No. __

IN THE
SUPREME COURT OF THE UNITED STATES

UNITED MEXICAN STATES
Petitioner,
v.

LION MEXICO
CONSOLIDATED, L.P.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Federal Arbitration Act ("FAA") authorizes courts to vacate an arbitration award when an arbitrator has "exceeded [its] powers." 9 U.S.C. § 10(a)(4). Under this Court's decisions, an arbitrator "may not ignore the plain language of the contract." *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987). But if the arbitrator even arguably construes or applies the parties' agreement, courts must let the award stand. *See id.*

The courts of appeals have developed notably different methods for determining when arbitrators are arguably interpreting an agreement versus ignoring the plain text. Some courts examine the language of the contract and will vacate an award when there is no plausible connection between the text and the arbitrator's conclusions. Others ask only whether the arbitrator purported to interpret the agreement, in other words, whether the arbitrator looked to and construed the agreement.

The court below adopted the latter approach, and in doing so, materially prejudiced the right to relief of the United Mexican States under the FAA. The text of the agreement – in this case, a treaty – was plain and unambiguous and there is no plausible connection between the text and the arbitrators' conclusions.

The question presented is:

Whether arbitrators have "exceeded their powers" under 9 U.S.C. § 10(a) when the award has no plausible basis in the governing instrument.

PARTIES TO THE PROCEEDING

Petitioner United Mexican States was appellant in the court of appeals and petitioner and cross-respondent in the district court.

Respondent Lion Mexico Consolidated, L.P. was appellee in the court of appeals and respondent and cross-petitioner in the district court.

*Movant Hector Cardenas was an appellant in the court of appeals and movant in the district court. The district court denied his motion to intervene and the D.C. Circuit upheld the lower court's decision. Accordingly, Mr. Cardenas is not a party to the proceedings.

RELATED PROCEEDINGS

United States District Court for the District of Columbia:

> *United Mexican States v. Lion Mexico Consolidated, L.P.*, No. 1:21-cv-03185-ACR (Nov. 8, 2024)

United States Court of Appeals for the District of Columbia Circuit:

> *United Mexican States v. Lion Mexico Consolidated L.P.*, Nos. 24-7185, 24-7186 (consol.) (Apr. 7, 2026)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner United Mexican States ("Mexico") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

INTRODUCTION

In *United Paperworkers Int'l Union v. Misco, Inc.,* the Court affirmed that an "arbitrator may not ignore the plain language of the contract; but the parties having authorized the arbitrator to give meaning to the language of the agreement, a court should not reject an award on the ground that the arbitrator misread the contract." 484 U.S. 29, 38 (1987) ("*Misco*"); *see also Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp*., 559 U.S. 662, 671–72, 676–77 (2010) ("*Stolt-Nielsen"*). Accordingly, "as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, the court cannot overturn his decision simply because it disagrees with his factual findings, contract interpretations, or choice of remedies." *Id.; see also United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960) ("*Enterprise Wheel"*); *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013) (*"Oxford"*). This case presents an important and recurring question of federal arbitration law over which appellate courts have subsequently split: Following *Misco,* how should courts determine whether an arbitrator "ignored the plain language of the contract" instead of construed the contract so as to warrant vacatur under § 10(a)(4) of the FAA?

More than two decades ago, Justice Stevens identified the precise problem, observing that this Court's precedents "do not provide significant guidance as to what standards a federal court should use in assessing whether an arbitrator's behavior is so untethered to either the agreement of the parties or the factual record so as to constitute" an excess of power. *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 512 (2001) (Stevens, J., dissenting). Today, the lower courts still lack a uniform method for determining when an arbitrator disregards the parties' agreement.

Two Circuits employ an exceptionally deferential standard, asking only whether the arbitrator purported to interpret the agreement. *See, e.g.*, *BNSF Railway Co. v. Alstom Transportation, Inc.*, 777 F.3d 785, 788–89 (5th Cir. 2015) (asking whether the arbitrator "cites and analyzes the text of the contract" and whether "her conclusions are framed in terms of the contract's meaning"); *Madison Hotel v. Hotel & Restaurant Employees, Local 25, AFL-CIO* 144 F.3d 855, 859 (D.C. Cir. 1998) ("In this case it is enough to sustain the award that the arbitrator … purported to be interpreting the contract in rendering his final decision.") (internal quotes omitted).

Three other Circuits focus on the text. The Seventh Circuit in particular looks to whether there is any "interpretive route to the award" and will vacate an award when no such route can be discerned. *United States Soccer Fed'n, Inc. v. United States Nat'l Soccer Team Players Ass'n*, 838 F.3d 826, 832–37 (7th Cir. 2016) ("Because the arbitrator is typically limited to interpreting the contract, if 'there is no possible interpretive route to the award,' then a "noncontractual basis can be inferred and the award set aside."); *USAA Savings Bank v. Goff*, 170 F. 4th 1051, 1055 (7th Cir. 2026). The Second Circuit takes a similar approach, asking whether there is a "barely colorable justification for the outcome reached." *ReliaStar Life Ins. Co. of N.Y. v. EMC Nat'l Life Co.*, 564 F.3d 81, 86 (2d Cir. 2009); *Smarter Tools Inc. v. Chongqing SENCI Import & Export Trade Co., Ltd.*, 57 F.4th 372 (2d. 2023) ("A 'barely colorable justification' exists so long as the arbitrators had reasoning on which they 'could have justifiably rested their decision.'"). The Ninth Circuit asks whether the arbitrator's interpretation was "plausible." *Lagstein v. Certain Underwriters at Lloyd's, London*, 607 F.3d 634, 643 (9th Cir. 2010); *HayDay Farms, Inc. v. FeeDx Holdings, Inc.*, 55 F.4th 1232, 1241 (9th Cir. 2022).

These two approaches can lead to opposite outcomes for the same award. One court may find that the arbitrator disregarded the plain text because there is no plausible or colorable justification for the arbitrator's conclusions. Another court may find it sufficient that the arbitrator purported to interpret the award, and accordingly uphold the award without even analyzing the text of the agreement.

This case presents an appropriate vehicle for resolving that split. In line with its previous decisions, the court below adopted the former approach, and in doing so, materially prejudiced Mexico's right to relief under the FAA. This Court should grant certiorari and articulate a uniform standard for determining when an arbitrator is genuinely construing an agreement and when, instead, the arbitrator has exceeded the powers delegated by the parties under § 10(a)(4).

OPINIONS BELOW

The court of appeals' published decision affirming that judgment is reported at *United Mexican States v. Lion Mexico Consolidated L.P.*, 172 F.4th 1 (D.C. Cir. 2026). Pet. App. A.

The district court's decision denying Mexico's petition to vacate the arbitral award is reported at *United Mexican States v. Lion Mexico Consolidated, L.P.*, 757 F. Supp. 3d 18 (D.D.C. 2024). *See* Pet. App. B.

JURISDICTIONAL STATEMENT

This petition is timely filed. The judgment of the court of appeals was entered on April 7, 2026. Pet. App. A. Upon Petitioner's request, this Court extended the deadline to file a petition for writ of certiorari until August 5, 2026.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT AWARD EXPERTS, TREATY PROVISIONS AND STATUTES

The pertinent sections of the arbitration award are reproduced in the appendix to this petition. *See* Pet. App. C.

The relevant provisions of the NAFTA are reproduced in the appendix to this petition. *See* Pet. App. D.

The pertinent sections of the U.S. Code, 9 U.S.C. § 10, are reproduced in the appendix to this petition. *See* Pet. App. E.

STATEMENT

A. The Arbitration Agreement

The arbitration agreement at issue in this case is Chapter Eleven of the North American Free Trade Agreement ("NAFTA"), to which the United States, Mexico and Canada were signatories until the treaty was superseded by the United States-Mexico-Canada Trade Agreement. North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, 107 Stat. 2057 (1993). *See* C.A. App. JA295. In NAFTA Article 1122, each NAFTA country offered standing consent to arbitrate disputes with investors in accordance with the provisions of Chapter Eleven. C.A. App JA304. LMC consented to the arbitration in its Request for Arbitration, and Mexico was deemed to have consented when LMC met the procedural requirements for initiating the arbitration.

Article 1131(1) (entitled "Governing Law") provides that arbitrations shall be decided "in accordance with [the NAFTA] and applicable rules of international law." C.A. App JA307. The "applicable rules of international law" for interpreting treaties are set out in Article 31 of the Vienna Convention on the Law of Treaties, May 3, 1969, 1155 U.N.T.S. 331 (1980) ("Vienna Convention").

Section A of NAFTA's Chapter Eleven required each signatory to accord specific legal protections to investors from other NAFTA countries and their investments within each country. Article 1105(1), the provision at issue here, required that "[e]ach Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security." Pet. App. D, at 60a. The terms "investors" and "investment" are specifically defined and treated as separate subjects throughout Chapter 11. By its clear terms, the text of Article 1105(1) only requires protection of investments.

B. The Arbitration

LMC initiated arbitration proceedings against Mexico in December 2015, claiming that Mexico, through its courts, violated Article 1105(1) by denying LMC relief under Mexican law. C.A. App JA37. The arbitration was seated in Washington D.C. The arbitral tribunal (the "Tribunal") issued its award on September 20, 2021, holding that Mexico breached Article 1105(1) and ordering Mexico to pay LMC approximately $47 million in damages, plus interest, costs, and attorney's fees. C.A. App. JA202, JA216.

A key issue was the Tribunal's construction of Article 1105(1). LMC had claimed that the Mexican courts had denied justice to LMC as an investor. Mexico argued that Article 1105(1), by its plain text, protects only "investments of investors" and not "investors". The distinction was not trivial. If Article 1105(1) did not protect investors, then the Mexican courts could not have denied justice to LMC in violation of Article 1105(1).

Mexico's argument was supported by the text of Chapter Eleven. The terms "investor" and "investment" are carefully defined and precisely used throughout the text. *See* C.A. App. JA311-312. For example, Articles 1102 and 1103 of Chapter Eleven set out similar – but separate – protections for "investors" and "investments." *See* C.A. App. JA295-296. Article 1105(2) protects investors and investments separately as well. Pet. App. D, at 60a. Article 1105(1) was different. It did not provide any protection to investors.

In the award, the Tribunal acknowledged that a "literal reading" of Article 1105(1) extends protection only to investments, but nevertheless concluded that the provision protects both investments and investors, and held Mexico liable under Article 1105(1). Pet. App. C, at 58a. The Tribunal reasoned that the phrase "treatment in accordance with international law" in Article 1105(1) meant the same as the "minimum standard treatment of aliens," and on that basis, the Tribunal concluded that investors must be protected under Article 1105(1). Pet. App. C, at 59a. Chapter Eleven does not mention aliens.

For support, the Tribunal relied primarily on a document issued jointly by the three NAFTA countries in 2001 interpreting Article 1105(1) through the Free Trade Commission ("FTC Note"). Pet. App. C, at 59a. However, the FTC Note did not address whether investors (or aliens) were protected under Article 1105(1). The part relied on by the Tribunal – Section B.1 – states: "Article 1105(1) prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of another Party." C.A. App. JA325. In other words, investments were to receive the same standard of treatment under Article 1105(1) as aliens (foreigners) receive under customary international law. Aliens are protected under customary international law, while investments are protected under Article 1105(1). C.A. App. JA325. Section B.1 does not insert the words "investors" or "aliens" into Article 1105(1). Section B.1 therefore offered no plausible or colorable justification for the Tribunal's conclusion.

The Tribunal also cited three arbitration awards deciding claims under Article 1105(1) of the NAFTA. Pet. App. C, at 59a. However, none of those decisions addressed whether investors were protected under Article 1105(1), and the Tribunal did not explain why those cases were instructive authority.

C. Procedural History

Mexico filed a petition in the United States District Court for the District of Columbia seeking vacatur of the award under Section 10(a)(4) of the FAA. Mexico argued that the Tribunal exceeded its powers by disregarding the plain and unambiguous language of Article 1105(1) and showed that Chapter Eleven expressly distinguished between "investors" and "investments," and that Article 1105(1) only included investments.

Because the award was rendered in the District of Columbia, Mexico's petition to vacate was subject to Title 9, Chapter 1. *See* 9 U.S.C. § 10 ("[T]he United States court in and for the district wherein the award was made may make an order vacating the award."). LMC filed an opposition and a cross-petition seeking confirmation of the award.

The district court held a hearing on Mexico's petition to vacate, during which the court stated that "a literal reading of 1105(1) clearly does not apply to investors." C.A. App. JA772; *see also* C.A. App. JA770. Despite this statement, the district court denied Mexico's petition and entered LMC's cross-petition for confirmation, finding that the Tribunal arguably interpreted the provision. Pet. App. B, at 39a. Without addressing the language of Article 1105(1), the court ruled the Tribunal's decision fell "comfortably within the realm of interpretation" because the Tribunal had "identified and rejected Mexico's argument, applied existing guidance interpreting Article 1105(1), cited cases, and explained its reasoning." Pet. App. B, at 39a. The district court did not consider whether the cited materials offered any plausible support for the Tribunal's conclusion. For the district court, the fact that the Tribunal cited to anything "confirmed that it was 'arguably interpreting' Article 1105(1)." Pet. App. B, at 40a.

The appeals court affirmed the district court's decision. The court stated that the "sole question" under Section 10(a)(4) is "whether the arbitrator (even arguably) interpreted" the governing agreement, Pet. App. B, at 34a, and found that the Tribunal arguably interpreted Article 1105(1) by discussing the text of Article 1105(1) and citing to the FTC Note. Pet. App. A, at 10a-12a. Without addressing whether the Tribunal disregarded the plain language of Article 1105(1), the court concluded that the Tribunal's analysis was an interpretation and could not be disturbed under Section 10(a)(4). Pet. App. A, at 13a.

