No. 25-699

In the Supreme Court of the United States

AMAPLAT MAURITIUS LTD. *ET AL.*.
Petitioners,

v.

ZIMBABWE MINING DEVELOPMENT CORPORATION, *ET AL.*

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

REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

Respondents do not (and cannot) deny that the decision below spawns a conflict between the two principal circuits for foreign arbitration enforcement. They contend that the Petition presents a one-off, unimportant question. But the issue is recurring and arises in other currently pending cases. The sovereign immunity and treaty interpretation issues presented are exceptionally important. Clarity "is doubly important" because "foreign nations and foreign lawyers must understand our law." *Bolivarian Republic of Venezuela* v. *Helmerich & Payne Int'l Drilling Co.*, 581 U.S. 170, 183 (2017). The conflict will inevitably lead to forum shopping. But there is no reason to wait for percolation in other circuits where the issue is less likely to arise.

Respondents denigrate the Petition's importance by mischaracterizing its arguments. As the Question Presented makes clear (Pet. i), Petitioners have consistently maintained that Respondents impliedly waived immunity by *both* signing the New York Convention *and* agreeing to arbitrate a specific dispute subject to its terms. The D.C. Circuit's decision cuts off what Respondents acknowledge (BIO 4) is a settled avenue of enforcing foreign judgments confirming awards entered under the New York Convention. The Court should grant review to resolve a conflict on an important question that the D.C. Circuit got wrong.

I. THE QUESTION PRESENTED IS RECURRING

Respondents suggest the Question Presented is practically insignificant. They are wrong. This is one of several *currently pending* cases that assert implied waiver in New York Convention judgment-enforcement actions, consistent with *Seetransport Wiking Trader Schiffarhtsgesellschaft MBH & Co.* v. *Navimpex Centrala Navala,* 989 F. 2d 572 (2d Cir. 1993). *See Armas* v. *Bolivarian Republic of Venezuela*, No. 1:24-cv-2886-JMC (D.D.C.) (asserting Venezuela impliedly waived immunity in action to enforce French judgment confirming award); *Joint Stock Company State Savings Bank of Ukraine (a/k/a JSC Oschadbank)* v. *Russian Federation*, 1:23-cv-764-ACR (D.D.C.); Oschadbank *Amicus* Br. 1; *Global Voice Group SA* v. *Republic of Guinea*, 2025 WL 522048, *4, *14–*15 (D.D.C. Feb. 18, 2025) (citing *Seetransport*'s judgment enforcement rule but holding sovereign did not agree to arbitrate particular dispute).

The Second Circuit has repeatedly acknowledged and reaffirmed *Seetransport*'s implied waiver holding in actions to enforce foreign judgments arising from "direct appeal of the arbitral award" under the New York Convention. *See, e.g.*, *Transatlantic Shiffahrtskontor GmbH* v. *Shanghai Foreign Trade Corp.*, 204 F.3d 384, 391 (2d Cir. 2000). The question may arise in more cases, but, given the typically summary nature of judgment enforcement, many cases result in unpublished orders. And relevant cases often settle. *See, e.g.*, *Stirling Civil Engineering Ltd.* v. *Government of the United Republic of Tanzania*, No. 1:17-cv-02116-RC, ECF 14 (D.D.C.) (seeking to

enforce foreign judgment under *Seetransport*); ECF 18 (voluntarily dismissing).

The Petition raises a recurring issue that is likely to arise with more frequency as sovereigns increasingly refuse to honor arbitral awards. *See* E. Gallard & I. Penusliski, "State Compliance With Investment Awards," ICSID Review (2021) 1, 47–50 (discussing "significant" instances of non-compliance).

