No. _____

IN THE SUPREME COURT OF THE UNITED STATES

AMAPLAT MAURITIUS LTD. and

AMARI NICKEL HOLDINGS ZIMBABWE LTD,

Applicants,

v.

ZIMBABWE MINING DEVELOPMENT CORP.,

Respondent,

APPLICATION TO THE CHIEF JUSTICE TO EXTEND THE TIME TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners Amaplat Mauritius Ltd. ("Amaplat") and Amari Nickel Holdings Zimbabwe Ltd. ("Amari") respectfully submit this request to extend their time for filing a petition for writ of certiorari by 60 days to December 12, 2025. The U.S. Court of Appeals for the D.C. Circuit issued its judgment on July 15, 2025, and the petition is currently due on October 13, 2025.

Good cause exists for this request. This is Petitioners' first application for extension of time. Petitioners submit this application more than 10 days before the current due date for the petition. Sup. Ct. R. 13.5. Petitioners have conferred with counsel for Defendants, who do not object to the requested extension. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

BACKGROUND

This case involves a question of implied waiver of sovereign immunity under the Foreign Sovereign Immunity Act's ("FSIA") "waiver" exception, 28 U.S.C. § 1605(a)(1). The issue presented has divided the Courts of Appeals—whether a signatory to the New York Convention (*see* Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Art. I(1), June 10, 1958, 21 U.S.T. 2517), by agreeing to arbitrate in another New York Convention jurisdiction, waives its sovereign immunity from a subsequent action in U.S. courts to enforce a foreign judgment confirming the arbitration award. Petitioners Amaplat and Amari intend to seek review to resolve the conflict in the Circuits on this important question.

In this action, Amaplat and Amari seek to enforce a judgment entered by the High Court of Zambia against Defendants the Republic of Zimbabwe, the Zimbabwe Mining Development Corporation ("ZMDC"), and Zimbabwe's Chief Mining Commissioner (collectively "Zimbabwe"), which confirmed an arbitration award entered pursuant to the New York Convention. The New York Convention provides for "recognition and enforcement of arbitral awards" by and among signatory states, subject to its terms and procedures. New York Convention, Art. I, Section 1.

The underlying dispute arose out of a joint venture between Amaplat and Amari, both Mauritian mining companies, and ZMDC to develop nickel and platinum mines in Zimbabwe. After a change in leadership at Zimbabwe's Ministry of Mines, Zimbabwe seized Amaplat and Amari's mining concessions and, in the process, breached the governing joint venture agreements. The parties' agreements

provided for arbitration of any disputes before the International Chamber of Commerce's ("ICC") Court of Arbitration. After ZMDC sought to terminate the agreements, Plaintiffs filed for arbitration against the Zimbabwe parties, the ICC Court ordered that an arbitration tribunal be seated in Zambia. All of the relevant countries—Zimbabwe, the Republic of Mauritius, and Zambia—are parties to the New York Convention.

The arbitration proceeded to a hearing on the merits. The arbitration was delayed while Zimbabwe unsuccessfully challenged the arbitration tribunal's jurisdiction in Zambian courts. After resolution of that litigation, the arbitration tribunal completed its hearings and issued a Final Award in January 2014, ordering ZMDC to pay Amaplat US$42,882,000 and ZMDC to pay Amari US$3,900,000, along with legal costs and interest. Years of more post-award litigation followed in Zambian courts until, on August 9, 2019, the High Court for Zambia at the Commercial Registry at Lusaka issued an Ex Parte Order for Leave to Register and Enforce the Final Award. The Judgment provided that ZMDC and the Commissioner had 30 days after service to move to set aside the Judgment, but no application to set aside the Judgment was ever filed. Petitioners then attempted unsuccessfully to convince Zimbabwe to pay (or settle) voluntarily.

