No. 26-____

In the Supreme Court of the United States

INDIAN HARBOR INSURANCE CO., ET AL., PETITIONERS

v.

ONE LAKESIDE PLAZA, L.L.C.,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case presents the same question as the now-pending petition for writ of certiorari in 25-1383, *Indian Harbor Insurance Co. et. al. v. Town of Vinton, Louisiana, et. al.*:

Does federal common law or state law determine whether a nonsignatory to an arbitration agreement governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards can use equitable estoppel principles to enforce the agreement?

The Court should hold this petition pending the disposition of *Town of Vinton* and then dispose of this petition consistently with its ruling in that case.

PARTIES TO THE PROCEEDINGS

Petitioners are Indian Harbor Insurance Co., QBE Specialty Insurance Co., Steadfast Insurance Co., General Security Indemnity Co. of Arizona, United Specialty Insurance Co., Lexington Insurance Co., Safety Specialty Insurance Co., and Old Republic Union Insurance Co.

Respondent is One Lakeside Plaza L.L.C. Respondent was Plaintiff-Appellee below.

None of the parties are publicly listed on a stock exchange.

CORPORATE DISCLOSURE STATEMENTS

Indian Harbor Insurance Company. Indian Harbor Insurance Company ("IHIC") is a Delaware Corporation with its principal place of business located in Stamford, Connecticut. IHIC is a direct subsidiary of XL Specialty Insurance Company, and is an indirect subsidiary of Greenwich Insurance Company, X.L. America, Inc., XL Financial Holdings (Ireland) Limited, XL Bermuda Ltd, XL Group Ltd, and AXA SA. The ultimate indirect parent of IHIC is AXA SA (Euronext: CS), a company domiciled in France. No public company has an interest of 10% or more in Axa S.A.

QBE Specialty Insurance Co. QBE Specialty Insurance Co. is a subsidiary company indirectly owned by QBE Insurance Group Ltd. (ASX: QBE). For investors in the US, the company's American Depository Receipts trade on the OTC market under the stock symbols "QBEIF" and "QBIEY." HSBC Custody Nominees (Australia) Ltd., JP Morgan Nominees Australia Pty Ltd., and Citicorp Nominees Pty Ltd. each have an interest of 10% or more in QBE Insurance Group Ltd.

Steadfast Insurance Company. Steadfast Insurance Company (hereinafter “Steadfast”) is a wholly owned subsidiary of Zurich American Insurance Company, a New York corporation. Zurich American Insurance Company is a wholly owned subsidiary of Zurich Holding Company of America, Inc., a Delaware corporation. Zurich Holding Company of America, Inc., is wholly owned by Zurich Insurance Company Ltd, a Swiss corporation. Zurich Insurance Company Ltd is directly owned by Zurich Insurance Group Ltd (SIX: ZURN), a Swiss corporation. Zurich Insurance Group Ltd is the only publicly traded parent company, with a listing on the Swiss stock exchange, and a further trading of American Depositary Receipts (ZURVY). No public company has an interest of 10% or more in Zurich Insurance Group Ltd.

General Security Indemnity Co. of Arizona. General Security Indemnity Co. of Arizona is a wholly owned subsidiary of SCOR Reinsurance Co. and a wholly owned indirect subsidiary of SCOR SE (Euronext: SCR). No public company has an interest of 10% or more in SCOR SE.

United Specialty Insurance Co. United Specialty Insurance Co. is a wholly owned subsidiary of State National Insurance Company, Inc., and a wholly owned indirect subsidiary of Markel Group Inc. (NYSE: MKL). No public company has an interest of 10% or more in Markel Group Inc.

Lexington Insurance Co. Lexington Insurance Co. is a direct, wholly owned subsidiary of AIG Property Casualty U.S., Inc., which is a wholly owned subsidiary of AIG Property Casualty Inc., which is a wholly owned subsidiary of American International Group, Inc., which is a publicly-held corporation (NYSE: AIG). No public company has an interest of 10% or more in American International Group, Inc.

Safety Specialty Insurance Co. Safety Specialty Insurance Co. is a wholly owned subsidiary of Safety National Casualty Corp. and a wholly owned indirect subsidiary of Tokio Marine Holdings, Inc. (TYO: 8766). The Master Trust Bank of Japan, Ltd., has an interest of 10% or more in Tokio Marine Holdings, Inc.