II. THE CONFLICT WILL NOT ABATE WITHOUT THIS COURT'S REVIEW

Further percolation is unnecessary. The conflict pits the default venue for claims against foreign sovereigns (28 U.S.C. § 1391(f)(4)) against the circuit home to U.S. commercial and banking centers. The D.C. Circuit and Second Circuit oversee the "principal district courts in which these cases are brought" (*Helmerich*, 581 U.S. at 186)—a point Respondents wholly ignore. A conflict between them is untenable. *See Republic of Hungary* v. *Simon*, No. 23-867 (granting certiorari where D.C. and Second Circuits disagreed on Foreign Sovereign Immunities Act (FSIA) expropriation exception); *see also* Pet. 18.

The conflict will lead to substantial forum shopping—with the Second Circuit becoming the preferred venue. 28 U.S.C. § 1391(f) also allows suit in a jurisdiction where a foreign instrumentality does business or where relevant property is maintained. Prevailing parties are incentivized to seek New York Convention judgment enforcement in the Second Circuit whenever possible because it has already held that immunity is waived. Absent resolution of the conflict, venue choice will become dispositive of immunity moving forward. Resolution should not

wait for other circuits where these cases are less likely to arise.

The Second Circuit is unlikely to reverse course on its own. It rarely grants *en banc* review. There is no indication it harbors any doubts about *Seetransport*. That court has reaffirmed *Seetransport*'s waiver rule in multiple cases involving foreign judgment enforcement. *See Transatlantic Shiffahrtskontor*, 204 F.3d at 391; *Banca Di Credito Cooperativo di Civitanova Marche e Montecosaro Soc. Cooperativa* v. *Small*, 852 F. App'x 15, 18 (2d Cir. 2021) (*Seetransport* award was enforceable because it was confirmed by "French judgment awarding the sums specified in the award"). As Respondents concede, the Second Circuit also "has extended" *Seetransport*'s holding to cases arising under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). BIO 18 n.4 (*citing Blue Ridge Investments, L.L.C.* v. *Republic of Argentina*, 735 F.3d 72, 84 (2d Cir. 2013)).

III. THE QUESTION PRESENTED IS IMPORTANT

1. The Question Presented is important. This Court often grants review to decide similar sovereign immunity questions even absent circuit conflict. *See, e.g.*, *Exxon Mobil Corp.* v. *Corporación CIMEX*, No. 24-699 (whether FSIA applies to claims arising under Helms-Burton Act). The Court has also stressed the importance of addressing the boundaries of "important rights asserted in reliance upon federal treaty obligations." *Kolovrat* v. *Oregon*, 366 U.S. 187, 191 (1961). The need for review is especially compelling because the conflict arises in the

international arbitration realm, where certainty "is doubly important" because "foreign nations and foreign lawyers must understand our law." *Helmerich*, 581 U.S. at 183.

2. The conflict is particularly problematic because, for more than 30 years, *Seetransport* has been the leading case in New York Convention arbitration enforcement disputes. Restatements and treatises have long relied upon *Seetransport* as an example of a foreign sovereign having "implicitly waived any sovereign-immunity defense." REST. (THIRD) INT'L COMMERCIAL & INVESTOR-STATE ARB. § 4.26 cmt. I; *see also* 1 DOMKE ON COM. ARB. § 22:8, nn. 3, 4 (citing *Seetransport*); LITIGATION OF INT'L DISPUTES IN U.S. COURTS § 3.27 & n.15 (same).

Other countries also have looked to *Seetransport* as a statement of American law on implied waiver. In a case currently pending before Australia's highest court regarding the New York Convention, Australia's Attorney General cited *Seetransport* for the "American" view on implied waiver. *CCDM Holdings, LLC* v. *Republic of India*, No. S90/2025, Submission Seeking Leave to Intervene ¶ 22 (High Ct. of Australia, Sept. 11, 2025). The U.K. Supreme Court favorably cited *Seetransport* as an archetype of implied waiver in a case to which Zimbabwe is a party. *Kingdom of Spain* v. *Infrastructure Services Luxembourg S.A.R.L.*, [2026] UKSC 9, ¶ 140 (addressing ICSID Convention). Even Respondents admit that, prior to its decision below, the D.C. Circuit had signaled approval of *Seetransport* (BIO 9). By deviating from its prior decisions and explicitly rejecting a decision long viewed as the leading authority on the subject, the D.C. Circuit has injected

significant uncertainty into New York Convention arbitration enforcement.