On January 10, 2022, Plaintiffs filed suit in the U.S. District Court to enforce the Zambian judgment confirming the arbitration award. Defendants moved to dismiss, asserting foreign sovereign immunity from judgment enforcement in the United States. The District Court denied the motion in relevant part, ultimately

agreeing with Amaplat and Amari that Zimbabwe's Mining Commissioner was subject to suit under FSIA's implied waiver exception, 28 U.S.C. § 1605(a)(1). *Amaplat Mauritius Ltd. v. Zimbabwe Mining Devel. Corp.*, 663 F. Supp. 3d 11, 35 (D.D.C. 2023). The district held that the Commissioner's submission to arbitration constituted an implied waiver, relying on a pair of related Second Circuit decisions arising from the same dispute, *see Seetransport Wiking Trader Schiffahrtsgesellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala*, 989 F.2d 572 (2d Cir. 1993) (*Seetransport I*), and 29 F.3d 79 (2d Cir. 1994) (*Seetransport II*). After further proceedings, the District Court also denied ZMDC's motion to dismiss, concluding that it was an alter ego of Zimbabwe and thus subject to suit in U.S. courts as well. *See Amaplat Mauritius Ltd. v. Zimbabwe Mining Devel. Corp.*, 717 F. Supp. 3d 1, 9-10 (D.D.C. 2024).

Zimbabwe appealed. In a July 15, 2025 decision, the D.C. Circuit reversed, concluding that Zimbabwe, did not, by submitting to arbitration in another New York Convention state (Zambia), waive immunity from a subsequent suit to enforce a Zambian judgment confirming the arbitration award against Zimbabwe. *See* Slip op. 10-15. The D.C Circuit explicitly rejected the Second Circuit's contrary *Seetransport* holdings. Acknowledging that the Second Circuit "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," Slip op. 11, the D.C. Circuit nevertheless disagreed. The Court held instead that the New York Convention did not expressly mandate recognition of judgments on awards, and

there was insufficient evidence of implied waiver with respect to enforcement of a foreign judgment that confirms an arbitration award. *Id*. at 12-14.

REASONS FOR GRANTING THE APPLICATION

Amaplat and Amari intends to file a petition for certiorari on the important question of whether the FSIA's implied waiver exception, 28 U.S.C. ¸ 1605(a)(1), abrogates Zimbabwe's foreign sovereign immunity from an action in U.S. courts to enforce a foreign judgment confirming an arbitration award, where the foreign government defendants expressly submitted to binding arbitration governed by a mutual-recognition treaty—here, the New York convention.

The D.C. Circuit's decision creates a conflict of authority with the *Seetransport* decision of the Second Circuit. That Court held that when a sovereign agrees to binding arbitration in a country that is party to a treaty that allows national courts to confirm arbitral awards (here, the New York Convention), the consenting state agrees that the award will become an enforceable judgment, and the sovereign waives its immunity to enforcement of the judgment in any contracting state. *Seetransport*, 989 F.2d at 579. *Seetransport* correctly reasoned that the New York convention "expressly permits recognition and enforcement" of arbitral awards in signatory states. *Id.* at 578. And when a foreign government submits to arbitration in a New York Convention state, it must "have contemplated the involvement of the courts of any of the Contracting States in an action to enforce the award." *Id.* at 579. That necessarily includes a U.S.-action to enforce a judgment of a New York convention state confirming the award "because the cause

of action is so closely related to the claim for enforcement of the arbitral award." *Id.* at 583.

The D.C. Circuit explicitly rejected *Seetransport*'s holding, reasoning that "[e]ven assuming arguendo that a foreign sovereign intends to waive its immunity from actions to confirm arbitral awards when it signs the New York Convention and agrees to arbitrate, such conduct does not demonstrate an intent to waive immunity from judgment recognition actions." Slip op. 12. "The [New York] Convention says nothing about recognizing foreign court judgments after having sought recognition and enforcement of the award." *Id.*

Yet, as the Second Circuit reasoned, a foreign state's agreement to submit to a New York Convention arbitration and the recognition *and* enforcement of the arbitration award *necessarily* contemplates an action to enforce a judgment confirming the award in any New York Convention member state and thus an **implied** waiver of sovereign immunity. By contrast, the D.C. Circuit appears to have ignored the implied waiver clause and instead required something more akin to an explicit waiver.

The defining feature of mutual-recognition treaties like the New York Convention, Inter-American Convention, and ICSID Convention is that a prevailing party can go to *any* contracting state's courts to enforce the award. Tellingly, in enacting the FSIA, Congress provided as a key (and very first) example of an implied waiver in Section 1605(a)(1) as when a country agreed to binding arbitration. H.R. Rep. No. 94-1487, at 18 (1976), reprinted in 1976 U.S.C.C.A.N.