Old Republic Union Insurance Co. Old Republic Union Insurance Co. is a wholly owned subsidiary of Old Republic International Corp. (NYSE: ORI). BlackRock, Inc. (NYSE: BLK) has an interest of 10% or more in Old Republic International Corp.

RELATED PROCEEDINGS

United States Court of Appeals (5th Cir.):

One Lakeside Plaza, L.L.C. v. Indian Harbor Insurance Co. et al., No. 24-30758 (Jan. 7, 2026)

Town of Vinton et al. v. Indian Harbor Insurance Co. et al., Nos. 24-30035, 24-30748, 24-30749, 24-30750, 24-30751, 24-30756, & 24-30757 (Dec. 8, 2025)

United States District Court (W.D. La.):

One Lakeside Plaza LLC v. Indian Harbor Insurance Co. et al., No.21-cv-4050 (Nov. 19, 2024)

Town of Vinton v. Certain Underwriters at Lloyds London et al., No. 23-cv-240 (Dec. 14, 2023)

Certain Underwriters at Lloyds London et al. v. School Board of Cameron Parish, No. 22-cv-5280 (Nov. 4, 2024)

School Board of Cameron Parish v. Indian Harbor Insurance Co. et al., No. 22-cv-5283 (Nov. 4, 2024)

Certain Underwriters at Lloyds London et al. v. Cameron Parish Recreation #6, No. 22-cv-5286 (Nov. 4, 2024)

Cameron Parish Recreation #6 v. Indian Harbor Insurance Co. et al., No. 22-cv-5287 (Nov. 4, 2024)

Certain Underwriters at Lloyds London Subsc et al. v. Police Jury of Cameron Parish, No. 22-cv-5345 (Nov. 4, 2024)

Cameron Police Jury v. Indian Harbor Insurance Co. et al., No. 22-cv-5348 (Nov. 4, 2024)

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INTRODUCTION

This case presents exactly the same issue as is currently pending before the Court in *Indian Harbor Insurance Company et. al. v. Town of Vinton, Louisiana, et. al.*, Case No. 25-1383. The Court should hold this petition pending the disposition of *Town of Vinton* and then dispose of this petition consistently with its ruling in that case.

The issue presented is of national and international importance. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards—the New York Convention or simply Convention—is an international treaty that requires member states to enforce most arbitration agreements involving foreign parties. Congress implemented the Convention in Chapter 2 of the Federal Arbitration Act (FAA). *See* 9 U.S.C. §§ 201 -08. In *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 445 (2020), the Court held that the Convention permits "enforcement of arbitration agreements by nonsignatories under domestic-law equitable estoppel doctrines"—contract law rules designed to stop parties from effectively evading arbitration agreements by suing nonsignatories related to the parties. But the Court didn't decide "which body of law"—federal or state—"governs that" equitable estoppel "determination." *Id.*

Here, as in *Town of Vinton,* the Fifth Circuit held that state law applies. Because the court leaned on that ruling to deny Petitioners' motions to compel arbitration—under a Louisiana state-law rule prohibiting insurance companies from enforcing arbitration agreements through equitable estoppel—the ruling determined the outcome of the case and deepened the 4-1 circuit split created by *Town of Vinton*.

OPINIONS BELOW

The court of appeals' opinion (App. 1a-2a) is unreported and is available at 2026 WL 50022. The district court opinion is unreported and is available at 2024 WL 4828732. App. 3a-9a.

JURISDICTION

1. The district court had jurisdiction over the Insurers' motions to compel arbitration under 28 U.S.C. § 1331, because "[a]n action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States." 9 U.S.C. § 203. As explained below, the Insurers' motions to compel arbitration fall under the Convention because they seek to enforce written arbitration agreements arising out of commercial relationships, and at least one party to the agreements isn't an American citizen. *Id.* §§ 202, 206.

2. The district court denied the Insurers' motions to compel arbitration. App. 3a-9a. The court of appeals had jurisdiction to review that order under 9 U.S.C. § 16(a)(1)(C), which authorizes interlocutory appeals from orders declining to compel arbitration under the Convention.

