aware of the Second Circuit's decision. There is accordingly no basis to conclude that Zimbabwe's understanding of the Convention would have been premised on an intermediate appellate court's decision issued almost 36 years after the final text of the Convention.

4. Finally, petitioners (at 35-37) are incorrect that following the text of the Convention undermines any policy in favor of enforcing awards. The FAA gives parties three years to seek enforcement in the United States, which is not particularly challenging in the case of a foreign sovereign. There is no requirement to identify assets in the United States; plaintiffs must only plead an exception to immunity and properly serve the sovereign. *Antrix*, 605 U.S. at 230, 237.

Petitioners themselves can hardly complain about a compressed timeline for seeking enforcement. They decided to wait over five years to seek confirmation in Zambia and eight years to file an alter ego claim in the United States against Zimbabwe, despite having brought an unsuccessful alter ego claim in Belgium within months of the arbitral award in their favor. Pet. 9-10; JA11-21, JA69-70, JA1147-48; Reply to Plaintiffs' Opposition to the Motion to Dismiss, Ex. G at 3-8, *Amaplat*, 717 F. Supp. 3d 1 (No. 22-cv-58).

In sum, petitioners had many opportunities to enforce the arbitral award in an American court. Their failure to do so in a timely manner is not a reason to expand the Convention and the FSIA beyond their clear text.

CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Respectfully submitted,

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