6604, 6617; *see also Foremost-McKesson, Inc. v. Islamic Republic of Iran*, 905 F.2d 438, 444 (D.C. Cir. 1990).

The petition will address this critical question, which has divided the Courts of Appeals. The resolution of this question is important. Foreign countries pervasively do international business and attract foreign direct investment through state-owned corporations like ZMDC. By promising foreign investors binding arbitration to reassure them of a neutral forum, the investors expect that the award and the judgments enforcing it will be worth the paper it is written on.

Good cause exists for an extension of time. Petitioners both required time to review the D.C. Circuit's decision and to come to a decision as to whether to proceed with a petition, including assessing the current status of potential Zimbabwean assets in the United States and other jurisdictions. This time-consuming process has used up much of the initial time to file a petition. In addition, while the undersigned represented the Petitioners below, additional Supreme Court counsel, including Steptoe's Shannen W. Coffin, have been brought on and need time to familiarize themselves with the record and the intricacies of the Foreign Sovereign Immunities Act, treaties, and customary international law implicated by the decisions below and to assist in preparation of the Petition. Additionally, Petitioners' counsel of record, Steven K. Davidson, has been attending to a significant immediate family medical emergency and has had court hearings this month that have disrupted efforts to prepare a petition.

A 60-day extension of the filing deadline to December 12, 2025, will allow counsel to properly evaluate the issues, consult and coordinate with the client, and prepare the petition for certiorari.

CONCLUSION

For the foregoing reasons, petitioners Amaplat and Amari respectfully requests a 60-day extension of time in which to file a petition for writ of certiorari in this case, to and including December 12, 2025.

Respectfully submitted,

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September 19, 2025

APPENDIX CONTENTS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 18, 2024 Decided July 15, 2025

No. 24-7030

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

v.

ZIMBABWE MINING DEVELOPMENT CORPORATION, ET AL.,
APPELLANTS

Appeal from the United States District Court
for the District of Columbia
(No. 1:22-cv-00058)

Rodney Q. Smith II argued the cause for appellants. With him on the briefs was *Katherine A. Sanoja*. *Bethel Kassa* entered an appearance.

Steven K. Davidson argued the cause for appellees. With him on the brief were *Robert W. Mockler* and *Joseph M. Sanderson*.

Before: KATSAS and CHILDS, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*.

Opinion for the Court filed by *Circuit Judge* CHILDS.

CHILDS, *Circuit Judge*: Two Mauritian mining companies bring this action against the Republic of Zimbabwe, the Zimbabwe Mining Development Corporation (ZMDC), and Zimbabwe's Chief Mining Commissioner, asking us to recognize and enforce a judgment of the High Court of Zambia that confirmed an arbitral award issued in Zambia. Plaintiffs argue we have subject matter jurisdiction because Defendants waived their immunity under the Foreign Sovereign Immunities Act (FSIA), which sets out narrow exceptions to a sovereign's immunity from suit in U.S. courts.

Plaintiffs contend that the FSIA's arbitration exception, which waives immunity from an action to "confirm an award," also waives immunity from an action to recognize a foreign court judgment that confirmed an award. Plaintiffs also rely on the FSIA's implied waiver exception for jurisdiction. They argue that a foreign sovereign waives its immunity from an action to recognize a foreign court judgment that confirmed an arbitral award when the sovereign signs a treaty governing the recognition and enforcement of arbitral awards and agrees to arbitrate in a jurisdiction that has done the same.

Applying either exception here would require us to conflate two distinct concepts — arbitral awards and foreign court judgments. We cannot fit a judgment recognition action into a provision that mentions only award confirmation. Nor can we conclude that Defendants intended to waive their immunity by signing a treaty that governs only the recognition and enforcement of arbitral awards, not the court judgments confirming such awards. Because neither exception applies, we lack subject matter jurisdiction over this action.

I.

A.

The FSIA grants foreign sovereigns and their political subdivisions, agencies, and instrumentalities immunity from the jurisdiction of U.S. courts unless a specifically enumerated exception to immunity applies. *See* 28 U.S.C. §§ 1603, 1604. The FSIA has an "express goal of codifying the restrictive theory of sovereign immunity" — under which a sovereign has immunity for its "public but not its private acts" — and "[m]ost of the FSIA's exceptions . . . comport with th[at] overarching framework." *Fed. Republic of Germany v. Philipp*, 592 U.S. 169, 182–83 (2021).