3. Finally, review is needed because the D.C. Circuit effectively foreclosed (in the default venue for suing sovereigns) a long-recognized avenue for arbitral enforcement—one that even Respondents acknowledge. BIO 4 ("Creditors can also attempt to enforce a foreign judgment confirming any such award under state law."); *see also First Inv. Corp. of Marshall Islands* v. *Fujian Mawei Shipbuilding, Ltd.*, 703 F.3d 742, 751 (5th Cir. 2012) (discussing enforcement of foreign judgments that confirm awards). Under the D.C. Circuit rule, foreign judgment enforcement would largely disappear in New York Convention cases, substantially prejudicing creditors where sovereigns refuse to comply with arbitral awards.

Respondents counter (BIO 13–14) that foreign judgment enforcement is available under other FSIA exceptions, but they exaggerate the "ready availability" of these other exceptions. In this case, for instance, the D.C. Circuit rejected the arbitration exception as a basis to enforce a foreign judgment. App.9a–11a. Similarly, the commercial activity exception is largely unavailable where, as is often the case, a foreign judgment confirming a foreign arbitration award involving foreign parties lacks any territorial nexus to the United States. 28 U.S.C. § 1605(a)(2); *see*, *e.g.*, *Transatlantic Shiffahrtskontor*, 204 F.3d at 388–391. This effectively excludes large swaths of New York Convention disputes involving foreign parties and foreign sovereigns.

That leaves Respondents arguing that only an express waiver can satisfy Section 1605(a)(1) in the judgment enforcement context. But Congress saw it otherwise, explicitly providing that a waiver may arise "by implication." 28 U.S.C. § 1605(a)(1). The Brief in Opposition merely confirms that Respondents, like the court below, would frustrate Congress's plain command by requiring an implicit waiver actually to be an explicit one. *See* Pet. 24–25.

4. Respondents' other efforts to undermine the importance of the Question Presented fall short. Petitioners do not argue that an "agreement to arbitrate in another country alone suffices to waive immunity" or that "bare agreement to arbitrate effectuates an implied waiver." BIO 13, 21. Petitioners' position has always been that "the implied waiver exception of the FSIA is satisfied when a foreign sovereign joins the New York Convention *and* agrees to arbitrate under its terms." Pet. 3 (emphasis added); *id.* at i (Question Presented); *id.* at 27 ("Those two actions alone are enough…"); *see also* App. 35a, 83a.[1]

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[1] Respondents' implied waiver is even clearer because they consented to arbitrate under International Chamber of Commerce rules, which provide that, by submitting to arbitration, parties "shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made." App.127a. *See Walker International Holdings Ltd.* v. *Republic of Congo*, 395 F.3d 229, 234 (5th Cir. 2004) (holding ICC rule effectuates waiver of immunity covering post-judgment execution). At the very least, the ICC rules provide further indicia that Respondents "contemplated enforcement of any arbitral awards in any of the other signatory States, and

Petitioners' arguments are not at odds with any supposedly "unanimous" principle of narrow construction. BIO 13. Indeed, *Seetransport* announced its judgment enforcement waiver rule only after acknowledging this principle. *See* 989 F.2d at 577. Regardless, lower court precedent applying a narrow construction rule is inconsistent with Congress's express authorization of implied waiver in Section 1605(a)(1). Where Congress has plainly provided for implied waiver, courts should not place a thumb on the scale against that statutorily authorized waiver. *Cf. Puerto Rico* v. *Franklin-California Tax-Free Trust*, 579 U.S. 115, 125 (2016) (rejecting presumption against preemption where Congress has explicitly authorized preemption).