That was judicial error. Arbitrators "may not ignore the plain language of the contract." See *Misco*, 484 U.S. at 38. In line with *Misco*, the lower courts should have asked whether there was any plausible or colorable justification for the Tribunal's conclusions.

Had the lower courts adopted this approach, Mexico's petition to vacate would have been reviewed under a different standard. The court would have been required to engage with the text and determine whether the arbitrator's conclusions were plausible. Applying this standard, the award would have been vacated because the relevant language of the NAFTA is plain and needs no interpretation. There is no question that investors are not mentioned in the text of Article 1105(1). The Tribunal failed to provide any plausible or colorable justification for concluding otherwise, and the materials on which the Tribunal purported to rely do not address whether investors are protected.

REASONS FOR GRANTING THE PETITION

The courts of appeals are deeply divided over how to determine whether an arbitrator disregarded the plain language of an agreement. The decision below deepens that conflict. Rather than examining whether the Tribunal's conclusions were even plausible, the D.C. Circuit considered it sufficient that the Tribunal purported to interpret the text. That approach is contrary to decisions holding that courts must determine whether the arbitrator's conclusions have any connection to the text. Because this conflict presents a recurring and important question about the scope of judicial review, this Court should grant the petition.

I. THERE IS A CLEAR SPLIT ON THE QUESTION PRESENTED.

The courts of appeals agree on the formulation that an award must stand if the arbitrator was "even arguably construing or applying the contract," but that an arbitrator may not "ignore the plain language of the contract" or dispense "his own brand of industrial justice." *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987) ("*Misco*"); *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). Nonetheless, the circuit courts are split on how a reviewing court gives effect to both prongs of the standard when the award adopts a reading that the text does not support.

One group of circuits looks at the text of the agreement and asks whether there is any interpretive route between the text and the arbitrator's conclusions. Another group poses a more method-focused question: whether the arbitrator looked to the agreement, cited or analyzed its terms, and framed the decision as an interpretation of the agreement. Under the first approach, courts evaluate the result; under the second, they focus on the process by which the arbitrator reached that result.

These different approaches can lead to different outcomes. A court applying the first approach may conclude arbitrators exceeded their powers because their interpretation was not plausible. Another court applying the second approach may conclude the arbitrators did not exceed their power because they at least purported to interpret the agreement, regardless of whether the interpretation has any connection to the governing text.

A. The Second, Seventh, And Ninth Circuits Ask Whether the Arbitrator's Interpretation is Plausible.

The text-focused circuits review whether the arbitrator's conclusion has a plausible or colorable connection to the text of the arbitration agreement — not merely whether the arbitrator invoked the exercise of interpretation.

The Second Circuit asks whether "the arbitrator's award draws its essence" from the agreement, "since the arbitrator is not free merely to dispense his own brand of industrial justice." *ReliaStar Life Ins. Co. of N.Y. v. EMC Nat'l Life Co.*, 564 F.3d 81, 85–86 (2d Cir. 2009). The court will uphold an award "as long as the arbitrator offers a barely colorable justification for the outcome reached," meaning the arbitrator must have had "reasoning on which they could have justifiably rested their decision." *Id.* at 86; *Smarter Tools Inc. v. Chongqing SENCI Imp. & Exp. Trade Co.*, 57 F.4th 372, 383 (2d Cir. 2023) (quoting *Willemijn Houdstermaatschappij, BV v. Standard Microsystems Corp.*, 103 F.3d 9, 13–14 (2d Cir. 1997)). The "barely colorable justification" inquiry accordingly requires the reviewing court to trace a link between the agreement and the arbitrator's result, rather than accepting the arbitrator's invocation of interpretation at face value.

The Seventh Circuit asks whether the contract supplies an "interpretive route" to the award. *United States Soccer Fed'n, Inc. v. United States Nat'l Soccer Team Players Ass'n*, 838 F.3d 826, 832 (7th Cir. 2016). Because "the arbitrator is typically limited to interpreting the contract, if there is no possible interpretive route to the award, then a noncontractual basis can be inferred and the award set aside." *Id.* (quoting *Chicago Typographical Union No. 16 v. Chicago Sun-Times, Inc.*, 935 F.2d 1501, 1505–06 (7th Cir. 1991)). The Seventh Circuit vacated the award in *U.S. Soccer Federation* because the governing agreement was "clear and unambiguous" and there was accordingly "no other reasonable interpretation" to support the arbitrator's conclusion. *Id.* at 833. The court also rejected the notion that an arbitrator's award is "completely insulated from judicial review" merely because the arbitrator considered the agreement ambiguous, explaining that "the arbitrator cannot dress his policy desires up in contract interpretation clothing." *Id.* at 835 (quoting *Northern Indiana Public Service Co. v. United Steelworkers of America*, 243 F.3d 345, 347 (7th Cir. 2001)); *see also id.* (quoting *Ethyl Corp. v. United Steelworkers of Am.*, 768 F.2d 180, 187 (7th Cir. 1985)) ("This is not to say that simply by making the right noises—noises of contract interpretation—an arbitrator can shield from judicial correction an outlandish disposition of a grievance.").

Most recently, the Seventh Circuit reaffirmed that a court must ask "not whether the arbitrator misinterpreted the agreement, but only whether the arbitrator's inquiry disregarded the very language of the agreement itself." *USAA Savings Bank v. Goff*, 170 F.4th 1051, 1054–55 (7th Cir. 2026) (quoting *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013)). The arbitrator in that case disregarded the agreement's plain terms governing post-award review of punitive damages. As a result, the court held that "there is no 'no possible interpretive route' to the arbitrator's decision," and vacated the award. *Id*. at 1056 (quoting U.*S. Soccer Fed'n*, 838 F.3d at 832).

The Ninth Circuit likewise has held that "an arbitrator does not exceed its authority if the decision is a plausible interpretation of the arbitration contract," meaning the arbitrator's decision cannot be "completely irrational" or "ignores controlling terms of the parties' contract." *HayDay Farms, Inc. v. FeeDx Holdings, Inc.*, 55 F.4th 1232, 1240–41 (9th Cir. 2022). The Ninth Circuit has also stated that a court "need only determine whether the arbitrators' interpretation was 'plausible.'" *Lagstein v. Certain Underwriters at Lloyd's, London*, 607 F.3d 634, 643 (9th Cir. 2010) (quoting *Employers Ins. of Wausau v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 933 F.2d 1481, 1486 (9th Cir. 1991)).

Taken together, courts in these circuits consider that where there is no plausible or colorable justification for the arbitrator's interpretation, the arbitrator is considered to have disregarded the plain text and the award is vacated. They do not defer to an arbitrator's interpretation that departs from the text of the agreement.

B. The First, Fifth, and D.C. Circuits Focus On Whether The Arbitrator Purported To Interpret The Agreement.

Other circuits apply a markedly different inquiry. They do not ask whether the arbitrator's conclusions are plausible. They instead examine the arbitrator's methodology: whether the arbitrator identified the interpretive task, cited or analyzed the agreement, and framed the result as a construction of the agreement. If the answer is yes, those courts generally find that the arbitrator "arguably interpreted" the agreement.

The D.C. Circuit follows that method-focused approach. The court has stated it has "no business" deciding whether particular contractual language supports the claim submitted to arbitration or overruling the arbitrator because they would read the contract differently. *Madison Hotel v. Hotel & Restaurant Employees, Local 25, AFL-CIO*, 144 F.3d 855, 859 (D.C. Cir. 1998). The D.C. Circuit adopted the same hands-off approach in this case, stating that the "sole question" was whether the Tribunal "arguably interpreted" Article 1105(1), and upholding the award because the Tribunal purported to address the treaty text, cited extrinsic evidence, and framed its conclusion as treaty interpretation. Pet. App. A, at 10a-12a.

The Fifth Circuit likewise treats the "sole question" as whether "the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong." *BNSF Railway Co. v. Alstom Transportation, Inc.*, 777 F.3d 785, 787 (5th Cir. 2015). To answer that question, the Fifth Circuit looks principally to the face of the award—whether the arbitrator identified contract interpretation as the task, cited and analyzed the contractual text, and framed the conclusions in terms of the contract's meaning. *Id.* at 788; *Kemper Corporate Services, Inc. v. Computer Sciences Corp.*, 946 F.3d 817, 823 (5th Cir. 2020). "It is of no consequence whether the Tribunal's interpretations of the parties' agreements or the governing law were correct … because it is the arbitrator's construction of the contract which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." *Kemper* 946 F.3d at 823 (cleaned up).

The First Circuit follows this same approach. *First State Insurance Co. v. National Casualty Co.*, 781 F.3d 7, 11 (1st Cir. 2015). "In ascertaining whether arbitrators arguably interpreted the underlying contract," the court looks to the face of the award because "the award will often suggest…that the arbitrator was arguably interpreting the contract." *Id.* (quoting *BNSF Railway*, 777 F.3d at 788); *see also Hoolahan v. IBC Advanced Alloys Corp.*, 947 F.3d 101, 118 (1st Cir. 2020). Relying on *First State Insurance*, the court in *Hoolahan* upheld an arbitration award after finding that the award "cites to articles of the Agreement," which was "more than enough" for the court to conclude that the arbitrator was construing it. *Hoolahan*, 947 F.3d at 118.

Thus, the First, Fifth and DC Circuits take a more deferential approach, simply inquiring whether the arbitrator structured its reasoning as an interpretation, without regard as to whether the text of the agreement can support the interpretation.

II. THE COURT SHOULD RESOLVE THE CIRCUIT SPLIT

The Court should grant review because the split described above is not an abstract or academic disagreement — it produces materially different outcomes on identical facts and undermines the predictability the FAA is supposed to deliver.

A. The Split Is Outcome-Determinative and Recurring.

The split among the Circuits concerns a question that arises in every case in which a party contends that an arbitrator disregarded the plain language of a contract: how should a reviewing court determine whether an arbitrator's reading of a contract is so untethered from the text that the arbitrator "exceeded its authority" under the FAA? Courts confronting that question have not converged on an answer, and the divergence appears across labor, commercial, and treaty-based arbitration, among others. Bringing clarity to this question will benefit parties in all these sectors.

In forming contracts, parties negotiate specific terms, allocate specific risks, and choose arbitration on the understanding that the arbitrator's role is to enforce the terms to which the parties actually agreed, not to substitute the arbitrator's own judgment for the parties' bargain. The role of a reviewing court under § 10(a)(4) is to police that boundary — to ensure that an arbitrator's award remains connected to the text the parties adopted, rather than to the arbitrator's own view of the fairest outcome. When courts of appeals apply different methodologies to that inquiry, they are applying a different degree of protection to the parties' bargain.

Courts adopting the method-focused-approach are less effective at policing that boundary because, by asking only whether the arbitrator invoked the vocabulary of interpretation, they effectively permit arbitrators to enforce their own view of policy while merely reciting the language of construction. That is precisely the outcome the Seventh Circuit condemned when it explained that " simply by making the right noises — noises of contract interpretation — an arbitrator can shield from judicial correction an outlandish disposition of a grievance." *United States Soccer Fed'n, Inc. v. United States Nat'l Soccer Team Players Ass'n*, 838 F.3d 826, 835 (7th Cir. 2016)

B. The Split Encourages Forum Shopping and and Leads to Inconsistent Treatment of Arbitration Agreements.

Because the same award potentially could be confirmed in one circuit and vacated in another depending solely on which methodology applies, parties have every incentive to litigate confirmation and vacatur proceedings strategically rather than on the merits. A party favoring finality will seek out circuits applying the deferential, process-focused test; a party seeking meaningful review will seek out circuits applying the text-focused, plausibility-based test.

This problem with the inconsistency extends to arbitrations under treaties involving foreign governments, such as this case. In particular, arbitrations involving foreign governments are frequently seated in Washington, DC. Accordingly, the DC Circuit's methods-based approach has become the predominant method for arbitrations involving governments, which are therefore systematically subject to a different standard of review than the same category of award would receive if it happened to be seated, and challenged, in the Second, Seventh, or Ninth Circuits.

Granting certiorari would eliminate that anomaly and ensure that arbitration awards, both commercial and under treaties, are reviewed under the same standard.

C. This Case Is an Ideal Vehicle for Resolving the Split.

The question presented was squarely raised and decided below, on a fully developed record. The D.C. Circuit did not decide whether Article 1105(1) was actually susceptible to the Tribunal's reading; it held only that the Tribunal's citation to the treaty text and interpretive materials was sufficient to end the inquiry. Had the Second, Seventh, or Ninth Circuit's approach applied instead, they would have focused on the plain and unambiguous text of Article 1105(1) — which extends protection only to "investments," not "investors" — and would have concluded that there was no plausible or colorable basis for the Tribunal's contrary conclusion. The case therefore squarely presents whether the outcome of a § 10(a)(4) challenge should depend on the method a court uses to ask whether an arbitrator exceeded its powers, and it does so in a context — international arbitration under a treaty binding a sovereign state — where the United States has a heightened interest in ensuring that federal courts speak with one voice.

For all these reasons, the Court should grant review now. The existing split distorts the nationwide application of the FAA, produces unequal treatment of materially identical awards, invites forum shopping, and leaves lower courts without guidance on a question this Court's own precedents have left open for more than two decades. *See Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 512 (2001) (Stevens, J., dissenting).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, FILED APRIL 7, 2026

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-7185

UNITED MEXICAN STATES,

Appellant,

v.

LION MEXICO CONSOLIDATED L.P.,

Appellee,

HECTOR CARDENAS,

Movant-Appellant.