Two FSIA exceptions are relevant to this appeal. The first is the arbitration exception, which provides:

> A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case . . . in which the action is brought[] either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration . . . or to confirm an award made pursuant to such an agreement to arbitrate, if . . . the agreement or award is or may be governed by a treaty . . . in force for the United States calling for the recognition and enforcement of arbitral awards.

28 U.S.C. § 1605(a)(6).

The second is the implied waiver exception. The implied waiver exception states: "A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case . . . in which the foreign state has waived its immunity . . . by implication . . . ." 28 U.S.C. § 1605(a)(1).

"[W]e have long held that implicit in § 1605(a)(1) is the requirement that the foreign state have *intended* to waive its sovereign immunity." *Wye Oak Tech., Inc. v. Republic of Iraq*, 24 F.4th 686, 691 (D.C. Cir. 2022) (quotations omitted).

Because the FSIA governs the waiver of a sovereign's immunity in courts beyond its borders, we construe these exceptions narrowly, cognizant of the consequences for international relations and the risk of reciprocal expansions of liability over the U.S. government in courts abroad. *See NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain*, 112 F.4th 1088, 1099, 1108 (D.C. Cir. 2024).

B.

Although the FSIA determines subject matter jurisdiction, it creates no independent cause of action here. *See McKesson Corp. v. Islamic Republic of Iran*, 672 F.3d 1066, 1075 (D.C. Cir. 2012). The Federal Arbitration Act (FAA), 9 U.S.C. §§ 1, *et seq*., provides a cause of action to confirm and enforce arbitral awards made pursuant to the New York Convention, a multilateral treaty governing the "recognition and enforcement of arbitral awards." Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Art. I(1), June 10, 1958, 21 U.S.T. 2517 (New York Convention). Zimbabwe, Zambia, and the United States are all signatories to the New York Convention.[1]

This case, however, is not brought under the FAA, which has a three-year statute of limitations. *See* 9 U.S.C. § 207.

[1] *See Participant: Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, United Nations Treaty Collection (last visited June 30, 2025), https://treaties.un.org/Pages/showDetails.aspx?objid=080000028002a36b&clang=_en [https://perma.cc/U5HY-DXN9].

Instead, this case is brought under the District of Columbia Uniform Foreign-Country Money Judgments Recognition Act (the D.C. Judgments Recognition Act). The D.C. Judgments Recognition Act provides a cause of action to recognize and enforce a foreign court judgment that "[g]rants or denies recovery of a sum of money" and is "final," "conclusive," and "enforceable" under the law of the country where it was rendered. D.C. Code § 15-363. Within fifteen years of a foreign judgment's issuance, a party may bring an action under the D.C. Judgments Recognition Act to turn the foreign judgment into a domestic judgment, rendering it enforceable in the United States. *See id.* §§ 15-367, 15-369.

II.

A.

This action under the D.C. Judgments Recognition Act originates with a contract dispute in Zimbabwe.[2] In the late 2000s, two Mauritian mining companies, Amaplat Mauritius Ltd. (Amaplat) and Amari Nickel Holdings Zimbabwe Ltd. (Amari), decided to develop nickel and platinum mines in Zimbabwe. To do so, they entered into memoranda of understanding (MOUs) to form joint ventures with ZMDC — a corporation established by Zimbabwean law to engage in activities in the development of mining industry. *See* Zimbabwe Mining Dev. Corp. Act, ch. 21:08, § 22.26 (1990) (Zim.). The MOUs contained provisions requiring any dispute to be resolved before the International Chamber of Commerce's International Court of Arbitration (ICC).

[2] As the issues we reach concern only the legal sufficiency of the jurisdictional allegations, we assume the following facts to be true on our review. *See Doe v. Fed. Democratic Republic of Ethiopia*, 851 F.3d 7, 8 n.1 (D.C. Cir. 2017) (citing *Phoenix Consulting Inc. v. Republic of Angola*, 216 F.3d 36, 40 (D.C. Cir. 2000)).

