No. 26-442

IN THE

Supreme Court of the United States

PETERSEN ENERGIA INVERSORA, S.A.U., *et al.*,

Petitioners,

v.

ARGENTINE REPUBLIC, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF PROFESSOR WILLIAM DODGE AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

William S. Dodge is the Lobingier Professor of Comparative Law and Jurisprudence at the George Washington University Law School. He served as a Reporter for the first phase of the American Law Institute's *Restatement (Fourth) of the Foreign Relations Law of the United States* (2018) and currently serves as a Reporter for the second phase of the *Restatement (Fourth)*. Professor Dodge has written extensively about doctrines of international comity, including exhaustion. *See, e.g.*, William S. Dodge, *International Comity in American Law*, 115 Colum. L. Rev. 2071 (2015). He filed an amicus brief on those issues with this Court in *Republic of Hungary v. Simon*, 592 U.S. 207 (2021), and *Federal Republic of Germany v. Philipp*, 592 U.S. 169 (2021). *See* Brief of Professors William S. Dodge & Maggie Gardner as Amici Curiae in Support of Respondents, *Republic of Hungary v. Simon*, 592 U.S. 207 (2021) (No. 18-1447), and *Federal Republic of Germany v. Philipp*, 592 U.S. 169 (2021) (No. 19-351), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721656. He also filed an amicus brief with the Second Circuit in the case below addressing international comity abstention. *See* Brief of Amici Curiae Professors

[1] No counsel for a party authored any part of this brief. No person other than *amicus curiae* or its counsel made any monetary contribution to the preparation or submission of this brief. Under Rule 37.2, *amicus curiae* notified counsel for all parties on October 21, 2026, of its intent to file this brief.

William S. Dodge and Maggie Gardner in Support of Plaintiffs, *Petersen Energia Inversora, S.A.U. v. Argentine Republic*, No. 23-7370 (2d Cir. Apr. 1, 2024), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4780567.

SUMMARY OF THE ARGUMENT

The petition for certiorari presents a question that has divided the courts of appeals: whether claims against a foreign state must be brought first, or exclusively, in the foreign state's own courts before such claims can be asserted in federal court under the Foreign Sovereign Immunities Act (FSIA).

The Seventh Circuit has held that federal courts must dismiss claims against a foreign state under the FSIA if plaintiffs have not exhausted their remedies in the foreign state's courts. *See Fischer v. Magyar Államvasutak Zrt.*, 777 F.3d 847, 856-59 (7th Cir. 2015). The plaintiffs in *Fischer* brought expropriation claims under 28 U.S.C. § 1605(a)(3). The Seventh Circuit held that "principles of international comity make clear that these plaintiffs must attempt to exhaust domestic remedies before foreign courts can provide remedies for those violations." *Id.* at 852.

The D.C. Circuit, however, has expressly rejected the Seventh Circuit's exhaustion requirement. *See Philipp v. Fed. Republic of Germany*, 894 F.3d 406, 416 (D.C. Cir. 2018) (discussing *Fischer*), *vacated and remanded on other grounds*, 592 U.S. 169

(2021); *see also Philipp v. Fed. Republic of Germany*, 925 F.3d 1349, 1350 (D.C. Cir. 2019) (Katsas, J., dissenting from denial of rehearing en banc) (noting the "clear split with the Seventh Circuit"). The court explained that the FSIA's "'comprehensive' statement of foreign sovereign immunity . . . leaves no room for a common-law exhaustion doctrine." *Philipp*, 894 F.3d at 416 (quoting *Republic of Argentina v. NML Cap., Ltd.*, 573 U.S. 134, 141 (2014)). The D.C. Circuit reaffirmed its rejection of an exhaustion requirement in *Simon v. Republic of Hungary*, 911 F.3d 1172, 1180-81 (D.C. Cir. 2018), *vacated and remanded on other grounds*, 592 U.S. 207 (2021). The court noted that an exhaustion requirement might, in fact, preclude plaintiffs from proceeding under the FSIA entirely through the operation of *res judicata*. *See id.* at 1180.