Consolidated with 24-7186

Argued November 3, 2025 Decided April 7, 2026

Appeals from the United States District Court
for the District of Columbia
(No. 1:21-cv-03185)

Before: PILLARD, WALKER and CHILDS, *Circuit Judges*.

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

Pillard, *Circuit Judge*: Mexico seeks to vacate an arbitration award resolving an investment dispute between Mexico and Lion Mexico Consolidated, a Canadian investor. Applying provisions of the North American Free Trade Agreement, a panel of arbitrators ordered Mexico to pay Lion $47 million in compensation for the country's failure to protect the company's investments in real estate projects in Mexico. Mexico petitioned our district court to vacate the arbitral award on the grounds that the arbitrators exceeded their powers and acted in manifest disregard of the law. The district court held the arbitrators acted within their authority and with appropriate regard for the law, so denied Mexico's petition and granted the investor's cross-petition for confirmation of the award. Mexico appeals. Separately, Héctor Cárdenas Curiel, a Mexican businessman involved in the events that gave rise to the arbitration, moved to intervene in the district court proceedings. The district court denied intervention, and Cárdenas appeals. We affirm in full.

I.

A.

The North American Free Trade Agreement (NAFTA) was a multilateral treaty between the United States of America, Mexico, and Canada that sought to facilitate trade and economic activity, including cross-border investment, among the three nations. North American Free Trade Agreement, Dec. 17, 1992, 107 Stat. 2057, 32 I.L.M. 289. NAFTA is no longer in effect since it was superseded on July 1, 2020, by the U.S.-Mexico-

Canada Agreement. *See* United States-Mexico-Canada Agreement Implementation Act, Pub. L. No. 116-113, 134 Stat. 11 (2020). But the arbitration at issue here, instituted in December 2015, was governed by NAFTA, and NAFTA's intervening repeal has no effect on its applicability to this dispute.

Among NAFTA's provisions to encourage cross-border investment—memorialized in Chapter 11 of NAFTA—was the requirement that each party "accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security." NAFTA art. 1105(1). NAFTA allowed foreign investors to initiate arbitration proceedings directly against a party government for violating the protections of Chapter 11, including Article 1105(1). *See id.* art. 1120(1). The treaty established the Free Trade Commission, an entity comprising the trade ministers of the three NAFTA signatories, to supervise its implementation and interpretation. The Commission's interpretations of NAFTA bound any arbitral tribunal convened to adjudicate a dispute under the treaty. *Id.* arts. 1131(2), 2001(1).

A petition in United States court to confirm an arbitral award based on a treaty to which the United States is a party may proceed under the Federal Arbitration Act (FAA), 9 U.S.C. § 1 *et seq.*, which recognizes such a treaty as federal law, *id.* at § 201. *See, e.g.*, *BG Grp. PLC v. Rep. of Argentina*, 572 U.S. 25, 44, 134 S. Ct. 1198, 188 L. Ed. 2d 220 (2014); *LLC SPC Stileks v. Republic of Moldova*, 985 F.3d 871, 879 n.2, 450 U.S. App. D.C. 342 (D.C. Cir.

2021). The FAA establishes a "federal policy favoring arbitration" and requires federal courts to "rigorously enforce agreements to arbitrate." *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 226, 107 S. Ct. 2332, 96 L. Ed. 2d 185 (1987) (internal quotation marks omitted). Limited judicial review protects the "prime objective" of an agreement to arbitrate, which is "to achieve 'streamlined proceedings and expeditious results.'" *Preston v. Ferrer*, 552 U.S. 346, 357, 128 S. Ct. 978, 169 L. Ed. 2d 917 (2008) (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 633, 105 S. Ct. 3346, 87 L. Ed. 2d 444 (1985)). Judicial power to vacate arbitral decisions is accordingly confined to "very unusual circumstances." *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 568, 133 S. Ct. 2064, 186 L. Ed. 2d 113 (2013) (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 942, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995)). The FAA lists four grounds on which a court may vacate an arbitration award. *See* 9 U.S.C. § 10(a). At issue in this case is the fourth ground: "where the arbitrators exceeded their powers." *Id.*

A party seeking vacatur of an arbitral award on the ground that the arbitrators "exceeded their powers" bears a "heavy burden." *Oxford Health Plans*, 569 U.S. at 569. It is not enough for the challenger to show that the arbitrators "committed an error—or even a serious error." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671, 130 S. Ct. 1758, 176 L. Ed. 2d 605 (2010). Because the parties "bargained for the arbitrator's construction of their agreement," an arbitral award "even arguably construing or applying the contract" will stand, "regardless of a court's view of its (de)merits." *Oxford Health Plans*, 569 U.S. at 569 (internal quotation marks omitted). Only when arbitrators exceed the scope of their delegated authority by "issuing an award that simply reflects [their] own notions of economic justice rather than drawing its essence from the contract" will the arbitrators' decision be set aside. *Oxford Health Plans*, 569 U.S. at 569 (formatting modified). Thus, "the sole question" for a court entertaining a petition for relief under Section 10(a)(4) is "whether the arbitrator (even arguably) interpreted the parties' contract, not whether [they] got its meaning right or wrong." *Id.*

B.

Lion Mexico Consolidated, L.P. (Lion) is a Canadian company that made loans to companies owned by a Mexican businessman named Héctor Cárdenas Curiel (Cárdenas) to finance real estate projects in Mexico. *United Mexican States v. Lion Mexico Consolidated, L.P.*, 757 F. Supp. 3d 18, 23 (D.D.C. 2024). The parties documented the loans through mortgages to Lion on the real property and promissory notes to Lion as unconditional commitments to repay the loans. *Id.*; *see* Arbitration Award (Award), Annex A (Decision on Jurisdiction) ¶ 58 (J.A. 252). Cárdenas's companies, however, never made a single payment on the loans. *United Mexican States*, 757 F. Supp. 3d at 23. After Lion's fruitless efforts to recoup its investment through direct negotiation with Cárdenas and litigation in Mexican courts that Cárdenas stymied, Lion initiated arbitration proceedings against the government of Mexico in December 2015. Award ¶ 12 (J.A. 37).

The arbitration was seated in Washington D.C. *Id.* ¶ 40 (J.A. 40). As relevant here, Lion claimed that Mexico had failed to grant its loan-based investments the protections required by Article 1105(1) of NAFTA. *See* Award ¶ 187 (J.A. 76). Lion contended that Article 1105(1) protected each form of financing that it had provided to Cárdenas's companies: the mortgages and the promissory notes. *See United Mexican States*, 757 F. Supp. 3d at 29. In response, Mexico objected that the arbitral tribunal (Tribunal) lacked jurisdiction over Lion's Article 1105(1) claims because neither the mortgages nor the promissory notes qualified as "investments" as that term was defined in NAFTA. *See* Decision on Jurisdiction ¶ 98 (J.A. 260). Mexico further contended that, even if Lion had made qualifying "investments," Lion could not obtain relief because Article 1105(1) protected only investments and not investors. Mexico's Counter Memorial ¶ 141 (J.A. 322).

On September 9, 2021, the Tribunal handed down its award in Lion's favor. The Tribunal found that when Lion tried to recoup its investments in the Mexican courts, Cárdenas orchestrated a scheme of "complex judicial fraud" to frustrate any recovery. Award ¶ 94 (J.A. 51). Specifically, the Tribunal found that a Mexican court judgment purporting to cancel Lion's loans to Cárdenas's companies rested on a forged settlement agreement Cárdenas had prepared. *Id.* ¶¶ 94-95, 103 (J.A. 51-52, 54). The Tribunal further found that, despite Lion's repeated attempts to establish that the putative agreement undergirding the apparent cancellation judgment had been forged, Lion obtained no relief from the Mexican courts. *See id.* ¶¶ 138-79 (J.A. 63-72); *United Mexican States*, 757 F. Supp. 3d at 23-25.

Based on those findings, the Tribunal determined that Mexico breached its Article 1105 obligations to Lion. Award ¶ 354 (J.A. 110). As a threshold matter, the Tribunal concluded that it had jurisdiction over Lion's Article 1105 claims as to the mortgages, but not as to the promissory notes, because only the former qualified as "investments" under NAFTA. Decision on Jurisdiction ¶ 266 (J.A. 293). On the merits, the Tribunal concluded that Article 1105(1) "protects investments and investors," rejecting Mexico's argument that the provision "only extends protection to investments, but not to investors." Award ¶ 356 (J.A. 110). And Mexico breached its Article 1105(1) obligations to Lion because Mexico's courts repeatedly failed to provide Lion a fair opportunity, consistent with the "customary international law minimum standard of treatment of aliens," to vindicate its rights to its investments. *Id.* ¶¶ 210, 299, 506-509 (J.A. 81, 98, 138). The Tribunal consequently ordered Mexico to pay Lion $47 million in compensation, plus costs and attorney's fees. *Id.* ¶ 851 (J.A. 216).

C.

On December 6, 2021, Mexico petitioned the United States District Court for the District of Columbia to vacate the award on the grounds that the Tribunal "exceeded [its] powers" under 9 U.S.C. § 10(a)(4) and acted in manifest disregard of the law. *United Mexican States*, 757 F. Supp. 3d at 27, 32. Specifically, Mexico argued that the Tribunal had impermissibly expanded the scope of Article 1105(1) by entering an award that protected foreign investors—not just investments—in Mexico. *Id.* at 29. Lion opposed the petition and submitted a cross-petition for confirmation of the award. *Id.* at 27.

The district court denied Mexico's petition and granted Lion's. *Id.* at 33. The court first corrected what it viewed as Mexico's fundamental misapprehension of the Tribunal's ruling: that the Tribunal had interpreted Article 1105(1) to generally protect foreign investors from unfair or inequitable treatment, even when the mistreatment was unconnected to any "investments" protected under NAFTA. *Id.* at 29. The district court explained that such a "sweeping" understanding of the Tribunal's decision could not be squared with the award's reasoning, including the Tribunal's dismissal of Lion's claims as to the promissory notes for failure to qualify as "investments" under NAFTA. *Id.* Thus, the district court explained, the Tribunal interpreted Article 1105(1) to protect foreign investors only from unfair treatment that adversely affects their qualifying investments.

The court then determined that the Tribunal did not exceed its powers in so concluding because the Tribunal's work fell "comfortably within the realm of interpretation." *Id.* at 30. The court explained that the award reflected the Tribunal's interpretation because it "identified and rejected Mexico's argument, applied existing guidance interpreting Article 1105(1), cited cases, and explained its reasoning." *Id.* Next, assuming without deciding that arbitrators'"manifest disregard of the law" could provide an alternative, non-statutory basis for vacating an arbitral award, the court concluded that the Tribunal's award could not be so characterized for largely the same reasons the Tribunal did not exceed its powers in entering it. *Id.* at 28 n.8, 32. The court thus saw nothing warranting vacatur of the award. *Id.* at 32. Because a court "must grant" a timely filed petition to confirm an arbitral award "unless the award is vacated, modified, or corrected as prescribed in [S]ections 10 and 11 of [the FAA]," the district court granted Lion's timely cross-petition for confirmation. *Id.* at 32-33 (quoting 9 U.S.C. § 9).

Separately, while the petition and cross-petition remained pending in the district court but five months after the parties had finished their briefing, Cárdenas moved to intervene. *Id.* at 27. The arbitrators had found that Cárdenas orchestrated the fraudulent scheme in the Mexican courts that harmed Lion. Claiming that the award had violated his due process rights by "ma[king] serious findings of unlawful conduct against him during the arbitration without affording him an opportunity" to defend himself, Cárdenas sought to intervene in the district court in support of Mexico's petition to vacate the award. *United Mexican States v. Lion Mex. Consol. LP*, No. 21-3185 (D.D.C. July 21, 2023), ECF No. 42-1 (Mem. ISO Mot. to Intervene) at 13. He claimed his intervention would present an argument in support of vacatur that Mexico had not raised. *Id.* In the same order in which it denied Mexico's petition, the district court denied Cárdenas's motion to intervene: Cárdenas failed to establish that he is entitled to intervene as of right, Fed. R. Civ. P. 24(a)(2), and provided no basis for permissive intervention, Fed. R. Civ. P. 24(b). *United Mexican States*, 757 F. Supp. 3d at 33-37.

Mexico and Cárdenas each timely appealed.

II.

We begin with Mexico's petition to vacate the arbitral award. We review *de novo* the district court's application of the highly circumscribed grounds for vacatur. *Selden v. Airbnb, Inc.*, 4 F.4th 148, 155, 453 U.S. App. D.C. 241 (D.C. Cir. 2021).

A.

Mexico first contends that the award should be vacated because the Tribunal "exceeded [its] powers." 9 U.S.C. § 10(a)(4). We are unpersuaded. As already noted, in reviewing a petition to vacate an arbitral award under Section 10(a)(4) of the FAA, "the sole question for us is whether the arbitrator (even arguably) interpreted the parties' contract"—or, in this case, the treaty—"not whether he got its meaning right or wrong." *Oxford Health Plans*, 569 U.S. at 569. If the arbitrator even arguably interpreted the terms of the agreement to arbitrate, the petition must be denied. *Id.* Here, Mexico challenges the Tribunal's conclusion that Article 1105(1) protects investors with regards to their qualifying investments. Thus, the question is whether the Tribunal arguably interpreted Article 1105(1) in so concluding. We conclude that it did.

Describing the Tribunal's analysis proves the point. In determining that Article 1105(1) covers investors as to their protected investments, the Tribunal started, as interpreters of law routinely do, with the text of that provision. *See* Award ¶ 356 (J.A. 110). The key Article states: "Each Party shall accord to investments of investors of another Party treatment in accordance with international law . . . ." NAFTA art. 1105(1). The Tribunal noted that the "literal" terms of Article 1105(1) referenced the "treatment" of "investments of investors," Award ¶ 356 (J.A. 110), so it looked to authorities interpreting those terms.