After a brief period of mining development, ZMDC tried to terminate the MOUs. Relying on the arbitration provisions, Amaplat and Amari initiated arbitration before the ICC, naming as respondents ZMDC and the Chief Mining Commissioner of Zimbabwe's Ministry of Mines. The ICC selected Zambia as the seat of the arbitration. ZMDC and the Commissioner initially agreed to participate in the arbitration, but eventually withdrew from the proceedings.

In 2014, the arbitral panel issued a final award finding ZMDC liable for breach in the amount of $42.9 million to Amaplat and $3.9 million to Amari, with 5% annual interest. The award also directed the respondents to pay the costs and expenses of the arbitration. Amaplat and Amari did not receive the amount due under the award.

Several years later, Amaplat and Amari sought and obtained a judgment from the Registrar of the High Court of Zambia registering the award pursuant to the New York Convention. The judgment empowers Amaplat and Amari to enforce the award "in the same manner as a judgment or order" of the High Court.

B.

In 2022, Amaplat and Amari filed this civil action in the District Court for the District of Columbia against ZMDC, the Commissioner, and — for the first time — the Republic of Zimbabwe itself. The Complaint sets forth one count to recognize and enforce the judgment of the High Court of Zambia pursuant to the D.C. Judgments Recognition Act. The Complaint also states that Defendants waived immunity from suit under the FSIA because this action falls within the arbitration and implied waiver exceptions to sovereign

immunity. In response, Defendants filed motions to dismiss, arguing, as relevant to this appeal, that the two FSIA exceptions are inapplicable.

The district court ruled on the scope of both exceptions to immunity. It determined that the arbitration exception does not apply to waive Defendants' immunity because the exception covers actions to confirm arbitral awards, not actions to recognize and enforce foreign court judgments. The district court, however, held that the implied waiver exception does apply. In doing so, the district court considered the Second Circuit's decision in *Seetransport Wiking Trader Schiffarhtsgesellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala*, 989 F.2d 572 (2d Cir. 1993) (*Seetransport*). *Seetransport* held that a foreign sovereign waived its immunity under the implied waiver exception from a claim to confirm an arbitral award *and* from a claim to recognize a foreign court judgment confirming the arbitral award because the sovereign both (1) signed the New York Convention and (2) agreed to arbitrate in a jurisdiction that had done the same. *See id.* at 578–79. Determining that *Seetransport* provided the best framework for this case, the district court reasoned that signing the New York Convention and agreeing to arbitrate in Zambia waived immunity from this action to recognize a foreign court judgment. After the district court determined that Defendants waived their immunity from suit and accordingly denied their motions to dismiss, Defendants filed this appeal.

III.

We have jurisdiction to review the denial of a foreign sovereign's assertion of sovereign immunity under the collateral-order doctrine. *EIG Energy Fund XIV, L.P. v. Petroleo Brasileiro, S.A.*, 104 F.4th 287, 292–93 (D.C. Cir.

2024). We review the district court's denial of Defendants' motions to dismiss *de novo*. *Zhongshan Fucheng Indus. Inv. Co. v. Fed. Republic of Nigeria*, 112 F.4th 1054, 1061 (D.C. Cir. 2024) (citing *Transamerica Leasing, Inc. v. La Republica de Venezuela*, 200 F.3d 843, 847 (D.C. Cir. 2000)). "When a plaintiff asserts jurisdiction under the FSIA, the defendant foreign state bears the burden of proving that the plaintiff's asserted statutory exception to immunity does not apply." *Id.* (citing *Belize Soc. Dev. Ltd. v. Gov't of Belize*, 794 F.3d 99, 102 (D.C. Cir. 2015)).

IV.

We begin with the arbitration exception.[3] We agree with the district court that the arbitration exception is inapplicable: there is a basic distinction between actions to confirm foreign arbitral *awards* and actions to domesticate foreign judicial *judgments*. The arbitration exception by its plain terms applies to the former, not the latter.