This Court granted certiorari in *Philipp* and *Simon* to address the exhaustion question, which petitioners in those cases reframed as a question of international comity abstention, but the Court ultimately decided those cases on another ground. *See Fed. Republic of Germany v. Philipp*, 592 U.S. 169, 187 (2021) (holding that the FSIA's expropriation exception does not apply to domestic takings and declining to address petitioner's international comity argument). After this Court vacated the lower-court decisions in *Philipp* and *Simon*, the D.C. Circuit readopted the analysis of those decisions, holding "that the FSIA does not require prudential exhaustion

in suits against foreign states." *De Csepel v. Republic of Hungary*, 27 F.4th 736, 753 (D.C. Cir. 2022). Thus, the circuit split continues.

In the decision below, the Second Circuit held that Petitioners' claims were barred by Argentina's General Expropriation Law (GEL). The court found that the GEL "explicitly forecloses" actions such as the plaintiffs' that impede an expropriation, *Petersen Energia Inversora S.A.U. v. Argentine Republic*, 172 F.4th 120, 140 (2d Cir. 2026), and "instead channels those disputes into the compensation-setting mechanism set forth elsewhere in the GEL," *id.* at 141. The Second Circuit's holding goes even further than the Seventh Circuit's exhaustion requirement because it both requires claims such as Petitioners' to be brought in the foreign state's domestic courts in the first instance and precludes subsequent suits in other forums.

The decision below allows foreign states to adopt laws rendering themselves immune from federal jurisdiction by requiring that claims against them be heard in the foreign state's own courts, usurping Congress's directive that those claims should be heard in the United States under the FSIA. The decision below is inconsistent with the text of the FSIA, which does not require exhaustion of domestic remedies. This Court should grant the petition for certiorari and resolve the split among the circuits.

STATEMENT

Petitioners' claims arise from Argentina's violation of YPF's Bylaws when it expropriated YPF in 2012. Sections 7 and 28(A) of the Bylaws provided "that minority shareholders would be offered a compensated exit if and when the Argentine government ever renationalized YPF." *Petersen*, 172 F.4th at 126. However, "[t]he Republic never conducted a tender offer as required by § 7 and § 28(A) of the Bylaws." *Id.* at 128. Petitioners filed breach-of-contract and other claims in the Southern District of New York. Argentina and YPF moved to dismiss the case for lack of jurisdiction under the FSIA. *See Petersen Energia Inversora S.A.U. v. Argentine Republic*, 895 F.3d 194, 203 (2d Cir. 2018), *cert. denied*, 588 U.S. 906 (2019). On appeal, the Second Circuit held that Petitioners' claims fell within the FSIA's commercial activity exception. *See id.* at 205-11. On remand, the district court denied motions to dismiss on grounds of *forum non conveniens* and international comity and ultimately entered a judgment against Argentina for more than $16 billion.

In the decision below, the Second Circuit reversed, holding "that [Petitioners'] breach of contract damages claims against the Republic are not cognizable under Argentina's civil codes and public law governing expropriation." *Petersen*, 172 F.4th at 125. Although purporting to rely on Argentina's substantive law, the court in fact gave effect to

procedural provisions in Argentina's GEL making Argentine courts the exclusive forum for disputes. The court found that the GEL "establishes a comprehensive procedure for resolving claims arising from expropriation," *id.* at 140, and "explicitly forecloses actions 'by third parties [that] impede the expropriation or its effects' while the expropriator and property owner determine the amount of compensation owed to the owner." *Id.* (quoting GEL art. 28). "The GEL's preclusion of third-party lawsuits was likely intended to mitigate the fallout from the exact kinds of claims brought by [Petitioners] here," the court reasoned. *Id.* Rather than permitting contractual claims following an expropriation, the GEL "instead channels those disputes into the compensation-setting mechanism set forth elsewhere in the GEL." *Id.* at 141.[2] The Second Circuit held, in short, that Argentine law required Petitioners' claims to be brought in Argentine courts.