First, the Tribunal relied on a Free Trade Commission Interpretation Note from July 31, 2001. In the Interpretation Note, the Commission understood Article 1105(1) as prescribing "the customary international law minimum standard of *treatment of aliens*" as the minimum standard of treatment to be afforded to investments of investors of another party. Award ¶¶ 356-58 (J.A. 110) (emphasis added) (internal quotation marks omitted). Because in the context of foreign-investor protection the Interpretation Note's reference to "aliens" could "only mean investors," *id.* ¶ 358 (J.A. 110), and because NAFTA makes the Commission's Interpretation Notes binding on arbitral tribunals adjudicating claims under that treaty, *see* NAFTA art. 1131(2), the Tribunal concluded that it was bound to interpret Article 1105(1) to protect investors, Award ¶ 358 (J.A. 110). The Tribunal then relied on several arbitration decisions that had "construed Art. 1105 as a source of protection for investors rather than solely for their investments." *Id.* ¶ 358 & n.384 (J.A. 110).

Starting with the text of Article 1105(1) and giving meaning to that text in accord with binding and persuasive authorities interpreting it, the Tribunal's analysis is, "through and through, [an] interpretation[] of the parties' agreement." *Oxford Health Plans*, 569 U.S. at 570. Contrary to Mexico's contentions, this is not a case in which the Tribunal lacked "*any* contractual basis" for its conclusion, such that the Tribunal "simply imposed its own conception of sound policy." *Id.* at 571 (internal quotation marks omitted); *cf. Raymond James Fin. Servs., Inc. v. Bishop*, 596 F.3d 183, 189 (4th Cir. 2010) (vacating arbitral award that either "disregarded or modified unambiguous contract provisions" or was based on arbitrators'"own personal notions of right and wrong"); *Mo. River Servs., Inc. v. Omaha Tribe of Neb.*, 267 F.3d 848, 855 (8th Cir. 2001) (vacating arbitral award that "rewrote" the contract (internal quotation marks omitted)).

Mexico levies two challenges to the contrary. It first contends that the district court "definitively" recognized that Article 1105(1) unambiguously excluded investors, yet its opinion and order impermissibly "ignored its previous finding." Mex. Br. 20, 22. As an initial matter, any such determination by the district court on the meaning of Article 1105(1)—a legal interpretation that Mexico inaccurately characterizes as a "finding"—would not bind us on *de novo* review. The district court, moreover, never concluded that Article 1105(1) unambiguously excluded investors. Mexico cites the district court's statement, made while questioning counsel at oral argument, that "a literal reading of 1105(1) clearly does not apply to investors." *See* Mex. Br. 20-21. But, as the district court ultimately concluded, the Tribunal's holding that Article 1105(1) protects investors still fell comfortably within the realm of interpretation. *United Mexican States*, 757 F.

Supp. 3d at 29-31. Indeed, as the Tribunal's interpretation of Article 1105(1) illustrates, an observation about a "literal" reading is not the same thing as arriving at an "unambiguous" interpretation. Ultimately, whether Article 1105(1) is ambiguous (and whether the district court so concluded) is relevant only insofar as it bears on whether the Tribunal interpreted Article 1105(1) in rendering its award—which the Tribunal plainly did.

Mexico also argues that the district court erred by inaccurately "refram[ing]" the issue addressed by the Tribunal as one of "standing." *See* Mex. Br. 28-30. But the district court did not so "reframe" the issue. When the court said that "[t]he Tribunal held only that investors had standing to bring claims *if* a challenged action affected a *qualified* investment," it was simply restating its observation that the Tribunal did not "rule that Article 1105(1) applied to investors writ large," but "only that an investor could bring a claim under Article 1105(1) *if* the challenged treatment affected a qualifying investment" by that investor. *United Mexican States*, 757 F. Supp. 3d at 29. What matters for judicial review is that the Tribunal arrived at that understanding by interpreting Article 1105(1). And, for reasons well explained by the district court, that is the best reading of how the Tribunal understood Article 1105(1). *See id.* at 29-31.

In sum, Mexico has failed to carry its "heavy burden" to show that the Tribunal exceeded its authority in concluding that Article 1105(1) protected Lion with regard to its investments. *Oxford Health Plans*, 569 U.S. at 569.

B.

As an alternative ground for vacatur, Mexico contends that the Tribunal acted in manifest disregard of the "governing law of treaty interpretation" as expressed in Article 31 of the Vienna Convention on the Law of Treaties. Mex. Br. 30 (formatting modified). We disagree.

It is "unclear . . . whether manifest disregard remains a valid ground for vacatur after the Supreme Court's decision in *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 584-86, 128 S. Ct. 1396, 170 L. Ed. 2d 254 (2008)," which held that "the FAA's list of grounds for refusing to enforce an award is exclusive." *Selden*, 4 F.4th at 160 n.6. The Supreme Court and this court have yet to decide whether non-statutory grounds for vacatur, including manifest disregard of the law, survived *Hall Street*. *Stolt-Nielsen S.A.*, 559 U.S. at 672 n.3; *Metro. Mun. of Lima v. Rutas De Lima S.A.C.*, 141 F.4th 209, 219 (D.C. Cir. 2025). And we need not decide that question here. Even assuming, as the district court did, that manifest disregard of the law remains a separate ground for vacatur, the Tribunal did not act in manifest disregard of the law.

The party seeking to vacate an arbitral award bears the burden of demonstrating that the arbitrators acted in manifest disregard of the law. *LaPrade v. Kidder, Peabody & Co.*, 246 F.3d 702, 706, 345 U.S. App. D.C. 358 (D.C. Cir. 2001). We have ruled that a tribunal acts in manifest disregard of the law if "(1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether;" and (2) "the law ignored by the arbitrators was well defined, explicit, and clearly applicable to the case." *Id.* (internal quotation marks omitted). Consistent with the deference owed to arbitrators' judgments and the finality interests that arbitration is designed to serve, we treat manifest disregard as an "extremely narrow" standard of review that is unmet "if any justification" for an award "can be gleaned from the record." *Kurke v. Oscar Gruss & Son, Inc.*, 454 F.3d 350, 354, 372 U.S. App. D.C. 154 (D.C. Cir. 2006) (internal quotation marks omitted).

Mexico fails to demonstrate that the Tribunal acted in manifest disregard of the law in interpreting Article 1105(1) to protect Lion with respect to its qualifying investments. Assuming that Article 31 of the Vienna Convention on the Law of Treaties constitutes a "governing legal principle" that is "well defined, explicit, and clearly applicable to the case," within the meaning of the manifest-disregard principle, Mexico has not shown that the Tribunal "refused to apply it or ignored it altogether." *LaPrade*, 246 F.3d at 706 (internal quotation marks omitted).

Article 31 of the Vienna Convention provides the "[g]eneral rule of interpretation" for construing treaties. Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1155 U.N.T.S. 331 (Vienna Convention). It instructs that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." *Id.* Mexico places great emphasis on Article 31's reference to the "ordinary meaning" of the treaty, which it says "requires fealty to the text." Mex. Br. 32. And because the text of Article 1105(1) of

NAFTA only refers to “investments of investors” and not “investors,” Mexico contends that the Tribunal acted in manifest disregard of its obligation to interpret the treaty according to its “ordinary meaning.” *Id.* at 34.

But Article 31 does not say that a treaty’s interpretation must end with the text. Rather, it instructs that “ordinary meaning” is “to be given to the terms of the treaty in their context and in the light of its object and purpose.” Vienna Convention art. 31. Mexico interprets Article 1105(1) of NAFTA to protect only “investments” and not “investors,” such that it provides no protection to investors whose investments are mistreated. That interpretation, as the district court explained, would undermine “NAFTA’s purpose of encouraging the free flow of goods, services, and investments among the signatories.” *United Mexican States*, 757 F. Supp. 3d at 31 (citing NAFTA art. 102(1)).

Moreover, Article 31 also requires interpreters to “take[] into account” “any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.” Vienna Convention art. 31. Here, as explained above, Article 1131(2) of NAFTA required the Tribunal to treat the Free Trade Commission’s Interpretation Notes as binding. The Tribunal faithfully complied with Article 1131(2) of NAFTA—and thus, Article 31 of the Vienna Convention—when it considered the Free Trade Commission’s Interpretation Note on Article 1105(1). And that Interpretation Note supports the Tribunal’s interpretation of Article 1105(1) to protect investors with regard to their qualifying investments. *See supra* at 10; *see also United Mexican States*, 757 F.

Supp. 3d at 26-27. For these reasons, the Tribunal did not "refuse[] to apply" or "ignore . . . altogether" Article 31 of the Vienna Convention. *LaPrade*, 246 F.3d at 706 (internal quotation marks omitted). Accordingly, Mexico has not shown that the Tribunal acted in manifest disregard of the law.

Because Mexico failed to carry its burden to show that the Tribunal "exceeded [its] powers," 9 U.S.C. § 10(a)(4), or acted in manifest disregard of the law, *LaPrade*, 246 F.3d at 706, we affirm the district court's order denying Mexico's petition to vacate the arbitral award and granting Lion's cross-petition for confirmation.

III.

We next address the district court's denial of Cárdenas's motion to intervene. Reviewing for abuse of discretion, *Campaign Leg. Ctr. v. Fed. Election Comm'n*, 68 F.4th 607, 610, 461 U.S. App. D.C. 86 (D.C. Cir. 2023), we affirm.

Cárdenas first argues that he was entitled to intervene as of right under Federal Rule of Civil Procedure 24(a)(2). "Parties have the right under Rule 24(a)(2) to intervene in an action if they meet four requirements: (1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the applicant's interests." *SEC v. Prudential Sec. Inc.*, 136 F.3d 153, 156, 329 U.S. App. D.C. 10 (D.C. Cir. 1998).

The district court denied intervention as of right for three reasons: First, Cárdenas's motion was not timely; second, Cárdenas's motion would have been futile; and third, Mexico could adequately represent Cárdenas's interest. *United Mexican States*, 757 F. Supp. 3d at 33-36.

Because Mexico's ability to adequately represent Cárdenas's interest suffices to defeat intervention as of right, we need not consider the district court's other reasons. In his brief to us, Cárdenas says he is "not seeking to intervene in the *vacatur* proceeding to challenge the fraud findings or to try to reopen the other factual findings by the tribunal." Cárdenas Br. 31 (formatting modified). Instead, he seeks to intervene only "in support of Mexico's petition to vacate an arbitral award that directly harms his interests, by making additional arguments in support of vacatur that Mexico did not make." *Id.* Even assuming that Cárdenas has a cognizable interest in seeking vacatur of the award, Cárdenas does not contest that the interest he seeks to protect by intervening—to vacate the entire award rather than challenge specific findings about himself—is the same as Mexico's. Cárdenas Br. 42. Thus, as the district court explained, Cárdenas's motion "at best reflects a strategy disagreement with Mexico" about which arguments to raise in support of the shared goal of vacatur. *United Mexican States*, 757 F. Supp. 3d at 36. That kind of disagreement about litigation strategy does "not make inadequate the representation of those whose interests are identical with that of an existing party." *Jones v. Prince George's Cnty.*, 348 F.3d 1014, 1020, 358 U.S. App. D.C. 276 (D.C. Cir. 2004) (internal quotation marks omitted). Thus, Mexico could adequately represent

Cárdenas's interest, which is an independently sufficient reason to deny intervention as of right. *See* Fed. R. Civ. P. 24(a)(2).

Cárdenas alternatively contends that the district court should have allowed him permissive intervention under Rule 24(b)(1). A court "may" allow intervention under Rule 24(b)(1) if the would-be intervenor presents "(1) an independent ground for subject matter jurisdiction; (2) a timely motion; and (3) a claim or defense that has a question of law or fact in common with the main action." *E.E.O.C. v. Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1046, 331 U.S. App. D.C. 101 (D.C. Cir. 1998). Even when a movant meets those criteria, a court retains discretion to deny intervention. *Id.* The district court concluded that Cárdenas did not satisfy the criteria for permissive intervention because his motion was untimely, and that in any event his intervention would be "unlikely to significantly contribute to . . . the just and equitable adjudication of the legal question presented." *United Mexican States*, 757 F. Supp. 3d at 37 (internal quotation marks omitted).

The district court acted within its sound discretion in denying permissive intervention under Rule 24(b)(1). Even if Cárdenas had timely sought intervention, the district court, in exercising its discretion, would have had to consider whether the intervention would "unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). And, as the court correctly explained, allowing Cárdenas to intervene would have "delay[ed] the proceeding . . . by requiring the parties to dedicate substantial time and resources briefing arguments" that both parties agreed were "unrelated to the existing petitions." *United Mexican States*, 757 F. Supp. 3d at 35. In these circumstances, the district court did not abuse the "wide latitude afforded to district courts" under Rule 24(b) when it denied Cárdenas's motion for permissive intervention. *National Children's Ctr.*, 146 F.3d at 1046.

We thus affirm the district court's denial of Cárdenas's motion to intervene.

* * *

For the foregoing reasons, we affirm the district court's order.

So ordered.

APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, FILED NOVEMBER 8, 2024

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 1:21-cv-03185 (ACR)

UNITED MEXICAN STATES,

Petitioner,

v.

LION MEXICO CONSOLIDATED, L.P.,

Respondent.