3. The court of appeals entered its judgment on January 7, 2026. App. 1a. It denied rehearing en banc on February 9, 2026. App. 10a. On May 6, 2026, Justice Alito extended the time to file a petition for a writ of certiorari to June 9, 2026, and on June 3, 2026, further extended the time to file a petition to July 9, 2026. *See* 28 U.S.C. § 2101(c); No. 25A1218 (U.S.).

This petition is timely filed on July 9, 2026. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant portions of the New York Convention and Chapter 2 of the FAA are reproduced in the appendix. *See* App. 13a-16a.

STATEMENT

A. Legal background

1. The Petition in *Indian Harbor Insurance Co. et. al. v. Town of Vinton, et. al.*, filed on June 11, 2026 presents the same issue in this case: whether federal law or state law controls the application of equitable estoppel in a case involving the New York Convention. *Town of Vinton* is the best vehicle for plenary review of that question. That is because unlike the single paragraph per curiam affirmance issued by the Fifth Circuit in this case, the *Town of Vinton* Fifth Circuit panel issued a written opinion in that case explaining its reasoning. *See* 2026 WL 50022, at *1 (stating that there is no "meaningful difference" between this case and *Town of Vinton*).

2. "The New York Convention is a multilateral treaty that addresses international arbitration." *GE Energy*, 590 U.S. at 438. It was adopted "to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries." *Scherk v. Alterto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974).

Relevant here, Article II(1) of the Convention provides that each contracting state "shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship." Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, Article II(1), 21 U.S.T. 2518, 2519 (New York Convention). To be enforceable under the Convention, an arbitration agreement must be "signed by parties or contained in an exchange of letters or telegrams." Article II(2), 21 U.S.T. at 2519. And unlike Chapter 1 of the FAA, which makes the validity of arbitration agreements turn on state contract law, *see* 9 U.S.C. § 2, the Convention provides that an agreement's "valid[ity]" is determined by "the law to which the parties have subjected it or, failing any indication thereon, the law of the country where" any award on the agreement "was made," Article V(1)(a), 21 U.S.T. at 2520.

3**.** "In 1970, the United States acceded to the New York Convention, and Congress enacted implementing legislation in Chapter 2 of the FAA." *GE Energy*, 590 U.S. at 439; *see also* 9 U.S.C. §§ 201–208. As this Court has explained, "Chapter 2 grants federal courts jurisdiction over actions governed by the Convention, § 203; establishes venue for such actions, § 204; authorizes removal from state court, § 205; and empowers courts to compel arbitration, § 206." *GE Energy*, 590 U.S. at 439.

Taken together, the Convention, Congress's reservations to it at accession, and Chapter 2 of the FAA provide that a court must compel arbitration when (1) there is "an agreement in writing" to arbitrate the dispute, New York Convention Article II(1)-(2), 21 U.S.T at 2519; (2) the agreement provides for arbitration "in the territory of" a convention signatory, *id.*; (3) the agreement arises out of a "commercial" legal relationship, 9 U.S.C. § 202; and (4) a party to the agreement isn't an American citizen or the agreement has a "reasonable" nexus with a foreign country, *id.* §§ 202, 206.

4. The FAA typically preempts anti-arbitration state laws like the Louisiana law at issue here, La. Rev. Stat. § 22:868. *See, e.g.*, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341 (2011). But the FAA doesn't preempt Louisiana's anti-arbitration policy for insurance disputes because the federal McCarran-Ferguson Act provides an exception to preemption, stating that no "Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance," with exceptions not relevant here. 15 U.S.C. § 1012(b). But the McCarran-Ferguson Act doesn't apply to the New York Convention because it doesn't apply to treaties, as every court of appeals to have considered the issue has held. *See Certain Underwriters at Lloyds, London v. 3131 Veterans Blvd LLC*, 136 F.4th 404, 411 (2d Cir. 2025) (overruling prior precedent); *Green Enterprises, LLC v. Hiscox Syndicates Ltd. at Lloyd's of London*, 68 F.4th 662, 667 (1st Cir. 2023); *CLMS Management Services L.P. v. Amwins Brokerage of Georgia, LLC*, 8 F.4th 1007, 1016 (9th Cir. 2021); *ESAB Group, Inc. v. Zurich Insurance PLC*, 685 F.3d 376, 390-91 (4th Cir. 2012); *Safety National Casualty Corp. v. Certain Underwriters at Lloyd's, London*, 587 F.3d 714, 721-25 (5th Cir. 2009) (en banc). Thus, if the Convention and Chapter 2 of the FAA supply a federal equitable estoppel rule, it must override any contrary state law.