Argentina argued below that the case should have been dismissed on grounds of *forum non conveniens* and international comity, and the Second Circuit remarked "that there are serious forum-

[2] The court also held that the Bylaws did not create contractual obligations enforceable against Argentina. *See id.* at 137-39. In doing so, the court acknowledged that its "interpretation of the Bylaws" was "informed by the context of the governmental expropriation from which these claims arise." *Id.* at 139. The Second Circuit's interpretation of the Bylaws does not, therefore, constitute an independent ground on which the decision below can be sustained.

related issues presented by these cases." *Id.* at 132. "On the Republic's telling," the court observed, "it has a strong sovereign interest in adjudicating these cases, as expressed by its existing statutory framework for resolving expropriation-related claims." *Id.* at 133. Formally, the court did not reach the issues of *forum non conveniens* and international comity. "[W]e need not—and indeed do not—rest our conclusions on the Republic's threshold arguments about the propriety of conducting this litigation in a U.S. court," the Second Circuit said, "[b]ecause we ultimately conclude that [Petitioners'] claims fail as a matter of Argentine law." *Id.* In fact, however, the panel did rest its conclusions on the propriety of conducting the litigation in U.S. court; it relied on procedural Argentine law to hold that expropriation-related claims must be brought only in Argentine courts.

ARGUMENT

I. The Circuits are Split on Whether Plaintiffs Must Exhaust Domestic Remedies Before Bringing Suit Under the FSIA.

Whether plaintiffs bringing claims against a foreign state must exhaust domestic remedies in that foreign state before invoking federal jurisdiction under the FSIA is an important question that has divided the courts of appeals and that this Court has previously granted certiorari to review.

In *Fischer*, the Seventh Circuit held that plaintiffs' expropriation claims brought under the FSIA had to be dismissed because plaintiffs had not exhausted their remedies in the foreign state's courts. *See* 777 F.3d at 856-59. The court held that "principles of international comity make clear that these plaintiffs must attempt to exhaust domestic remedies before foreign courts can provide remedies for those violations." *Id.* at 852. Despite acknowledging that the FSIA "says nothing about a prudential exhaustion requirement based on international comity concerns," *id.* at 859, the Seventh Circuit imposed such a requirement based on its understanding of customary international law, reasoning that "'international law require[s] plaintiffs to exhaust domestic remedies before pursuing expropriation claims elsewhere.'" *id.* at 857 (quoting *Abelesz v. Magyar Nemzeti Bank*, 692 F.3d 661, 679 (7th Cir. 2012)) (alteration in original).

The D.C. Circuit has expressly rejected the Seventh Circuit's exhaustion requirement. *See Philipp v. Fed. Republic of Germany*, 894 F.3d 406, 416 (D.C. Cir. 2018) (discussing *Fischer*), *vacated and remanded on other grounds*, 592 U.S. 169 (2021). In *Philipp*, the D.C. Circuit heeded this Court's admonition that "'any sort of immunity defense made by a foreign sovereign in an American court must stand on the Act's text. Or it must fall.'" 894 F.3d at 415 (quoting *Republic of Argentina v. NML Cap., Ltd.*, 573 U.S. 134, 141-42 (2014)). The court noted "that nothing in the text of the

FSIA's expropriation exception requires exhaustion," *id.*, which is equally true of nearly all the FSIA's exceptions. As the court observed, the fact that the FSIA's state-sponsors-of-terrorism exception requires a claimant to offer to arbitrate the claim, *see* 28 U.S.C. § 1605A(a)(2)(A)(iii), strengthens the inference that Congress's omission of an exhaustion requirement was intentional. *Philipp*, 894 F.3d at 415. "Congress's 'comprehensive' statement of foreign sovereign immunity" in the FSIA, the D.C. Circuit concluded, "leaves no room for a common-law exhaustion doctrine." *Id.* at 416 (quoting *NML Cap.*, 573 U.S. at 141 (2014)).

The D.C. Circuit reaffirmed its rejection of an exhaustion requirement in *Simon v. Republic of Hungary*, 911 F.3d 1172, 1180-81 (D.C. Cir. 2018), *vacated and remanded on other grounds*, 592 U.S. 207 (2021). In addition to repeating many of the points made in *Philipp*, the court in *Simon* worried that an exhaustion requirement "would in actuality amount to a judicial grant of immunity from jurisdiction in United States courts" because the foreign court's decision "could preclude [the plaintiffs] by operation of *res judicata* from ever bringing their claims in the United States." *Id.* at 1180. "Under the FSIA," the D.C. Circuit continued, "courts are duty-bound to enforce the standards outlined in the statute's text, and when jurisdiction exists . . . , courts 'have the power, and ordinarily the obligation, to decide cases and

controversies properly presented to them.'" *Id.* at 1181 (quoting *W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp., Int'l*, 493 U.S. 400, 409 (1990)).