MEMORANDUM OPINION AND ORDER

Article 1105(1) of the North Atlantic Free Trade Agreement (NAFTA) required Petitioner United Mexican States (Mexico) to "accord to investments of investors of [Canada and the United States] treatment in accordance with international law, including fair and equitable treatment and full protection and security."

In 2015, Respondent Lion Mexico Consolidated, L.P. (Lion), a Canadian limited partnership, brought a NAFTA Chapter 11 arbitration against Mexico, claiming that Mexico failed to accord Lion's investments the protection

Article 1105(1) required. Mexico raised several defenses, but only one is relevant here. Mexico argued that, by its plain meaning, the phrase "investments of investors" applied only to *investments*. Because Lion is an *investor*, not an investment, it could not seek relief under Article 1105(1). Lion countered that Mexico's interpretation was mistaken and, if accepted, would have rendered Article 1105(1) toothless. Agreeing with Lion that Article 1105(1) applied and finding that Mexico had violated it, the Tribunal awarded Lion over USD 47 million in damages (Award).

Mexico now petitions to vacate the Award while Lion cross-petitions to confirm it. Mexico acknowledges, and Lion readily agrees, that the Court's power to vacate an arbitral award is quite circumscribed. So long as the Tribunal "interpreted" Article 1105(1), the Court must confirm the Award—indeed, must confirm even if the Tribunal committed "serious error." Seeking to sideline this constraint, Mexico claims that the Tribunal did not "interpret" anything. The Tribunal instead ignored the "literal meaning" of "investments of investors" by granting relief to Lion, an investor.

Mexico's contention founders at the get-go. The Tribunal addressed Mexico's interpretation of Article 1105(1) head on, employed common interpretative tools to reach a different conclusion, cited authorities in support of its reading, and explained its reasoning. By any definition of the word, the Tribunal interpreted Article 1105(1). Because the Court cannot second-guess that interpretation, it **DENIES** Mexico's Petition to Vacate the

Arbitration Award, Dkt. 32, and **GRANTS** Lion's Cross-Petition for Confirmation, Recognition, and Enforcement of the Arbitral Award, Dkt. 35.

After addressing the dueling petitions, the Court addresses a motion to intervene filed by Héctor Cárdenas Curiel. Cárdenas, a Mexican businessman, contemporaneously knew the arbitration was proceeding. And he knew that the arbitral demand turned on Lion's contention that he had orchestrated a massive fraud in the Mexican courts. Yet, Cárdenas did not move to participate in the arbitration and instead seeks to attack the Award here. That attack comes too late and, in any event, is futile. Because Cárdenas does not meet the requirements for intervention under Federal Rule of Civil Procedure 24(a)(2) or 24(b), the Court **DENIES** his Motion to Intervene, Dkt. 42.

I. BACKGROUND

Petitioner Mexico is a foreign state as defined in the Foreign Sovereign Immunities Act. Award ¶ 9; 28 U.S.C. § 1603(a)-(b). Respondent Lion is a Canadian limited partnership with its principal place of business in Dallas, Texas. Award ¶ 7.

A. Unpaid Loans

In 2007, Lion entered financing relationships with C&C Ingeniería, S.A. de C.V. and C&C Capital, S.A. de C.V., two companies owned by Cárdenas. Award ¶¶ 57, 63-85.[1] Lion provided financing for Cárdenas—USD 32,805,479 across three loans—to develop two large real estate projects in Nayarit and Jalisco, Mexico. *Id.* ¶¶ 63-85. The parties documented the loan agreements in mortgages for the real property in Lion's name, promissory notes to pay on the mortgages, and credit agreements. *Id.*; *see also id.* ¶ 61. The structure of these agreements is dizzying and, happily, not relevant to these proceedings.[2] The relevant point is that Cárdenas's companies never made a single payment on any of the loans. *Id.* ¶ 90. Lion tried for years to obtain payment—any payment—to no avail. *Id.* ¶¶ 86-91. Tired of waiting for Godot,[3] in 2012, Lion served Cárdenas and his companies with a formal demand for payment and threatened to initiate foreclosure proceedings. *Id.* ¶ 92.

B. Court Proceedings in Mexico

Lion's formal demand did not induce Cárdenas or his companies to repay the loans. The Tribunal found that,

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1. The Court takes these facts from the Tribunal's factual findings and solely to resolve the pending motions. *See Gold Rsrv. Inc. v. Bolivarian Republic of Venezuela*, 146 F. Supp. 3d 112, 130 (D.D.C. 2015). The Court takes no position on whether Cárdenas in fact engaged in fraud. To put it mildly, Cárdenas disputes the Tribunal's findings. Dkt. 42-1 at 16-17.

2. For the reader who cannot get enough of analyzing financing transactions, the Tribunal summarized the ones here at paragraphs 63 to 85 of the Award.

3. Samuel Becket, Waiting for Godot (Faber & Faber ed., 2006).

instead, Cárdenas effected a scheme of "complex judicial fraud" to evade the obligations. Award ¶ 94. That is, Cárdenas created a forged settlement agreement (forged agreement), complete with a fake signature of Lion's attorney, in which Lion purportedly agreed to cancel all existing debts. *Id.* ¶¶ 98-99, 103. The forged agreement gave jurisdiction to the courts of Jalisco, Mexico, even though the promissory notes gave jurisdiction to the courts of Mexico City. *Id.* ¶ 101. Cárdenas then filed a lawsuit before the Juez Noveno de lo Mercantil in Jalisco (Mercantil Court) to enforce the forged agreement and cancel the loans. *Id.* ¶¶ 96, 98-99. The forged agreement also included a fake name and address for notice and service of process to Lion—the lawyer residing at the address had no affiliation with Lion and yet accepted service on its behalf. *Id.* ¶¶ 94, 102-03, 107. By design, no one notified Lion of the lawsuit and so Lion did not appear. *Id.* ¶ 108.

Cárdenas's companies submitted evidence purportedly supporting the forged agreement. *Id.* ¶¶ 96, 110. On June 27, 2012, the Mercantil Court issued a default judgment discharging the loans and ordering Lion to cancel the mortgages (Cancellation Judgment). *Id.* ¶ 111. It accepted the amount in controversy to be MEX 500,000 (about USD 25,000)—a lower amount than required for appeal—even though the loan documents admitted into evidence described transactions worth "tens of millions of dollars." *Id.* ¶¶ 112-13. This low amount precluded a standard appeal, thus cutting off one of only two avenues for Lion to reinstate the loans once it learned of the Cancellation Judgment.

Lion could still have pursued the other avenue, a so-called *amparo* proceeding (*i.e.*, a constitutional challenge) to contest the Cancellation Judgment once Lion learned of it. *Id.* ¶ 119. But Cárdenas was on the case—figuratively and literally—and quickly cut off this second avenue for Lion to obtain relief. *See id.* ¶¶ 116-26. He arranged for another attorney to act fraudulently on Lion's behalf using an identification card stolen from a Lion legal representative. *Id.* ¶¶ 124-25. That attorney filed an *amparo* purportedly on Lion's behalf and then purposefully abandoned it. *Id.* ¶ 129. The abandonment rendered the *amparo* final and not subject to further appeal, even after Lion learned of the Cancellation Judgment. *Id.*

Six months later, in early 2013, Lion finally learned of the Cancellation Judgment but not of the forged agreement. *Id.* ¶ 138. Unaware of Cárdenas's preemptive *amparo*, Lion filed its own *amparo* with the Juez de Distrito en Materia Civil in Jalisco (Juez de Distrito), challenging the earlier proceedings based on failure of service. *Id.* ¶¶ 142-45. After filing its *amparo*, Lion finally learned of the forged agreement when a court filing referenced it. *Id.* ¶ 145. At that point, Lion sought to admit evidence proving that the forged agreement was indeed forged. *Id.* ¶¶ 146-47. On January 30, 2013, a court clerk instead dismissed the motion. *Id.* ¶ 148. Lion then brought a second complaint before the Juez de Distrito, seeking for a second time to introduce evidence of the forgery. *Id.* ¶ 149. The court considered Lion's request but postponed its decision until a separate proceeding initiated by one of Cárdenas's companies, C&C Ingeniería, was resolved in yet a different court. *Id.* ¶¶ 150-51.

C&C Ingeniería had challenged Lion's actual *amparo* proceeding in the Segundo Tribunal Colegiado en Materia Civil del Tercer Circuito (Tribunal de Queja), an appeal court. *Id.* ¶¶ 151, 153. The company claimed that Lion's real attorneys had not properly signed the motion to admit evidence in its *amparo* proceeding before the Juez de Distrito, rendering that motion void. *Id.* The Tribunal de Queja agreed, ruling that Lion's legal representative, and not the attorney representing it in the *amparo* proceeding, should have signed the motion. *Id.* The Tribunal de Queja did not permit Lion to cure the procedural defect.[4] *Id.* ¶ 154. Thus—because a real Lion lawyer, but not the right Lion lawyer, signed the motion to admit evidence—Lion could not introduce evidence that a fake Lion lawyer had forged the agreement. *Id.* ¶ 153.

With this separate proceeding resolved, the Juez de Distrito resumed his work. Relying on the Tribunal de Queja's decision, he excluded all evidence that the agreement had been forged. *Id.* ¶¶ 155, 163. On December 14, 2013, the Juez de Distrito entered a final judgment rejecting Lion's *amparo* and upholding the Cancellation Judgment. *Id.* ¶ 158. He reached this decision even though a criminal judge had earlier ordered Cárdenas imprisoned for forging Lion documents and even though he acknowledged a different instance of a forged Lion signature. *Id.* ¶¶ 160-62.

Lion filed a *recurso de revisión* (*i.e.*, a reconsideration proceeding) that ultimately landed with the Tribunal

4. That same court permitted Cárdenas's company to cure a procedural defect. *Id.* ¶ 154.

de Queja. *Id.* ¶¶ 167, 169. By this point, Lion had filed numerous formal requests for a court to consider that the agreement was forged. *Id.* ¶ 170. On April 17, 2015, more than 16 months after Lion filed the *recurso*, the Tribunal de Queja again decided against Lion and remanded to the Juez de Distrito to determine whether Cárdenas's fraudulent *amparo* exhausted Lion's right to pursue its real *amparo. Id.* ¶ 171. This was the *first time* Lion learned of the earlier false *amparo*. *Id.* ¶ 173. The Tribunal de Queja ordered the Juez de Distrito not to consider the authenticity of the forged agreement, but only to analyze the admissibility of Lion's *amparo*. *Id.* ¶ 174.

On remand, the Juez de Distrito refused to allow Lion to introduce evidence of the forgery. *Id.* By this point, Lion had spent three years in the Mexican civil courts trying to undo Cárdenas's fraud with nothing to show for its efforts but a new fight about whether the courts had jurisdiction to consider its claim at all. *Id.* ¶ 178. On December 11, 2015, Lion ended its *amparo* because "it was futile to continue." *Id.* ¶ 179. It turned instead to arbitration.

C. Arbitration Under NAFTA

NAFTA, Can.-Mex.-U.S., Dec. 17, 1992, 107 Stat. 2057, 32 I.L.M. 289, was a multilateral treaty between the United States, Mexico, and Canada that aimed to facilitate trade and strengthen the economic relationship among the three nations.[5] *Id.* pmbl. To that end, Chapter

5. NAFTA is no longer operative. The United States—Mexico—Canada Agreement, which took effect on July 1, 2020, replaced it. Can. - Mex. U.S., Dec. 10, 2019, 134 Stat. 11.

11 of NAFTA required the signatories to provide certain protections and standards of treatment to foreign investors of another signatory and their investments. *Id.* arts. 1101-10. Key here is Article 1105(1), which required that "each Party . . . accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security." *Id.* art. 1105(1). Article 1139, NAFTA's definition section, provided an exhaustive list of what constituted an "investment" for purposes of Chapter 11. *Id.* art. 1139. And Article 1120(1) established a procedure for investors to initiate arbitration proceedings directly against a party government for violating its Chapter 11 protections. *Id.* art. 1120(1).

In December 2015, Lion filed a request for arbitration with the International Centre for Settlement of Investment Disputes (ICSID). Dkt. 56-8; *see also* Award ¶ 12. The arbitration was seated in Washington, D.C., under the ICSID Additional Facility Rules. Award ¶¶ 3, 40; *see also id.* Annex A ¶ 28. The Tribunal consisted of three experienced arbitrators,[6] and the parties were aptly represented. *Id.* ¶¶ 13, 40.

Lion alleged that the Mexican courts canceled Lion's mortgages based on the forged agreement and "repeatedly denied [Lion] the opportunity to prove that

6. The arbitrators were: (1) Chair Juan Fernández-Armesto, appointed by ICSID's Secretary General by agreement of the parties; (2) David J.A. Cairns, appointed by Lion; and (3) Professor Laurence Boisson de Chazournes, appointed by Mexico. Award ¶ 13; *see also* Dkts. 33-18, 33-19.

the purported [] agreement [was] a forgery." Dkt. 56-8 ¶ 15. This denial, Lion claimed, breached the International Minimum Standard of Treatment required by NAFTA Article 1105(1). *Id.*

Mexico submitted a preliminary objection to the Tribunal's jurisdiction "on the grounds that Lion's claims were manifestly without merit." Award, Annex A ¶ 21. The Tribunal dismissed this objection after full briefing. *Id.* Annex A ¶¶ 21-29. Mexico then requested bifurcation, raising two additional objections to the Tribunal's jurisdiction. *Id.* Annex A ¶ 31. This time, the Tribunal granted Mexico's request in part, deciding to address Mexico's objection that "the Tribunal lack[ed] jurisdiction . . . because Lion did not make an investment in Mexico within the terms required by Art[icles] 1101 and 1139 [of] NAFTA." *Id.* Annex A ¶ 33.