IV. THERE ARE NO VEHICLE ISSUES

The case is an appropriate vehicle to resolve the Question Presented, which is cleanly presented, was decided below, and created an acknowledged conflict. There is no jurisdictional or other impediment preventing the Court from addressing the merits.

Respondents suggest that deciding the "predicate" question—whether signing the New York Convention and agreeing to arbitrate in another Convention signatory country impliedly waives any immunity—counsels against review. The subsidiary question is unlikely to arise on its own, however, because arbitral award enforcement, unlike judgment enforcement, generally falls within Section 1605(a)(6)'s arbitration exception. In any event, such a "subsidiary question

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therefore had implicitly waived its defense of sovereign immunity." *Seetransport*, 989 F.2d at 578.

fairly included" in the question presented is properly before the Court. Sup. Ct. Rule 14(1)(a). The confusion engendered by the D.C. Circuit's shifting views on that question counsels review. Pet. 19–21; *compare Creighton Ltd.* v. *Qatar*, 181 F.3d 118, 123 (D.C. Cir. 1999); *Tatneft* v. *Ukraine*, 771 F. App'x 9, 10 (D.C. Cir. 2019) *with Process & Indus. Devs. Ltd.* v. *Fed. Republic of Nigeria*, 27 F.4th 771, 774 (D.C. Cir. 2022); App.16a.

V. PETITIONERS ARE CORRECT ON THE MERITS

Petitioners defer a full response to Respondents' merits arguments but reply briefly here.

1. Respondents contend that the absence of judgment enforcement provisions in the New York Convention ends the analysis. But the Convention's plain language explicitly contemplates enforcement in the manner normally available to other domestic litigants without any additional hurdles. The Convention expressly preserves "any right" an interested party "may have to avail himself of an arbitral award in the manner and to the extent allowed by the law" of the country in which enforcement is sought, App.106a (NY Conv., Art. VII(1)), and prohibits "substantially more onerous conditions" than are imposed on the enforcement of domestic awards, App.103a (NY Conv., Art. III). As Respondents concede, foreign judgment enforcement is a widely recognized avenue to enforce arbitral awards (BIO 4). The New York Convention plainly preserved that avenue. Pet. 32 ("[W]here enforcement was possible under the Geneva Convention, it should certainly be possible under the New York

Convention."); *see also* Oschadbank *Amicus* Br. 19–20.

What matters for the purposes of the FSIA is whether a sovereign would have contemplated enforcement proceedings against it in foreign courts. By consenting to the New York Convention's terms and agreeing to arbitrate, Respondents consented to enforcement by any means permitted by U.S. law. *See* Oschadbank *Amicus* Br.6 ("Implicit in the agreement to arbitrate is consent to enforcement of that agreement.") (citing *Victory Transp. Inc.* v. *Comisaria Gen. de Abastecimientos y Transportes*, 336 F.2d 354, 364 (2d Cir. 1964)). As explained (Pet. 21–22), recognition of a judgment confirming an arbitral award is substantively identical to an original action to confirm the same award. The D.C. Circuit itself has recognized that the "relief provided" to confirm a foreign award "is, in all relevant respects, identical to that obtained" to enforce a foreign judgment. *Continental Transfert Technique Ltd.* v. *Fed. Gov't of Nigeria,* 603 F. App'x 1, 3–4 (D.C. Cir. 2015). They result in the same U.S. judgment enforcing the arbitral panel's decision. That each route involves different *procedures* does not undermine the clarity of the foreign sovereign's waiver.