Dissenting from the denial of rehearing en banc, Judge Katsas noted that *Philipp* and *Simon* "create a clear split with the Seventh Circuit" and "are in tension with decisions from the Ninth and Eleventh Circuits." *Philipp v. Fed. Republic of Germany*, 925 F.3d 1349, 1350 (D.C. Cir. 2019) (Katsas, J., dissenting from denial of rehearing en banc). In their petitions for certiorari, Germany and Hungary reframed their exhaustion arguments as arguments for abstention on international comity grounds, citing not just the split with the Seventh Circuit's decision in *Fischer* but also *Mujica v. AirScan, Inc.*, 771 F.3d 580 (9th Cir. 2014), and *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227 (11th Cir. 2004). *See* Petition for a Writ of Certiorari, *Federal Republic of Germany v. Philipp*, No. 19-351 (U.S. Sept. 16, 2019); Petition for a Writ of Certiorari, *Republic of Hungary v. Simon*, No. 18-1447 (U.S. May 16, 2019).

This Court granted certiorari on the question of international comity abstention in both *Philipp* and *Simon*, as well as on the question of whether the FSIA's expropriation exception applies to "domestic takings" by a state of its own citizen's property in *Philipp*. In the end, this Court held that the expropriation exception does not apply to "domestic takings," and the Court did not reach the

international-comity/exhaustion question. *See Philipp*, 592 U.S. at 187. After this Court vacated the lower court decisions in *Philipp* and *Simon*, the D.C. Circuit readopted those decisions' analysis with respect to exhaustion, holding "that the FSIA does not require prudential exhaustion in suits against foreign states." *De Csepel*, 27 F.4th at 753. The circuits thus remain split after the Court's ruling in *Philipp*.[3]

The tension with other circuits also persists. In *Mujica*, the Ninth Circuit adopted a doctrine of international comity abstention allowing district courts to decline jurisdiction based on a three factor test-articulated by the Eleventh Circuit in *Ungaro-Benages*: "[1] the strength of the United States' interest in using a foreign forum, [2] the strength of the foreign governments' interests, and [3] the adequacy of the alternative forum."[4] *Mujica*, 771 F.3d

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[3] Like the D.C. Circuit, the First Circuit has rejected additional constraints on federal jurisdiction under the FSIA. *See Merlini v. Canada*, 926 F.3d 21, 38 (1st Cir. 2019) (rejecting "comity concerns" in the context of the FSIA's "commercial activity" exception).

[4] Other circuits have adopted a different doctrine of international comity abstention that is limited to cases in which there is a parallel proceeding pending in a foreign court. *See Answers in Genesis of Kentucky, Inc. v. Creation Ministries Int'l, Ltd.*, 556 F.3d 459, 467-69 (6th Cir. 2009); *Royal & Sun All. Ins. Co. of Canada v. Century Int'l Arms, Inc.*, 466 F.3d 88, 92-97 (2d Cir. 2006); *AAR Int'l, Inc. v. Nimelias Enters. S.A.*, 250 F.3d 510, 517-23 (7th Cir. 2001); *Al-Abood v. El-Shamari*, 217 F.3d 225, 232 (4th Cir. 2000); *Philadelphia Gear Corp. v. Philadelphia Gear de Mexico, S.A.*, 44 F.3d 187, 191-94 (3d Cir. 1994). *Mujica*, by contrast, does not impose such a requirement.

at 603 (quoting *Ungaro-Benages*, 379 F.3d at 1238; bracketed numbers added by Ninth Circuit).[5] Although *Mujica* and *Ungaro-Benages* did not involve the FSIA, such a doctrine of international comity abstention could be invoked in FSIA cases, since the FSIA provides that a non-immune foreign state "shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606. That is precisely what the foreign states asked this Court to do in *Philipp* and *Simon*.