The Tribunal held, after full briefing and a jurisdictional hearing, that "the Mortgages qualif[ied] as investments and that the Tribunal ha[d] jurisdiction . . . to adjudicate claims brought by Lion based on measures adopted by Mexico which affect[ed] the Mortgages." *Id.* Annex A ¶ 266; *see also id.* ¶ 15. On the other hand, the Tribunal held that Lion's promissory notes were not qualifying investments under Article 1139 and dismissed all claims related to those notes. *Id.* Annex A ¶¶ 203-08; *see also id.* ¶ 15.

In March 2017, Lion submitted its opening brief along with 120 factual exhibits, 200 legal authorities, three witness statements, and an expert report on Mexican law which included another 122 authorities. *Id.* Annex A ¶ 30. Mexico later filed a counter-memorial attaching 33 factual exhibits, 60 legal authorities, a witness statement, three expert reports, and a valuation expert report. *Id.* ¶ 22. Lion's reply included an additional 40 factual exhibits, 218 legal authorities, another witness statement, a fourth legal expert report, an expert evaluation report, and a rebuttal expert report. *Id.* ¶ 27.

The Tribunal then held a three-day merits hearing to address whether Mexico had violated NAFTA Article 1105(1). *Id.* ¶ 40. Lion argued that the Mexican courts' conduct was a denial of justice and thus violated Article 1105(1). Award ¶¶ 187, 197. Mexico shot back that Article 1105(1) did not apply at all because, by its plain terms, it protected only "investments" and did not protect "investors." *Id.* ¶¶ 353, 356.

The Tribunal rendered the Award—which weighed in at 924 paragraphs across 215 pages—on September 20, 2021. *Id.* ¶ 214. The Award was unanimous, with Mexico's appointed arbitrator joining it. The Tribunal addressed and rejected Mexico's "literal reading" that Article 1105(1) covered only investments. *Id.* ¶¶ 356-58. Along with the Article's language, the Tribunal found that it was bound by NAFTA to consider a Free Trade Commission Note of Interpretation (Interpretation Note).[7] *Id.* ¶ 207; NAFTA art. 1131(2). Section B(1) of the Interpretation Note equated Article 1105 with "the customary international

7. The Free Trade Commission consisted of the trade ministers of the three NAFTA signatories. NAFTA art. 1131(2).

law minimum standard of treatment of aliens." Award ¶¶ 208, 356-58 (quoting Interpretation Note § B(1)). The Tribunal determined that the reference to "aliens" in the Interpretation Note meant that investors themselves received protection under the Article. *Id.* ¶ 358. The Tribunal also cited several other arbitration awards containing language supporting its interpretation. *Id.* n.384.

Finding that Article 1105(1) applied, the Tribunal then concluded that Mexico "failed to provide Lion fair and equitable treatment under NAFTA Article 1105." *Id.* ¶¶ 615, 924. Aware that "the standard for finding a denial of justice is high," and required a finding of "improper and egregious procedural conduct" by the local courts, *id.* ¶ 370, the Tribunal nonetheless found that the Mexican courts denied Lion justice. They did so by (1) failing to ensure proper service and improperly declaring default, (2) denying Lion the right to appeal, and (3) denying Lion the right to submit evidence of forgery. *Id.* ¶ 371. The Tribunal summarized that the "Mexican judicial system . . . should have effectively restored [Lion's] rights," *id.* ¶ 614, but failed to do so "despite multiple opportunities" to get it right. *Id.* ¶ 373; *see also id.* ¶ 508. The Tribunal ordered Mexico to pay Lion USD 47,000,000 in compensation, USD 583,598.91 in costs, and USD 1,725,000 in attorney's fees, all with interest. *Id.* ¶ 924.

D. Confirmation Proceeding in the United States

On December 6, 2021, Mexico filed the present petition to vacate the Award on the grounds that the

Tribunal exceeded its power under 9 U.S.C. § 10(a)(4) and acted in manifest disregard of the law. Dkt. 1 ¶ 39. On February 4, 2022, Lion submitted a cross-petition to confirm, recognize, and enforce the Award. Dkt. 15. Lion and Mexico filed responses to each other's petitions in February and March 2022. Dkts. 14-18. Five months after the parties finished briefing their cross-petitions, on August 22, 2024, Cárdenas moved to intervene. Dkt. 23.

While the parties' petitions were pending, the Court Clerk reassigned the case to the undersigned. Dkt. Notice (Feb. 24, 2023). In the interest of judicial efficiency, the Court dismissed all pending motions without prejudice and instructed the parties to refile their motions to reflect any recent developments in the case law. Minute Ord. (May 9, 2023). The parties refiled their motions and updated their briefing. Dkts. 32-51. The Court heard oral argument on the Motion to Intervene on October 23, 2023, and on the Cross-Petitions for Confirmation and Vacatur three days later.

II. THE AWARD

A. Legal Standard

The Federal Arbitration Act (FAA), 9 U.S.C. § 1 *et seq.*, represents an "emphatic federal policy in favor of arbitral dispute resolution" that the Supreme Court has recognized "applies with special force in the field of international commerce." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc.*, 473 U.S. 614, 631, 105 S. Ct. 3346, 87 L. Ed. 2d 444 (1985). The Act "lists only four grounds upon which an arbitration award may be vacated." *Kurke v. Oscar Gruss & Son, Inc.*, 454 F.3d 350, 354, 372 U.S. App. D.C. 154 (D.C. Cir. 2006). Only one—set forth in Section 10(a)(4)—is at issue here: "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter was not made." 9 U.S.C. § 10(a)(4).

By design, Section 10(a)(4) leaves a court little room to maneuver. The "sole question" is "whether the arbitrators (even arguably) interpreted the parties' contract, not whether they got its meaning right or wrong." *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 573, 133 S. Ct. 2064, 186 L. Ed. 2d 113 (2013). It is not enough for a tribunal to have committed a legal or factual error, even if that error is "serious." *United Paperworkers Int'l Union, AFL—CIO v. Misco, Inc.*, 484 U.S. 29, 38, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987); *see also Kurke*, 454 F.3d at 354 (cleaned up) (explaining that "factual or legal error" is insufficient for vacatur); *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671, 130 S. Ct. 1758, 176 L. Ed. 2d 605 (2010) (holding that even "serious error" is insufficient for vacatur). More bluntly, "[t]he arbitrator's construction holds, however good, bad, or ugly." *Oxford Health Plans*, 569 U.S. at 573 (cleaned up). "Improvident, even silly, factfinding does not provide a basis for a reviewing court to refuse to enforce the award." *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509, 121 S. Ct. 1724, 149 L. Ed. 2d 740 (cleaned up).

A party seeking vacatur must therefore "clear a high hurdle," *Stolt-Nielsen S.A.*, 559 U.S. at 671, and meet an "onerous" burden, *Republic of Arg. v. AWG Grp. Ltd.*, 894 F.3d 327, 333, 436 U.S. App. D.C. 385 (D.C. Cir. 2018) (cleaned up). It must show that an arbitral tribunal acted "outside the scope of [its] contractually delegated authority." *Eastern Associated Coal Corp. v. Mine Workers*, 531 U.S. 57, 62, 121 S. Ct. 462, 148 L. Ed. 2d 354 (U.S. 2000) (cleaned up). Examples include issuing an award that reflects the arbitrators'"own notions of economic justice" or their "own brand of industrial justice." *Mesa Power Grp., LLC v. Gov't of Can.*, 255 F. Supp. 3d 175, 184 (D.D.C. 2017) (quoting *Stolt-Nielsen S.A.*, 559 U.S. at 671) (cleaned up).

This standard of review applies with equal force to an arbitration tribunal's interpretation of treaty language. *See BG Grp., PLC v. Republic of Arg.*, 572 U.S. 25, 33, 134 S. Ct. 1198, 188 L. Ed. 2d 220 (2014). "[U]nder our law," "it is up to [a] tribunal to determine what [a] treaty means," and thus a court has "no authority to delve into the merits" of that interpretation. *LLC SPC Stileks v. Republic of Moldova*, 985 F.3d 871, 879, 450 U.S. App. D.C. 342 (D.C. Cir. 2021); *see also State of Libya v. Strabag SE*, No. 20-cv-02600, 2021 U.S. Dist. LEXIS 187715, 2021 WL 4476771 (D.D.C. Nov. 30, 2021); *Republic of Arg. v. AWG Grp. Ltd.*, 211 F. Supp. 3d 335 (D.D.C. 2016), *aff'd*, 894 F.3d 327, 436 U.S. App. D.C. 385 (D.C. Cir. 2018).

A court can also vacate an award if the tribunal acted in "manifest disregard of the law."[8] Like Section 10(a)(4),

8. In *Hall Street*, the Supreme Court explained that Section 10 "provide[s] the FAA's exclusive grounds for expedited vacatur." *Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 584, 128 S. Ct. 1396,

manifest disregard for the law requires "more than error or misunderstanding with respect to the law." *Petruss Media Grp., LLC v. Advantage Sales & Mktg., LLC*, No. 22-3278, 2023 U.S. Dist. LEXIS 149655, 2023 WL 5507306, at *15 (D.D.C. Aug. 25, 2023) (quoting *Kanuth v. Prescott, Ball & Turben, Inc.*, 949 F.2d 1175, 1180, 292 U.S. App. D.C. 319 (D.C. Cir. 1991)). "Instead, a court must find that (1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether and (2) the law ignored by the arbitrators was well defined, explicit, and clearly applicable to the case." *Id.* (quoting *LaPrade v. Kidder, Peabody & Co., Inc.*, 246 F.3d 702, 706, 345 U.S. App. D.C. 358 (D.C. Cir. 2001)).

B. The Tribunal's Interpretation

Mexico argued to the Tribunal that Lion could not recover because the language "shall accord to investments of investors" applied to "investments and not investors." Award ¶ 356. The Tribunal disagreed and held that Article 1105(1) also "grants protection to Lion as an investor." Award ¶ 358. Mexico claims that, in doing so, the Tribunal exceeded its powers and acted in manifest disregard of the law. Not so.

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170 L. Ed. 2d 254 (2008). The D.C. Circuit has "assumed without deciding that" a tribunal acting in "'manifest disregard of the law' survives [*Hall Street*] as a separate ground for vacatur." *Mesa Power Grp.*, 255 F. Supp. 3d at 183. The Court takes the same approach and assumes without deciding that manifest disregard of the law remains as a separate ground for vacatur.

1. The Tribunal's Ruling Focused on Affected Qualified Investments

Mexico's Petition to Vacate is based on its view that "[t]he Tribunal ruled that Mexico owed Lion—the investor—an obligation to fair and equitable treatment under NAFTA" even though Article 1105(1) "extends only to investments, not investors." Dkt. 32 ¶ 2. The Tribunal's ruling, however, was not so sweeping. The Tribunal held only that investors had standing to bring claims *if* a challenged action affected a *qualified* investment.

Some background is helpful. Lion's arbitration demand alleged that Mexico had failed to grant its "investments" protection under Article 1105(1). Award ¶ 187. It initially claimed that Article 1105(1) covered each financing Cárdenas's companies received, including the mortgages and promissory notes. But NAFTA protected only investments that fell under the definition of "investment" in Article 1139. Mexico objected that "the Tribunal lack[ed] jurisdiction . . . because Lion did not make an investment in Mexico" as defined in that Article. *Id.* Annex A ¶ 33. The Tribunal agreed with Mexico in part. It determined that the mortgages qualified as investments, *id.* Annex A ¶ 266, but that the promissory notes did *not* qualify and dismissed all claims related to those notes, *id.* ¶¶ 15, 203-08. And thus it awarded damages as to the mortgages but not as to the promissory notes. *Id.* ¶¶ 171, 924.

The Tribunal did not, therefore, rule that Article 1105(1) applied to investors writ large. Instead, it held only that an investor could bring a claim under Article

1105(1) *if* the challenged treatment affected a qualifying investment. This is fully consistent with the approach taken by other NAFTA tribunals. For example, in *Grand River Enters. Six Nations, Ltd. v. United States*, the tribunal held that "Article 1105 provides no scope for individual investors' claims that they have received treatment contrary to international law, *except as that treatment affects a covered investment*." UNCITRAL, Award, ¶ 177 (Jan. 12, 2011), https://2009-2017.state.gov/documents/organization/156820.pdf (emphasis added).

If, as Mexico urges, investors could not bring Article 1105(1) claims, there would have been no enforcement mechanism, and the Article would have been rendered toothless. This is so because, as Lion highlights, "[t]he mortgages themselves [can]not commence legal proceedings, nor can they be served or sued. Only Lion Mexico, as the investor in the investment and as claimant in the Arbitration, can act to protect its mortgage investment." Dkt. 15-1 at 16. Put differently, under Mexico's interpretation, no arbitration could ever have been commenced to protect a qualifying investment. The Tribunal's approach in permitting Lion to bring claims as to investments covered by Article 1139 sidestepped this fatal flaw in Mexico's approach.

2. The Tribunal Interpreted Article 1105(1)

Even putting aside Mexico's misapprehension as to the Tribunal's ruling, its petition fails. The key question in a confirmation proceeding is whether the tribunal "interpreted" the language of Article 1105(1). *Oxford*

Health Plans LLC, 569 U.S. at 573. Somewhat oddly, however, courts in the FAA context do not appear to have defined the word "interpret." Instead, they address what "to interpret" does not encompass, *i.e.*, making public policy or administering one's own brand of industrial justice. *See Stolt-Nielsen S.A.*, 559 U.S. at 671-72. This may be because the definition of "interpret" is both broad and straightforward. To interpret is to "ascertain the meaning and significance of thoughts expressed in words." *Interpret*, BLACK'S LAW DICTIONARY (12th ed. 2024). By the same token, interpretation is "the ascertainment of the thought or meaning of the author of, or of the parties to, a legal document, as expressed therein, according to the rules of language and subject to the rules of law." ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 53 (2012) (quoting H.T. Tiffany, *Interpretation and Construction, in* 17 AMERICAN AND ENGLISH ENCYCLOPEDIA OF LAW 1, 2 (David S. Garland & Lucius P. McGehee eds., 2d ed. 1900)).