Respondents nevertheless contend that "[e]ven the Second Circuit has recognized that 'the [New York] Convention does not apply to the enforcement of judgments that confirm foreign arbitration awards.'" BIO 23 (*quoting Victrix S.S. Co.* v. *Salen Dry Cargo A.B.*, 825 F.2d 709, 713 n.2 (2d Cir. 1987)). But the New York Convention contemplates and preserves the judgment enforcement remedy. *See* Pet. 29–32; Oschadbank *Amicus* Br. 19–20 (explaining "parallel entitlement"). The Convention does not "pose[] a

categorical bar" to recognizing and enforcing such foreign award judgments. Oschadbank *Amicus* Br. 19 (*citing Comimpex* U.S. *Amicus* Br. 16). *Victrix*, a pre-*Seetransport* decision addressing federal comity principles applicable to a judgment enforcing an award on a maritime claim, is inapposite. Nothing in that decision prevented the Second Circuit from subsequently concluding that judgment enforcement was "so closely related" to the New York Convention's enforcement provisions as to give rise to an implied waiver. *Seetransport*, 989 F.2d at 583.

2. Respondents' focus (BIO 23) on the text of the Federal Arbitration Act (FAA) similarly misses the point. The FAA does not address sovereign immunity at all. Pre-*Seetransport* cases addressing FAA preemption of state-law judgment enforcement and whether an award can be enforced if it has been confirmed abroad are irrelevant. *See* Oschadbank *Amicus* Br. 20–21.

Respondents also misread the New York Convention's post-ratification understanding. The Hague Judgments Convention explicitly carves out "arbitration and related proceedings" *precisely because* its drafters were concerned about interfering with the New York Convention. Hague Judgments Conv., Art. II(3). The drafters declined to extend judgment enforcement to arbitral awards in deference to the New York Convention's broad reach. Pet. 33.

3. Finally, Respondents fault Petitioners for "not explain[ing] why" they initially sought enforcement in Belgium but not the United States in 2014. BIO 15, 25. But Respondents' actions in Belgium prompted the legal action there and have nothing to do with the

scope of the waiver. As the Petition explains (Pet. 36), locating assets to satisfy an award is often difficult, so when entities associated with Respondents attempted to *publicly* sell $45,000,000 worth of diamonds in Belgium, Petitioners had a unique opportunity (ultimately unsuccessful) to try to seize them. Concurrently, however, Respondents challenged the validity of the arbitration award in Zambia. JA69.

Respondents' Zambian award validity challenge delayed the opportunity for any effective enforcement in the United States. At that time, of course, Respondents were under U.S. sanctions, so few if any attachable assets would have been located here. JA941–43. Even if they were, the New York Convention provides that award enforcement may be refused where the award "has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made." App.106a (NY Conv., Art. V(1)(e)). Thus, if "the arbitration award was lawfully nullified by the country in which the award was made," Petitioners would "have no cause of action in the United States." *TermoRio S.A. E.S.P.* v. *Electranta S.P.*, 487 F.3d 928, 930 (D.C. Cir. 2007). Courts are empowered to stay an enforcement action in those circumstances. *See* App.105a (NY Conv., Art. VI). Mandating a rush to federal courts to satisfy the FAA's relatively short statute of limitations where validity challenges are pending in the seat of arbitration would flood federal courts with premature and often fruitless filings, particularly when state statutes of limitations usually provide for much longer periods. *See e.g.*, District of Columbia's Uniform Foreign-Country Money Judgments Recognition Act, D.C. Code § 15-

369 (15-year limitations period for judgment enforcement).

Respondents' conduct demonstrates the pressing need to address this question now. During arbitration, Respondents tried to derail proceedings only to be found by Zambian courts to have "suppressed material facts and laws." App.49a. Post-arbitration, they launched a multi-year challenge in Zambian courts which, if successful, would have precluded enforcement. App.105a (NY Conv., Art. V(1)(e)). Failing that, Respondents engaged in prolonged and fruitless settlement negotiations. Having withstood every delay tactic imaginable, Petitioners then sued here to enforce the judgment, only for Respondents to demand, "What took you so long?" This Court should preserve judgment enforcement under state law as a necessary countermeasure to such efforts by sovereigns to escape their treaty obligations by running out the clock.

CONCLUSION

The Court should grant certiorari and reverse the judgment below.

Respectfully submitted,

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APRIL 2026