As noted above, the Second Circuit in *Petersen* held that Argentina's GEL "explicitly forecloses" actions that impede an expropriation, 172 F.4th at 140, and "channels those disputes into the compensation-setting mechanism set forth elsewhere in the GEL," *id.* at 141. Like the Seventh Circuit in *Fischer*, the Second Circuit's decision requires plaintiffs to bring their claims in the domestic courts of the foreign state. Indeed, *Petersen* realizes the D.C. Circuit's fear in *Simon* that an exhaustion

[5] The Third Circuit has rejected this type of abstention outright, *see Gross v. German Found. Indus. Initiative*, 456 F.3d 363, 393-94 (3d Cir. 2006), while the Eleventh Circuit has subsequently limited—but not eliminated—it to "rare (indeed often calamitous) cases in which powerful diplomatic interests of the United States and foreign sovereigns aligned in supporting dismissal," *GDG Acquisitions, LLC v. Government of Belize*, 749 F.3d 1024, 1034 (11th Cir. 2014); *see also Reid v. Doe Run Res. Corp.*, 110 F.4th 1049, 1055 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 1309 (2025) (stating that, if such an abstention doctrine exists, it must be reserved for rare cases).

requirement would "amount to a judicial grant of immunity from jurisdiction in United States courts," 911 F.3d at 1180, by precluding subsequent suits in U.S. courts.

The decision below further entrenches the circuit split. In the D.C. Circuit, plaintiffs may sue foreign states under the FSIA as long as the requirements that Congress set out in the statute are met. By contrast, plaintiffs in the Second and Seventh Circuits can only invoke federal jurisdiction after exhausting their remedies in foreign courts (*Fischer*) or only when *foreign* law permits a U.S. venue (*Petersen*). And plaintiffs in the Ninth Circuit must overcome a judicially crafted abstention hurdle before their suits may proceed under the FSIA. Granting the petition would allow this Court to decide whether the FSIA permits courts to impose these additional limitations on federal jurisdiction.

II. The Decision Below Improperly Requires Claims to Be Brought in a Foreign State's Own Courts.

The Second Circuit's decision in *Petersen* does not only aggravate an acknowledged circuit split. It is also inconsistent with the FSIA itself. The FSIA enacts a comprehensive set of rules for claims against foreign states that does not require the exhaustion of remedies in the foreign state's own courts.

In addition, the FSIA expressly provides that a "foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606. Although a federal court may apply foreign substantive law to determine liability, it must apply federal procedural law because that is what it would do in a case against a private party. *See Cassirer v. Thyssen-Bornemisza Collection Found.*, 596 U.S. 107, 114 (2022). The provisions of the GEL on which the Second Circuit relied are plainly procedural and thus the decision below is contrary to Congress's direction in § 1606.

A. The Text of the FSIA Precludes an Exhaustion Requirement.

As this Court noted in *NML Capital*, the FSIA enacts a "comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state." 573 U.S. at 141 (quotation and citation omitted). "Thus, any sort of immunity defense made by a foreign sovereign in an American court must stand on the Act's text. Or it must fall." *Id.* at 140-41.

Nothing in the text of the FSIA requires plaintiffs to bring their claims before the courts of the defendant foreign state. The closest analogue is the requirement in the FSIA's state-sponsors-of-terrorism exception that "the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim

in accordance with the accepted international rules of arbitration." 28 U.S.C. § 1605A(a)(2)(A)(iii). But as the D.C. Circuit noted in *Philipp*, this provision strengthens the inference that the FSIA's omission of an exhaustion requirement was intentional. *See Philipp*, 894 F.3d at 415. Certainly, Congress knows how to draft an exhaustion requirement for international cases, as it did in section 2(b) of the Torture Victim Protection Act. *See* 28 U.S.C. § 1350 note ("A court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred."). No similar language is found in the FSIA.