The Tribunal's work falls comfortably within the realm of interpretation. It identified and rejected Mexico's argument, applied existing guidance interpreting Article 1105(1), cited cases, and explained its reasoning. The Tribunal did not, as Mexico complains, "ignore" the "literal meaning" of "investments of investors." Dkt. 32 ¶¶ 49-50 (citing Award ¶¶ 356-358). The Tribunal first regurgitated Mexico's position: "Mexico's first argument is based on a literal reading of Art[icle] 1105 of NAFTA."

Award ¶ 356.[9] Then, far from ignoring anything, it explained why it rejected Mexico's interpretation. Award ¶¶ 357-358.

The Tribunal began by recognizing its mandate. An "interpretation" of NAFTA by the Free Trade Commission (FTC) was "binding on a Tribunal." NAFTA art. 1131. And the FTC had interpreted Article 1105 as "prescrib[ing] the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of another Party." Award ¶¶ 207, 357-58; Dkt. 33-4. Applying this directive, the Tribunal reasoned that: (a) because [as the FTC opined] the standard of treatment under Article 1105(1) was the same as the customary international standard protecting *aliens*; (b) and aliens referred to individuals; (c) Article 1105(1) must have also protected individuals; (d) investors were individuals; and so (e) Article 1105(1) protected investors. *Id.* This analysis was assuredly "interpretation" by the Tribunal.

The Tribunal also cited other awards in support of its holding. Award ¶ 358 n.384. Mexico grumbles that the Tribunal "tersely cited" these awards. Dkt. 32 ¶ 56. That the Tribunal cited cases, tersely or in any other tone, confirms that it was "arguably interpreting" Article 1105(1), not "ignoring" it. And Mexico's complaint

9. The Tribunal could have made its intent clearer by writing "Mexico's literal reading" instead of "a literal reading." But in the context of Mexico's pleading to the Tribunal and the rest of the Award, the Tribunal unambiguously did not agree with Mexico's "literal reading" of Article 1105.

that these citations were "misplaced," *id.* ¶ 52, is but an inapposite argument that the Tribunal erred. That said, the Tribunal's citations were not haphazard. Each opinion is at least consistent with the conclusion that Article 1105(1) permitted investors to bring claims. The tribunal in *Merrill & Ring* wrote that "Article 1105(1) provides for the treatment of another Party's investors in accordance with international law." *Merrill & Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/01, Award ¶ 183 (Mar. 31, 2010) (cleaned up). *Gami* held that "a government's failure to implement or abide by its own law in a manner adversely affecting a foreign investor may . . . lead to a violation of Article 1105." *Gami Invs. Inc. v. United Mexican States*, Award ¶¶ 91-92 (Nov. 15, 2004). And in *Chematura* , a case discussing the Interpretation Note to Article 1105, the tribunal stated that "Article 1105 of NAFTA seeks to ensure that investors from NAFTA member States benefit from regulatory fairness." *Chematura Corp. v. Gov't of Can.*, Award ¶ 179 (Aug. 2, 2010).

Mexico complains that the Tribunal ignored the Vienna Convention on the Law of Treaties (VCLT), which can be used to understand applicable "customary international law." Dkt. 32 ¶ 60. Mexico is correct that the Tribunal did not cite the VCLT. But that is not germane for two reasons. First, the Tribunal was not required to set forth every possible basis for its conclusion. *Kurke*, 454 F.3d at 354 (cleaned up) (holding that a court must confirm an award even if the tribunal gave "no explanation . . . if any justification can be gleaned from the record"). Second, the VCLT arguably supports the Tribunal's interpretation. It requires that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty *in their context and in the light of its object and purpose*." Dkt. 32 ¶ 60 (quoting VCLT art. 31(1)) (emphasis added). Here, the context includes the Interpretation Note and other arbitral opinions the Tribunal relied on. And permitting investors to bring arbitration proceedings for the maltreatment of their investments furthered NAFTA's purpose of encouraging the free flow of goods, services, and investments among the signatories. *See* NAFTA art. 102(1).

Mexico separately faults the Tribunal for not acknowledging that the United States filed a non-disputing party brief (essentially an *amicus* brief) in which it supported Mexico's interpretation of Article 1105(1). Dkt. 32 ¶ 50. This complaint is wide of the proverbial mark. To start, a tribunal is "not require[d] to address [a non-disputing party's] submission at any point in the arbitration." Free Trade Commission, Statement on Non-Disputing Party Participation ¶ 9, https://2009-2017.state.gov/documents/organization/38791.pdf. That said, the Tribunal quoted and addressed the United States's brief at length, including its view as to the application of Article 1105(1) to judicial acts. *See* Award ¶ 553; *see also id.* ¶¶ 189, 205, 282-84, 287, 553, 556, 806. And, moreover, the United States nowhere argued that investors could not bring Article 1105(1) claims. To the contrary, its discussion of "investments of investors" is fully consistent with the Tribunal's approach: to succeed, "a claimant (*i.e.*, an investor) must therefore establish that the treatment accorded to its investment rose to the level of a denial of justice under customary international law." Dkt. 67-1 ¶ 10.[10]

While mistakenly faulting the Tribunal for failing to consider the United States's brief, Mexico fails to mention the brief submitted by Canada. This may well be because Canada flatly contradicted Mexico's position and arguably went even further than the Tribunal. It contended that "Article 1105(1) requires the NAFTA Parties to accord to investors *and* their investments the customary law minimum international law standard." Dkt. 67-1 ¶ 4 (emphasis added).

3. The Cases Mexico Cites Do Not Support Its Petition

Bringing its focus to case law in the United States, Mexico asks the Court to compare the Tribunal's work with those of other tribunals whose awards have been confirmed and vacated. *See* Dkt. 32 ¶¶ 63-71. Doing so fully supports the Court's decision to confirm.

Mexico directs the Court's attention to *Mesa Power Grp. LLC v. Gov't of Can.*, in which the court confirmed an arbitral award after finding that the tribunal had "'used all the standard interpretative tools' an arbitrator 'would normally use.'" *Id.* ¶ 64. Mexico contrasts that

10. The United States discussed the meaning of Article 1105(1) as applied in a "denial of justice" claim, *see* Dkt. 67-1 ¶ 10, and as applied to a "minimum standard of treatment" claim, *see id.* n.21. The United States does not appear to have attached any meaning to the two different types of claims.

work with what the Tribunal did here which, in Mexico's view, "did not apply . . . any of the methods normally used by tribunals to interpret treaty text save for terse citations" to three other inapposite awards. *Id.* ¶ 65. This both overstates the Tribunal's obligations and understates its work. The law does not require a tribunal to use "all" or even most of the available interpretative tools or even to use them correctly. *See supra* Sections II.A & II.B(2). And, at a minimum, the Tribunal interpreted the treaty language by its citation to the FTC's Interpretation Note of Article 1105(1) and other awards.

Mexico claims that "[t]he Tribunal's conduct is similar to the conduct of other arbitrators whose awards [courts have] vacated because of their failure to adhere to the text of the contract." Dkt. 32 ¶ 63. Not so. Here, the Tribunal chose one of two competing interpretations of treaty language. In the cases Mexico cites, the arbitrators created new contractual terms that unequivocally contradicted existing terms. In *Hay Adams Hotel LLC v. Hotel & Rest. Emps., Loc. 25*, the arbitrator acknowledged that petitioner had the contractual right to terminate the respondent employee. No. 06-968, 2007 U.S. Dist. LEXIS 34129, 2007 WL 1378490, at *1 (D.D.C. May 9, 2007). And yet the arbitrator ordered petitioner not to fire the employee and instead to have "a qualified professional [carefully inquire] into [the employee's] possible psychological problems." 2007 U.S. Dist. LEXIS 34129, [WL] at *2. In *Raymond James Fin. Servs Inc. v. Bishop*, the arbitrator granted wrongful termination damages even though the employee was at will and therefore not entitled to any damages. 596 F.3d 183, 187

(4th Cir. 2010). In *Davey v. First Command Fin. Servs., Inc.*, the arbitrator granted punitive damages even though a contractual term prohibited such damages. No. 11-CV-1510, 2012 U.S. Dist. LEXIS 11481, 2012 WL 277968, at *1 (N.D. Tex. Jan. 31, 2012). And in *Mo. River Servs. Inc. v. Omaha Tribe*, the arbitrator had ordered damages be paid from proceeds of a casino in Iowa even though the contract unambiguously limited proceeds to be paid from a casino in Nebraska. 267 F.3d 848, 855 (8th Cir. 2001).

4. The Tribunal Did Not Act in Manifest Disregard of the Law

For the same reasons applicable to the Section 10(a)(4) analysis above, the Tribunal did not act in manifest disregard of the law. *See Mesa Power Grp.*, 255 F. Supp. 3d at 183-84. Mexico does not deny that it received due process and that the arbitral proceeding followed the Additional Facility Rules. And the Tribunal did not replace the treaty language with a public policy determination, ignore the treaty language, or otherwise go rogue.

* * *

Simply put, the Tribunal interpreted Article 1105(1). Whether it reached the correct interpretation is beyond this Court's mandate.

C. Confirmation

"[A]t any time within one year after" a tribunal issues an award, "any party to the arbitration may apply . . . for an order confirming the award." 9 U.S.C. § 9. The Court "must grant such an order unless the award is vacated, modified, or corrected as prescribed in [S]ections 10 and 11 of [the FAA]."[11] *Id.*

Lion timely sought confirmation, *see* 9 U.S.C. § 9, within one year of when the Award was issued on September 20, 2021, *see* Award at 212. Dkt. 1. And for the reasons stated above, the Court rejects Mexico's arguments for vacatur. The Court therefore confirms the Award.

III. INTERVENTION

The Court now turns to the Motion to Intervene. Dkt. 42. Héctor Cárdenas Curiel, who did not participate in the arbitration, seeks collaterally to attack the Tribunal's Award. Dkt. 42. The Tribunal found that Cárdenas organized and carried out a fraudulent scheme against Lion, including using the forged agreement in legal proceedings his companies brought to cancel Lion's mortgages. Award ¶¶ 94-95. Cárdenas takes serious exception to these findings, proclaims his innocence, and seeks to unwind the Award. Dkt. 42-1 at 16-17. Even though Cárdenas knew of the arbitration proceedings and that they concerned allegations that he perpetuated a fraud on Lion, he made no attempt to intervene in the arbitration. Instead, Cárdenas first moved to intervene here nine months after Mexico moved to vacate the Award

11. Though Lion seeks confirmation under 9 U.S.C. § 9, courts typically confirm foreign arbitral awards under 9 U.S.C. § 207. *See Republic of Arg.*, 211 F. Supp. 3d at 345-46. The Court need not decide which applies because Lion satisfies the requirements of both.

and eight months after the applicable limitations period expired. Dkts. 23, 42.

Lion opposes intervention, arguing mainly that Cárdenas fails to establish he is entitled to intervene as of right or provide grounds for permissive intervention. Dkt. 49 at 8. Mexico takes no position, but "emphasizes" "that the Motion is entirely unrelated to Mexico's Petition." Dkt. 50 at 3.

The Court finds that Cárdenas cannot intervene as of right under Rule 24(a) and denies permissive intervention under Rule 24(b).

A. Intervention as of Right

1. Legal Standard

Federal Rule of Civil Procedure 24(a)(2) permits anyone to intervene as of right who, "on timely motion . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2).

A motion to intervene as of right must be timely as "judged in consideration of all the circumstances, especially weighing the factors of time elapsed since the inception of the suit, the purpose for which intervention is sought, the need for intervention as a means of preserving the applicant's rights, and the probability of prejudice to those already parties in the case." *Karsner v. Lothian*, 532 F.3d 876, 886, 382 U.S. App. D.C. 275 (D.C. Cir. 2008) (quoting *United States v. Brit. Am. Tobacco Austl. Servs., Ltd.*, 437 F.3d 1235, 1238, 369 U.S. App. D.C. 383 (D.C. Cir. 2006)). "The most important circumstance relating to timeliness is whether a party sought to intervene as soon as it became clear that its interests would no longer be protected by the parties in the case." *Campaign Legal Ctr. v. Fed. Election Comm'n*, 68 F.4th 607, 610, 461 U.S. App. D.C. 86 (D.C. Cir. 2023) (cleaned up).

2. Cárdenas's Motion Was Not Timely

a) Cárdenas Should Have Raised His Complaints with the Tribunal

Cárdenas complains that the Tribunal's finding that he committed widespread fraud caused, and will continue to cause, him substantial harm. Dkt. 42. Maybe so. But he should have challenged the fraud allegations during the arbitration, not as a third party in a vacatur proceeding.

To be sure, failure to intervene in an arbitration does not make a subsequent attempt to intervene in a vacatur proceeding untimely per se. *See Techcapital Corp. v. Amoco Corp.*, No. 99 CIV. 5093, 2001 U.S. Dist. LEXIS 2822, 2001 WL 267010, at *4 (S.D.N.Y. Mar. 19, 2001). However, courts allow such interventions primarily where the intervenor could not have intervened earlier. *See Eddystone Rail Co., LLC v. Jamex Transfer Servs., LLC*, 289 F. Supp. 3d 582, 590 (S.D.N.Y. 2018). This is not such a case. Cárdenas knew full well about the arbitration and "was on general notice that there would be some allegations made about him." Dkt. 54 at 18:23-24, 21:12-16.[12] Yet, he did nothing to try and intervene in the arbitration to protect his interests.