To fall within the arbitration exception, "the action" must be "brought[] either to enforce an agreement . . . to submit to arbitration . . . or to confirm an award made pursuant to such an agreement to arbitrate." 28 U.S.C. § 1605(a)(6). Plaintiffs do not argue that this is an action to enforce an agreement to arbitrate, as the MOUs' arbitration provisions were enforced when the arbitration took place. But this also is not an action

[3] Defendants argue that the arbitration exception is not properly before us on appeal because the district court rejected the argument below and Plaintiffs did not cross-appeal. But "[p]arties who win in the district court may advance alternative bases for affirmance that are properly raised and supported by the record without filing a cross-appeal, even if the district court rejected the argument." *Shatsky v. Palestine Liberation Org.*, 955 F.3d 1016, 1028 (D.C. Cir. 2020) (quotations omitted).

to confirm an arbitral award. Plaintiffs filed such an action in Zambia and obtained confirmation of the award from the Zambian High Court. They did not file any such action in the United States within the three-year limitations period imposed by the FAA. *See* 9 U.S.C. § 207. Rather, this is an action to recognize and enforce a foreign court judgment.

Nowhere does the arbitration exception mention foreign court judgments. And reading foreign court judgments into statutory text that references only award confirmation would require collapsing two concepts that we consistently have understood to be distinct. As we previously explained, we "have long recognized the conceptual difference between arbitral awards and foreign court judgments on arbitral awards." *Comm'ns Imp. Exp. S.A. v. Republic of the Congo*, 757 F.3d 321, 330 (D.C. Cir. 2014) (*Comimpex*). An arbitral award typically arises from a contract, while a court judgment is an act of a sovereign. In accordance with these distinct factual predicates, "[a]s a matter of U.S. law, the mechanism for" recognizing and enforcing an arbitral award is different from the mechanism for recognizing and enforcing a foreign court judgment. *Id.* (quoting Amicus United States Br. 14). "Confirmation is the process by which an arbitration award is converted to a legal judgment," *LLC SPC Stileks v. Republic of Moldova*, 985 F.3d 871, 875 (D.C. Cir. 2021), involving review of the arbitral award and arbitral process. By contrast, judgment recognition converts a foreign court judgment into a domestic court judgment, involving review of the foreign court order and judicial process. *See* D.C. Code § 15–367. In conducting these separate inquiries, courts apply federal law to award confirmation actions, *see, e.g.*, 9 U.S.C. §§ 1, *et seq*., but state law to judgment recognition actions, *see, e.g.*, D.C. Code §§ 15–361, *et seq.*

Despite these well-established distinctions between award confirmation and judgment recognition, Plaintiffs propose two ways to interpret "confirm an award" in the arbitration exception that they contend would cover this judgment recognition action. First, they argue that the phrase should be defined by "[t]he relief sought," namely "turning an award into a judgment." Appellee Br. 46. But here Plaintiffs do not seek to turn an award into a judgment; they seek to turn a foreign judgment into a domestic judgment. Second, Plaintiffs define "confirm" as "give . . . approval to," and argue that the function of this action is in effect to give approval to the underlying award. *See Confirm*, Black's Law Dictionary (5th ed. 1979). But this action ultimately asks us to review a foreign court judgment, not an arbitral award.

We therefore decline Plaintiffs' invitation to expand the reach of the arbitration exception beyond its plain terms.

V.

We next turn to the implied waiver exception. For similar reasons, the implied waiver exception also does not apply here. Plaintiffs argue that a foreign sovereign waives its immunity from an action to recognize a foreign court judgment that confirmed an arbitral award when the sovereign signs the New York Convention and agrees to arbitrate in a signatory state. We construe this exception narrowly and look for strong evidence of the sovereign's intent to waive immunity. The New York Convention governs the recognition and enforcement of arbitral awards, not of foreign judgments. Signing the New York Convention thus is insufficient to show Defendants' intent to waive immunity from judgment recognition actions.

A.

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). "The FSIA does not specifically define what will constitute a waiver by implication, but our circuit has followed the virtually unanimous precedent construing the implied waiver provision narrowly." *Khochinsky v. Republic of Poland*, 1 F.4th 1, 8 (D.C. Cir. 2021) (quotations omitted). To waive immunity by implication, a foreign sovereign must have "at some point indicated its amenability to suit." *Princz v. Fed. Republic of Germany*, 26 F.3d 1166, 1174 (D.C. Cir. 1994). For that reason, we have "consistently concluded that what matters . . . is the foreign sovereign's actual intent," *Wye Oak Tech., Inc.*, 24 F.4th at 697, and accordingly "rarely" find waiver "without strong evidence that this is what the foreign state intended," *Khochinksy*, 1 F.4th at 8 (quoting *Foremost-McKesson, Inc. v. Islamic Republic of Iran*, 905 F.2d 438, 444 (D.C. Cir. 1990)).