5. Equitable estoppel is a contract law doctrine that "allows a nonsignatory to a written agreement containing an arbitration clause to compel arbitration." 21 Williston on Contracts § 57:19 (4th ed. May 2026 update). The doctrine applies where a signatory "must rely on the terms of that agreement in asserting its claims against the nonsignatory or where the signatory to the written agreement raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." *Id.* In *GE Energy*, this Court held that the New York Convention permits "enforcement of arbitration agreements by nonsignatories under domestic-law equitable estoppel doctrines." 590 U.S. at 445. But it didn't decide "which body of law governs that determination." *Id.*

B. Factual and procedural background

1. Petitioners—the Insurers—are a group of insurance companies. Among other things, they offer surplus line policies—*i.e.*, "insurance for unique risks." App. 3a-4a. Respondent is a private entity in Louisiana that purchased a surplus lines policy from a group of Insurers. App. 1a, 3a. Eight of those Insurers are U.S.-based companies. The other two—Certain Underwriters at Lloyd's, London subscribing to Policy No. AMR-68821 (CUL) and HDI Global Specialty SE (HDI), are based abroad.

Respondent's policy contains two provisions relevant here. *First*, the policy contains a clause requiring that "[a]ll matters in difference between the Insured and the Companies … in relation to this insurance, including its formation and validity, and whether arising during or after the period of this insurance, shall be referred to an Arbitration Tribunal in the manner hereinafter set out." App. 4a. *Second*, the policy contains a Contract Allocation Endorsement stating that the policy "shall be constructed as a separate contract between the Insured and each of the Underwriters." *Id.*

2. In 2020, two hurricanes struck Louisiana, damaging Respondent's properties. App. 3a. Afterwards, Respondent submitted claims to the Insurers to cover their hurricane-related losses. App. 4a. Respondent alleges that the Insurers failed to timely and properly adjust the claim. App. 4a.

3. Respondent sued the Insurers in Louisiana state court. Respondent then proceeded to dismiss the Foreign Insurers with prejudice.

After they were served, the remaining Insurers removed the cases to federal court and moved to compel arbitration. The district court denied the Insurers' petitions to compel arbitration. App. 3a-9a.

The Insurers appealed.

4. The Fifth Circuit affirmed.

a. Before the Fifth Circuit—as in *Town of Vinton*—the parties' primary dispute was whether Respondent's policies involved foreign parties, as necessary to compel arbitration under 9 U.S.C. § 202. Respondent argued that based on the policies' Contract Allocation Endorsements, it had separate, bilateral contracts with each Insurer, meaning neither of two foreign Insurers was a party to the domestic Insurers' contracts. The domestic Insurers, in turn, argued that there were foreign parties to the policies for two reasons. *First*, all ten Insurers were parties to each policy, meaning there were foreign parties because CUL and HDI aren't U.S. citizens. App.4a-5a. *Second*, even if the policies were construed to create separate bilateral contracts between each Insurer and Respondent, the domestic Insurers could invoke the arbitration provisions in CUL's and HDI's contracts under principles of equitable estoppel because Respondent asserted interdependent and concerted conduct by the Insurers. App. 7a-9a.

b. Applying *Town of Vinton*, the Fifth Circuit agreed with Respondent. For its reasoning, the Court stated only that "[w]e recently affirmed the district court's application of Louisiana law to a similar contract," and because there was no "meaningful difference" between the cases, this case too would be affirmed. App. 1a-2a.

5. The Insurers petitioned for rehearing en banc. They explained that the panel decision splits from the decisions of other courts of appeals that apply federal common law, rather than state law, to the equitable estoppel analysis in New York Convention cases. As in *Town of Vinton*, the Fifth Circuit denied rehearing and cemented the split. App. 10a-11a.