Cárdenas attempts to explain away his inaction by bemoaning that the Tribunal never invited him to participate "as a witness or in any other capacity during the arbitration." Dkt. 42-2 ¶ 25; Dkt. 42-1 at 5-6. But a third party need not wait for an emblazed invitation to intervene. It was up to Cárdenas, not the Tribunal or the parties, to act on his behalf.

Cárdenas alternatively contends that he *did* try to intervene in the arbitration because his companies sought "to participate as non-disputing parties" and the Tribunal rejected that request. Dkt. 42-2 ¶ 26. This is the reddest of red herrings.[13] Yes, Iván Mercado, a legal representative

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12. The publicly available Request for Arbitration referenced Cárdenas eight times, Dkt. 56-8 ¶¶ 33-34, 36-37, 39, 41, and explained the forged document scheme and the alleged illegitimate legal proceedings, *id.* ¶¶ 41-50.

13. The figurative use of "red herring" has a fishy etymology. In 1667, *Gentleman's Recreation* suggested using the scent of red herring to keep hounds *on* the trail during a fox hunt. *See Red Herring*, Oxford English Dictionary, https://www.oed.com/dictionary/red-herring_n (last visited Oct. 17, 2024) (citing Nicholas Cox, the Gentleman's Recreation 59 (1674)). But in 1807, William Cobbett wrote that he had used a red herring as a *decoy to deflect* hounds chasing after a hare. *See id.* He then used that as a metaphor to claim that the English government had been misled by false foreign intelligence to divert attention away from domestic

acting on behalf of Cárdenas's companies, filed letters with the Tribunal seeking to participate. Dkt. 42-2 ¶ 26. And yes, the Tribunal denied the request. Dkt. 42-6 at 2. But Cárdenas's companies are not seeking to intervene here—Cárdenas himself is. And at no time did Mercado act on behalf of Cárdenas in his individual capacity, seek to defend Cárdenas's actions, or even contest the alleged fraud. Instead, in each letter, Mercado represented the companies and focused solely on challenging the Tribunal's jurisdiction. Dkts. 42-7, 42-11.

Even accepting Cárdenas's argument that he can rely on his companies' efforts to intervene does not help him. Instead, it raises its own obstacle. Cárdenas claims that he "is best positioned to raise the additional argument on lack of jurisdiction that the attorney representing Mr. Cárdenas's companies tried to raise five different times during the arbitration but was not allowed." Dkt. 57 at 7. In other words, he wants this Court to allow the very intervention the Tribunal rejected. The FAA prohibits this. *See* 9 U.S.C. § 10(a); *see also supra* Section II.A.

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matters: "Alas! it was a mere transitory effect of the political red-herring; for, on the Saturday, the scent became as cold as a stone." *Id.* (citing Cobbett's Wkly. Pol. Reg., Feb. 14, 1807). He retold the story numerous times, transforming the phrase into its figurative meaning of a clue used to divert from an issue at hand. *See id; see also* Michael Quinion, *The Lure of the Red Herring*, World Wide Words (Oct. 25, 2008), https://www.worldwidewords.org/herring.html (citing Robert Scott Ross & Gerald Cohen, *Two Contributions to the Study of Red Herring, in* Comments on Etymology 58, 58-69 (Gerald Cohen ed., 2008)).

b) Cárdenas Did Not Timely File His Motion

Even if the Court were inclined to excuse Cárdenas's failure to seek to participate in the arbitration, he did not timely raise his arguments here. He moved to intervene "to vacate an arbitral award that adversely affects [him]." Dkt. 57 at 3. But under the FAA, "[n]otice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered." 9 U.S.C. § 12. Cárdenas missed this deadline, moving to intervene to argue vacatur more than eight months after the limitations period expired. *See* Dkt. 23 (filed August 22, 2022); Dkt. 42-2 ¶ 57.

Cárdenas claims that this limitation period does not apply to him. He argues: "[t]he text of Section 10(a) of the FAA is clear that '[i]n any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award *upon the application of any party to the arbitration* — . . . .'" and "[he] was not a party to the arbitration and the three-month limitations period of Section 12 is therefore inapplicable to him." Dkt. 57 at 2 (cleaned up). By that reasoning, however, Cárdenas could not move to intervene to vacate the Award at any time because he was never a party to the arbitration.

The applicability of the limitations period aside, the "parties to the arbitration"—Lion and Mexico—would be prejudiced if the Court granted Cárdenas's belated motion. By the time he moved, the parties had fully briefed both the Petition to Vacate and Cross-Motion to Confirm. Dkts. 16, 18, 23. Given this timing, his supplemental briefing in support of Mexico's vacatur proceeding would be supplemental briefing in name only. It would, in practice, function as an independent petition by requiring a fresh round of opposition and reply briefing on vacatur arguments not raised in the vacatur and confirmation petitions already ripe for judgment. Cárdenas's intervention would delay the proceeding further by requiring the parties to dedicate substantial time and resources briefing arguments that they jointly contend are unrelated to the existing petitions. *See* Dkt. 49 at 15; Dkt. 50 ¶ 9.

3. Intervention Would Be Futile

Courts regularly deny motions to intervene when the intervention would be futile. *See, e.g., Stotts v. Memphis Fire Dep't*, 679 F.2d 579, 582 (6th Cir. 1982); *Peters v. District of Columbia*, 873 F. Supp. 2d 158, 210 (D.D.C. 2012); *In re Nat'l Football League Players' Concussion Inj. Litig.*, No. 14-1995, 2019 U.S. Dist. LEXIS 6154, 2019 WL 188431, at *4 (E.D. Pa. Jan. 14, 2019); *New York Life Ins. Co. v. Singh*, No. 14-CV-5726, 2017 U.S. Dist. LEXIS 231204, 2017 WL 10187670, at *7 (E.D.N.Y. Mar. 8, 2017) (citing *United States v. Glens Falls Newspapers, Inc.*, 160 F.3d 853, 855 (2d Cir. 1998)). Here, intervention would indeed be otiose.

Cárdenas contends that "excluding [him] from these proceedings would deprive the Court of the opportunity to be briefed on an important jurisdictional defect in the

Award" not raised by Mexico. Dkt. 42-1 at 13. But the parties agreed to the ICSID Additional Facility Rules, which provide that "[t]he Tribunal shall have the power to rule on its jurisdiction and competence." *See* NAFTA art. 1120(1)(b) (adopting ICSID Additional Facility Rule 53(1)). By consenting to proceed under those rules, the parties delegated all decisions about the Tribunal's jurisdiction to the Tribunal itself. *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 244 F. Supp. 3d 100, 111 (D.D.C. 2017), *aff'd*, 760 F. App'x 1 (D.C. Cir. 2019).

An argument by Cárdenas that the Tribunal lacked jurisdiction would be futile. Where, as here, the parties assign arbitrability to the arbitrator, "a court possesses no power to decide the arbitrability issue," even if it thinks the argument for arbitrability is "wholly groundless." *LLC SPC Stileks*, 985 F.3d at 878 (quoting *Henry Schein, Inc. v. Archer and White Sales, Inc.*, 586 U.S. 63, 68, 139 S. Ct. 524, 202 L. Ed. 2d 480 (2019)). Instead, "the court's standard for reviewing the arbitrator's decision about that matter should not differ from the standard courts apply when they review any other matter that parties have agreed to arbitrate." *Id.* at 878 (quoting *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 943, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995)); *see also supra* Section II.A. This may well explain why Mexico's petition did not raise lack of jurisdiction as a basis to vacate the Award.

4. Mexico Can Protect Cárdenas's Interests

Intervention is not necessary if the "existing parties adequately represent [the third party's] interest." Fed. R. Civ. P. 24(a)(2).

Cárdenas claims that neither Lion nor Mexico can protect his interests before this Court. Dkt. 42-1 at 3. That is true as to Lion. But Mexico and Cárdenas share the same goal: vacatur of the Award. Cárdenas seeks to intervene to raise "an important jurisdictional defect in the Award" Mexico did not raise. *Id.* at 13. He does not explain, however, why Mexico is not equally incentivized to raise the same jurisdictional defect. And so Cárdenas's motion at best reflects a strategy disagreement with Mexico as to whether to raise a jurisdictional argument in support of vacatur. Such disagreement is not a basis to find that Mexico cannot represent Cárdenas's interest. *See Jones v. Prince George's Cnty.*, 348 F.3d 1014, 1020, 358 U.S. App. D.C. 276 (D.C. Cir. 2003).

B. Permissive Intervention

Cárdenas asks, in the alternative, that the Court allow permissive intervention. Dkt. 42-1 at 1. "As its name would suggest, permissive intervention is an inherently discretionary enterprise." *E.E.O.C. v. Nat'l Child.'s Ctr., Inc.*, 146 F.3d 1042, 1046, 331 U.S. App. D.C. 101 (D.C. Cir. 1998). The Court may allow permissive intervention under Federal Rule of Civil Procedure 24(b) so long as the prospective intervenor presents "(1) an independent ground for subject matter jurisdiction; (2) a timely motion; and (3) a claim or defense that has a question of law or fact in common with the main action." *Id.* But the Court also has the discretion to deny such a motion, even if the proposed intervenor meets these baseline criteria. *Id.* at 1048.

The final requirement under Rule 24(b)(2), a timely motion, dooms Cárdenas's permissive intervention request. Courts apply a more lenient standard of timeliness to intervention as of right than to permissive intervention. *Stadnicki on Behalf of Lending Club Corp. v. Laplanche*, 804 F. App'x 519, 522 (9th Cir. 2020); *Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm'n*, 834 F.3d 562, 566 n.1 (5th Cir. 2016). The Court has already explained why Cárdenas's Motion was not timely under the more stringent standard and will not regurgitate that analysis. *See supra* Section II.A. Suffice it to say that Cárdenas neither asked to participate in the arbitration nor filed his motion within the time the FAA prescribes to move to vacate. Intervention at this late stage would delay the proceedings and prejudice Lion by allowing the intervenor to circumvent the statute of limitations.

Even if Cárdenas's Motion were timely, the Court would deny permissive intervention. The Rule 24(b) requirements are the floor where the Court's discretion begins, not the ceiling where it ends. *See Nat'l Child.'s Ctr.*, 146 F.3d at 1048. Like intervention as of right, permissive intervention is not appropriate because Cárdenas's arguments are futile, *see supra* Section II.A, making his intervention unlikely to "significantly contribute to . . . the just and equitable adjudication of the legal question presented." *Aristotle Int'l, Inc. v. NGP Software, Inc.*, 714 F. Supp. 2d 1, 18 (D.D.C. 2010).

IV. CONCLUSION

For the reasons stated above, the Court **DENIES** Cárdenas's Motion to Intervene, Dkt. 42; **DENIES**

Mexico's Petition to Vacate, Dkt. 32; and **GRANTS** Lion's Cross-Petition for Confirmation, Recognition, and Enforcement of the Arbitral Award, Dkt. 35.

SO ORDERED.

This is a final appealable Order. *See* FED. R. APP. P. 4(a).

Date: November 8, 2024

/s/ Ana C. Reyes
ANA C. REYES
United States District Judge

APPENDIX C — EXCERPT OF THE AWARD

INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES

(ICSID Case No. ARB(AF)/15/2)

LION MEXICO CONSOLIDATED LP

Claimant,

v.

UNITED MEXICAN STATES

Respondent.

AWARD

Members of the Tribunal
Juan Fernández-Armesto, President of the Tribunal
David J.A. Cairns, Arbitrator
Laurence Boisson de Chazournes, Arbitrator

Secretary of the Tribunal
Francisco Grob

Assistant to the Tribunal
Adam Jankowski

Washington D.C., September 20, 2021

* * *

4. The Tribunal's decision

354. In the following section, the Tribunal will briefly analyse and dismiss Respondent's preliminary objections (**4.1.**); then it will establish that Lion was indeed denied justice by Mexico's judiciary, in breach of NAFTA Art. 1105 (**4.2.**), and thereafter dismiss Mexico's counterargument that Lion failed to exhaust available and reasonable local remedies (**4.3.**).

4.1 Respondent's preliminary objection

355. The Tribunal will first address Mexico's preliminary objections (summarized in section 3.4. *supra*):

NAFTA Art. 1105 protects investments and investors

356. Mexico's first argument is based on a literal reading of Art. 1105 of NAFTA, which provides that Mexico "shall accord to investments of investors" of the other treaty Parties treatment in accordance with international law, including FET and FPS. Respondent says that Art. 1105 only extends protection to investments, but not to investors[383].

357. Contrary to Mexico's submission, the Tribunal finds that NAFTA Art. 1105 does indeed grant protection to Lion as an investor.

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383. RR, para. 138, RCM, paras. 134-144.

358. The FTC Interpretation Note equates the standard of protection to be applied under Art. 1105 of the NAFTA with the standard of "customary international law minimum standard of treatment of aliens". The reference to "aliens", in a context of investment protection, can only mean investors. A multitude of NAFTA Tribunals have also construed Art. 1105 as a source of protection for investors rather than solely for their investments[384].

* * *

384. See e.g., *Gami*, para. 91; *Chemtura*, para. 179; Exh. CLA-139; *Merrill*, para. 83.

APPENDIX D — NAFTA ARTICLE 1105

Article 1105: Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).

APPENDIX E — 9 U.S.C. § 10

9 U.S.C. § 10 — Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to *section*

580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in *section 572 of title 5*.