B.

Plaintiffs urge us to follow the Second Circuit's decision in *Seetransport* to conclude that the implied waiver exception applies. As described above, *Seetransport* 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. *See* 989 F.2d at 578–79. As the basis for the first waiver, the Second Circuit looked to the text of the New York Convention, emphasizing that it "expressly permits recognition and enforcement" of arbitral awards in signatory states. *Id.* at 578. Accordingly, the Second Circuit reasoned that if a state that had signed the Convention later entered into an agreement consenting to arbitration in a jurisdiction that had

done the same, it "logically . . . had to have contemplated the involvement of the courts of any of the Contracting States in an action to enforce the award." *Id.* at 579. Yet in extending this waiver a step further to also encompass the claim for judgment recognition, the Second Circuit did not rely on the text or scope of the New York Convention. Instead, it reasoned that the waiver extended 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.* at 583.

Even assuming *arguendo* that a foreign sovereign intends to waive its immunity from actions to confirm arbitral awards when it signs the New York Convention and agrees to arbitrate, such conduct does not demonstrate an intent to waive immunity from judgment recognition actions. The New York Convention governs only the recognition and enforcement of arbitral awards. Its text makes clear that "[t]his Convention shall apply to *the recognition and enforcement of arbitral awards* made in the territory of a State other than the State where *the recognition and enforcement of such awards* are sought." New York Convention, Art. I(1) (emphasis added). The Convention says nothing about recognizing foreign court judgments after having sought recognition and enforcement of the award. Likewise, the FAA, as the statute that codifies the Convention in U.S. law, mentions only the confirmation and enforcement of awards. *See Comimpex*, 757 F.3d at 327 ("Neither section 207 nor any other provision of Chapter 2 mentions foreign court judgments. Nor is there a reference to foreign court judgments in FAA Chapter 1, which has residual application.").

Plaintiffs contend that the Convention "expressly preserves . . . arbitral parties' right to rely upon domestic laws that are *more favorable* to award enforcement than are the terms of the Convention," *id.* at 328, which would include,

Plaintiffs argue, the D.C. Judgments Recognition Act. But, here, signing the Convention is the purported expression of Defendants' intent to waive immunity by implication. The possibility of actions beyond the Convention's scope does not provide clear evidence of what the sovereign intended by signing the Convention.

Indeed, there are other international treaties that *do* govern the recognition and enforcement of foreign court judgments. *See, e.g.*, Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, July 2, 2019, No. 58036. At least one explicitly covers both judgments and awards, unlike the New York Convention. *See* Interamerican Convention on Territorial Effectiveness of Foreign Arbitration Awards, Art. 1, June 14, 1980, OAS T.S. 51 ("This Convention shall apply to *judgments and arbitral awards* . . . ." (emphasis added)). Zimbabwe, Zambia, and the United States have not signed those treaties.[4]

In light of the scope of the New York Convention, asking only whether foreign court judgments are "closely related" to arbitral awards is too insubstantial a connection to establish strong evidence of a sovereign's intent to waive its immunity. Even when we have recognized that "an arbitral award and a court judgment enforcing an arbitral award are closely related," we have reaffirmed that "they are nonetheless distinct from one

[4] *See Participant: Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*, United Nations Treaty Collection (last visited June 30, 2025), https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280626108&clang=_en [https://perma.cc/77N9-7CEP]; *Signatory Countries: Interamerican Convention on Territorial Effectiveness of Foreign Arbitration Awards*, O.A.S. (last visited June 30, 2025), http://www.sice.oas.org/dispute/comarb/intl_conv/caicmoe.asp [https://perma.cc/N9DC-B2TA].

another . . . and that distinction has long been recognized." *Comimpex*, 757 F.3d at 330 (quotations omitted). We do not see the necessary evidence of intent to waive immunity by signing a treaty that governs arbitral awards, not foreign court judgments.

C.