REASONS FOR GRANTING THE PETITION

As has been explained in detail in the petition in *Town of Vinton*, the Fifth Circuit's decision has created a lasting 4–1 circuit split over whether federal or state law governs the equitable estoppel analysis in New York Convention cases. The First, Second, Fourth, and Ninth Circuits hold that federal common law must supply the rule of decision to honor the Convention's core purpose of creating uniform rules for enforcing international arbitration agreements. *See InterGen N.V. v. Grina*, 344 F.3d 134, 143 (1st Cir. 2003); *Smith/Enron Cogeneration Ltd. P'ship, Inc. v. Smith Cogeneration Int'l, Inc.*, 198 F.3d 88, 96 (2nd Cir. 1999); *Setty v. Shrinivas Sugandhalaya LLP*, 3 F.4th 1166, 1168 (9th Cir. 2021). The Fifth Circuit, in contrast, holds that the law of the forum state applies.

App. 10a. The conflict is clear and outcome-determinative. The Fifth Circuit's own precedent shows that the Insurers' equitable estoppel argument would have succeeded under federal common law, but it was doomed by the Fifth Circuit's decision to apply Louisiana's anti-arbitration rules instead.

This petition raises exactly the same question as *Town of Vinton*. And the Fifth Circuit's decision in this case, which simply applies *Town of Vinton*, is wrong for the same reasons that case was wrong. In short, these decisions undermine Congress's purpose in acceding to the Convention by subjecting international arbitration agreements to a patchwork of state law enforcement rules. And the question presented is important because it arises frequently, implicating important federal policies.

The Court should hold this petition pending the outcome of *Town of Vinton* and then dispose of the petition consistently with its ruling in that case.

I. The circuits have split 4–1 over whether federal or state law controls the equitable estoppel analysis in cases governed by the New York Convention.

The Fifth Circuit's follow-on decision in this case entrenched an outcome-determinative 4–1 circuit split on "which body of law"—state or federal—"governs" the equitable estoppel "determination" in cases arising under the New York Convention. *GE Energy*, 590 U.S. at 445. Only this Court can resolve the split.

A. Four courts of appeals hold that federal equitable estoppel principles determine whether nonsignatories can enforce arbitration agreements subject to the Convention

The First, Second, Fourth, and Ninth Circuits hold that federal common law principles control when a nonsignatory invokes equitable estoppel to enforce an arbitration agreement governed by the New York Convention.

1. Begin with the Second Circuit, the first court to expressly consider the question presented. In *Smith/Enron*, a company called SCI entered into a joint venture with certain affiliates of the Enron energy conglomerate "to construct, finance and manage" a power plant in the Dominican Republic. 198 F.3d at 90. The parties' main project agreement contained a broad provision requiring arbitration of project-related disputes in New York. *Id.* When the parties' relationship broke down, however, SCI sued the Enron entities in the Dominican Republic alleging that it was fraudulently induced to enter the partnership and seeking sizable damages. *Id.* at 91. The Enron entities, in turn, "filed a petition in the Southern District" of New York under the New York Convention "to compel arbitration of the dispute with SCI and to enjoin SCI from prosecuting the Dominican Lawsuit." *Id.* The district court granted the petition. *Id.*

The Second Circuit affirmed. The court first addressed and rejected SCI's arguments that the district court should have applied New York's choice of law rules and Turks and Caicos' substantive law to determine whether the Enron entities could enforce the arbitration agreement. *Id.* at 96. The court explained that because "this [was] a federal question case under [the New York Convention] and not a diversity case," there was "no persuasive reason to apply the law of New York simply because it [was] the forum of [the] litigation." *Id.* The court then held that when courts "exercise jurisdiction under Chapter Two of the FAA," they "have compelling reasons to apply federal law … to the question of whether an agreement to arbitrate is enforceable." *Id.* "[P]roceeding otherwise," the court explained, "would introduce a degree of parochialism and uncertainty into international arbitration that would subvert the goal of simplifying and unifying international arbitration law." *Id.*

Once it had "determined that federal law applie[d]," the court went on to hold that the Enron entities were entitled to compel arbitration under federal equitable estoppel principles. *Id.* at 97-98.