Nor is exhaustion of domestic remedies a background doctrine, like *forum non conveniens*, that the FSIA may be presumed not to have displaced. The Seventh Circuit based its exhaustion requirement on its understanding of customary international law, reasoning that "'international law require[s] plaintiffs to exhaust domestic remedies before pursuing expropriation claims elsewhere.'" *Fischer*, 777 F.3d at 857 (quoting *Abelesz*, 692 F.3d at 679) (alteration in original). But as the D.C. Circuit correctly pointed out in *Philipp*, the international-law requirement of exhaustion applies only to claims by one state against another in an international forum. *See Philipp*, 894 F.3d at 416; *see also* Restatement (Fourth) of the Foreign Relations Law of the United States § 424,

Reporters' Note 10 (noting that "under customary international law, . . . the exhaustion of local remedies is a precondition only to espousal of a claim by the injured party's government or the filing of a claim in an international tribunal") (citing *Interhandel Case (Switz. v. U.S.)*, Preliminary Objections, 1959 I.C.J. Rep. 6, 27 (Mar. 29)). The doctrine of international comity abstention that the Ninth Circuit adopted in *Mujica*, 771 F.3d 580, was recognized by no court prior to 2004, and certainly not when Congress passed the FSIA in 1976. *See* Brief of Professors William S. Dodge & Maggie Gardner as Amici Curiae in Support of Respondents 14, *Republic of Hungary v. Simon*, 592 U.S. 207 (2021) (No. 18-1447), and *Federal Republic of Germany v. Philipp*, 592 U.S. 169 (2021) (No. 19-351), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721656.

Imposing an exhaustion requirement for suits brought under the FSIA would frustrate Congress's intent to permit U.S. courts to hear claims against foreign states under carefully defined circumstances. A foreign state would be able to avoid such claims against it by invoking *res judicata* if the foreign state's courts decided in its favor. *See Simon*, 911 F.3d at 1180. Or a foreign state would be able to avoid such claims more directly by enacting a law like Argentina's requiring that certain claims, otherwise judiciable under the FSIA, may be brought only in the state's own courts. *See Petersen*, 172 F.4th at 140-41.

Chief Justice John Marshall observed nearly two hundred years ago that federal courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821). Since then, this Court has repeatedly emphasized "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976); *see also W.S. Kirkpatrick*, 493 U.S. at 409 ("Courts in the United States have the power, and ordinarily the obligation, to decide cases and controversies properly presented to them."). Although there are limited exceptions to this fundamental obligation, *see Colorado River*, 424 U.S. at 813-19, neither exhaustion nor international comity abstention is among them.

B. The Law on Which the Second Circuit Relied is Procedural, Not Substantive.

The Second Circuit's reliance on Argentina's GEL is inconsistent with the FSIA in another respect. Congress has directed that, "[a]s to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606. This means that courts in the United States must apply the substantive

law that would apply to private parties. *See Cassirer*, 596 U.S. at 114 ("Section 1606 directs a 'pass-through' to the substantive law that would govern a similar suit between private individuals." (quoting *Oveissi v. Islamic Republic of Iran*, 573 F.3d 835, 841 (D.C. Cir. 2009))). By the same measure, courts in the United States must apply their own procedural law because that is what they would do in suits against private parties, as the Second Circuit acknowledged below. *See Petersen*, 172 F.4th at 132 (noting that Argentina's "arguments based on *forum non conveniens* and international comity are governed by U.S. federal law").

The provisions of Argentina's GEL on which the Second Circuit relied are procedural, not substantive. Under the court's own interpretation, "the GEL explicitly forecloses actions 'by third parties [that] impede the expropriation or its effects' while the expropriator and property owner determine the amount of compensation owed to the owner." *Id.* at 140. The law "instead channels those disputes into the compensation-setting mechanism set forth elsewhere in the GEL." *Id.* at 141. There is nothing substantive about these provisions. They do not address liability but rather where suits may be brought. Certainly, these provisions are controlling for suits brought in Argentina. In suits brought in U.S. federal courts under the FSIA, however, § 1606 dictates that federal procedural law must govern because that is the

procedural law that would apply in suits against private parties. Argentina may dictate where suits must be brought within its own legal system, but it may not dictate to U.S. courts when they may hear claims under the FSIA.

CONCLUSION

For the reasons given above, this Court should grant the petition for certiorari.

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