Plaintiffs nevertheless argue that we should follow *Seetransport* based on two prior cases in which we referenced the decision. First, in 1999, we noted that the Second Circuit, "correctly we think," reasoned that a sovereign "must have contemplated" award-enforcement actions in other signatory states when it signed the New York Convention and agreed to arbitrate in another signatory state. *Creighton Ltd. v. Gov't of the State of Qatar*, 181 F.3d 118, 123 (D.C. Cir. 1999). We concluded, however, that a sovereign agreeing to arbitrate in a New York Convention jurisdiction was insufficient to show that it intended to waive immunity from award actions if the sovereign itself had not also signed the Convention. *See id.* In a subsequent unpublished judgment, we relied on *Creighton* for the proposition that "a sovereign, by signing the New York Convention, waives its immunity from arbitration-enforcement actions in other signatory states." *Tatneft v. Ukraine*, 771 F. App'x 9, 10 (D.C. Cir. 2019) (unpublished).

Neither case concerned a foreign court judgment; they both dealt with arbitral awards. And we have made clear that, even after *Creighton* and *Tatneft*, we have not yet "formally adopted" *Seetransport*'s conclusion that signing the New York Convention and agreeing to arbitrate is even sufficient to waive immunity from award actions. *Process & Indus. Devs. Ltd. v. Fed. Republic of Nigeria*, 27 F.4th 771, 774 (D.C. Cir. 2022); *NextEra*, 112 F.4th at 1100 (quoting *id.*). We once again leave that question "for another day." *NextEra*, 112 F.4th at 1100.

But we resolve that such conduct is insufficient to establish the requisite intent to waive immunity from foreign judgment actions that are not governed by the Convention.

VI.

Because we conclude that neither the arbitration exception nor the implied waiver exception applies to waive Defendants' immunity, we need not reach the remaining issues presented on appeal.

The parties dispute whether ZMDC and Zimbabwe have an alter ego relationship and thus whether ZMDC's agreement to arbitrate can be attributed to Zimbabwe for purposes of a waiver of immunity. *See TIG Ins. Co. v. Republic of Argentina*, 110 F.4th 221, 229 (D.C. Cir. 2024) (analyzing *alter ego* status to determine whether instrumentality's arbitration agreement binds foreign state for purposes of immunity waiver). We need not resolve this question because, even assuming ZMDC and Zimbabwe have an alter ego relationship, neither exception would apply to waive their immunity for the reasons described above.

The parties also dispute whether the Commissioner is sued as a state entity subject to the FSIA or as an individual subject to diplomatic immunity. *See Samantar v. Yousuf*, 560 U.S. 305, 315 (2010) (concluding that FSIA does not govern immunity of foreign officials). Again, even assuming Plaintiffs prevail in showing that the Commissioner is sued as a state entity, the Commissioner would be subject to our same analysis under the FSIA exceptions and thus immune from suit.

Finally, Defendants' contentions of inadequate service of process are outside the scope of this collateral appeal and, in any event, are superseded by the lack of subject matter

jurisdiction. *See La Reunion Aerienne v. Socialist People's Libyan Arab Jamahiriya*, 533 F.3d 837, 840 (D.C. Cir. 2008).

VII.

For the foregoing reasons, neither the arbitration exception nor the implied waiver exception applies to waive Defendants' immunity from this action. Accordingly, we reverse the district court's determination that it has subject matter jurisdiction, vacate the remainder of the district court's orders addressing the issues we do not reach in this appeal, and remand this case with instructions to dismiss for lack of jurisdiction.

So ordered.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-7030 **September Term, 2024**

FILED ON: JULY 15, 2025

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

v.

ZIMBABWE MINING DEVELOPMENT CORPORATION, ET AL.,
APPELLANTS

Appeal from the United States District Court
for the District of Columbia
(No. 1:22-cv-00058)

Before: KATSAS and CHILDS, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*

J U D G M E N T

This cause came to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. On consideration thereof, it is

ORDERED and **ADJUDGED** that the judgment of the District Court appealed from in this cause is hereby reversed as to the district court's determination that it has subject matter jurisdiction, vacated as to the remainder of the district court's orders addressing the issues we do not reach on appeal, and remanded with instructions to dismiss for lack of jurisdiction, in accordance with the opinion of the court filed herein this date.

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk

Date: July 15, 2025

Opinion for the court filed by Circuit Judge Childs.