2. The First Circuit has likewise held that federal equitable estoppel principles determine whether nonsignatories can enforce arbitration agreements in New York Convention cases. In *InterGen*, a Dutch energy company, InterGen, developed a power plant project in the United Kingdom. 344 F.3d at 138. As part of the project, InterGen's affiliates bought turbines from affiliates of another energy company called ALSTOM. *Id.* The contracts between InterGen's affiliates and ALSTOM's affiliates each contained arbitration clauses. *Id.* at 139.

When the turbines failed to work as advertised, InterGen sued ALSTOM in Massachusetts state court alleging that ALSTOM had defrauded InterGen into selecting defective goods for its power plant. *Id.* ALSTOM removed the case to federal district court and moved to compel arbitration under the New York

Convention. *Id.* at 140. Among other things, ALSTOM argued that equitable estoppel principles allowed it to enforce its affiliates' arbitration agreements with InterGen's affiliates against InterGen. The district court declined to compel arbitration. *Id.*

The First Circuit affirmed. The court first held that "federal common law" "govern[ed]" whether InterGen was bound by its affiliates' arbitration agreements. *Id.* at 143. The court explained that because cases under the New York Convention invoke "federal question" jurisdiction, courts must "look to federal choice of law principles" to select the appropriate substantive law. *Id.* Under federal choice of law rules, "[i]f the federal statute in question demands national uniformity, federal common law provides the determinative rules of decision." *Id.* The Convention demands uniform federal rules, the court explained, because "[a] central goal of the New York Convention—and the driving force behind Congress's enactment of chapter 2 [of the FAA]—was to set out uniform rules governing the recognition and enforcement of international arbitration awards." *Id.* "Applying varying state standards in cases falling within the Convention's ambit would [thus] be in tension with" the Convention's "elemental purpose." *Id.* The court accordingly applied federal common law to ALSTOM's equitable estoppel arguments, ultimately concluding that InterGen wasn't bound by its affiliates' arbitration agreements. *Id.* at 145-46.

3. The Ninth Circuit likewise holds that federal common law determines whether nonsignatories can use equitable estoppel to enforce arbitration agreements governed by the New York Convention. In *Setty*, an Indian businessman and his company sued an incense manufacturer for trademark infringement.

3 F.4th at 1167. The manufacturer moved to compel arbitration under the Convention, invoking an arbitration agreement in a partnership deed that the manufacturer hadn't signed. The district court declined to compel arbitration. *Id.*

The Ninth Circuit affirmed. The court first rejected the manufacturer's argument that "Indian law applie[d]" to determine whether it could invoke the arbitration clause as a nonsignatory. *Id.* at 1168. Like the First and Second Circuits, the Ninth Circuit explained that because "[t]he New York Convention and its implementing legislation emphasize the need for uniformity in the application of international arbitration agreements," courts must "apply 'federal substantive law'" "in determining the arbitrability of federal claims by or against non-signatories to an arbitration agreement." *Id.* The court thus applied federal equitable estoppel principles, concluding the manufacturer invoke arbitration. *Id.* at 1169.

4. Finally, the Fourth Circuit applies the same rule as the First, Second, and Ninth. In *Aggarao*, a Filipino seaman sued a Japanese shipping company and two car companies after he was severely injured in an accident at sea. *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 360 (4th Cir. 2012). The defendants moved to compel arbitration under the New York Convention pursuant to an arbitration clause in the seaman's employment contract with the shipping company, arguing that the car companies could enforce the arbitration agreement using equitable estoppel principles even though they weren't parties to the employment contract. *Id.* at 361. Applying federal common law principles explained in its prior decisions in *Brantley v. Republic Mortgage Insurance Co.*, 424 F.3d 392, 396 (4th Cir. 2005), and *American Bankers*

Insurance Group, Inc. v. Long, 453 F.3d 623, 627 (4th Cir. 2006), the Fourth Circuit held that the seaman was required to arbitrate his claims with the car companies. *Id.* at 373-74.

B. The Fifth Circuit holds that state law determines whether nonsignatories can invoke equitable estoppel to enforce arbitration agreements subject to the Convention.

Splitting from the First, Second, Fourth, and Ninth Circuits, the Fifth Circuit held that "[s]tate contract law," not federal common law, "determines whether a contract" governed by the New York Convention "can be enforced by or against nonparties using equitable estoppel." App. 9a. Given Louisiana law's hostility toward insurance arbitration, that choice of law effectively decided the Insurers' petitions to compel arbitration. *See* App. 10a.

Indeed, the Fifth Circuit has already recognized that the Insurers' petitions to compel arbitration would succeed under federal common law principles in a materially identical case involving many of the same insurers at issue here. In *Bufkin*, an apartment building owner sued a group of foreign and domestic insurers after they denied hurricane damage–related claims. *Bufkin Enters., L.L.C. v. Indian Harbor Ins. Co.*,96 F.4th 726, 728 (5th Cir. 2024). Invoking the New York Convention, the insurers moved to compel arbitration under the policy's arbitration provision. As in this case, the building owner argued that the domestic insurers couldn't invoke the Convention because the policy created separate contracts with each insurer. *Id.* at 730-31. The domestic insurers sought to enforce the foreign insurers' arbitration agreements through equitable estoppel. *Id.*

The Fifth Circuit agreed with the domestic insurers. The court predicted (incorrectly, as it turned out) that Louisiana courts would follow federal equitable estoppel principles in determining whether nonsignatories can enforce an arbitration agreement. *Id.* at 730. Applying federal principles, the court held that equitable estoppel allowed the domestic insurers to enforce the foreign insurers' arbitration agreements because the building owner's complaint did "not differentiate between conduct of foreign and domestic insurers," meaning it "alleged substantially interdependent and concerted conduct by the domestic and foreign insurers." *Id.* at 731-32.

This case is almost a carbon copy of *Bufkin*. It is thus crystal clear that the Insurers would have been entitled to compel arbitration if the Fifth Circuit had applied federal equitable estoppel principles.

C. Only this Court can resolve the conflict.

Only this Court can resolve the circuit split and ensure that courts enforce the New York Convention the same way nationwide. The courts of appeals won't resolve the split on their own. The Insurers cited the First, Second and Ninth Circuit's decisions applying federal common law in both their panel-stage brief and their petition for rehearing en banc. CA5 Dkt. 37; Dkt. 52; Dkt. 87. The same Fifth Circuit panel held in *Town of Vinton* that state—rather than federal—equitable estoppel law governs in Convention cases, which controlled the outcome here. App. 1a-2a. And the full Fifth Circuit denied rehearing en banc, entrenching the split, and even emphasizing in a concurrence that it had no further interest in resolving the split. App. 10a-12a.

II. The Fifth Circuit's decision was wrong.

The *Town of Vinton* petition explains in detail why the Fifth Circuit was wrong to apply Louisiana state law, rather than federal common law, to the equitable estoppel analysis. Federal common law applies when a subject implicates a "uniquely federal interest" and applying state law would conflict with federal policy. *Boyle v. United Techs. Corp.*, 487 U.S. 500, 507 (1988).. Enforcement of arbitration agreements under the New York Convention is a perfect example. Applying a patchwork of state equitable estoppel rules would conflict with the New York Convention's uniquely federal interest in unified standards for enforcing international arbitration agreements. *Scherk*, 417 U.S. at 520 n.15. So the First, Second, Fourth, and Ninth Circuits are correct to apply a uniform federal rule of decision, rather than whatever parochial anti-arbitration policies states might declare.

To reach the opposite result, the Fifth Circuit purported to rely on this Court's decision in *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009). That was error. *Arthur Andersen* held that state law governs the equitable estoppel analysis for cases brought under Chapter 1 of the FAA based on language in Chapter 1 referencing state law. 556 U.S. at 630-31. There is no similar language in Chapter 2 of the FAA or the New York Convention, meaning there is no basis for applying *Arthur Andersen*'s rationale to Convention cases.

III. The Court should hold this petition pending resolution of *Town of Vinton*.

The Court should hold this petition pending the resolution of the pending petition for writ of certiorari in *Town of Vinton*.

To ensure similar treatment of similar cases, this Court routinely holds petitions that implicate the same issue as other pending cases and, once the related case is decided, resolves the held petitions in a consistent manner. *See, e.g., Monsanto Co. v. Salad,* -- S. Ct. --, 2026 WL 1871318 (June 30, 2026); *Flores v. United States*, 581 U.S. 1015 (2017); *Merrill v. Merrill*, 581 U.S. 989 (2017); *Innovention Toys, LLC v. MGA Ent., Inc.*, 579 U.S. 915 (2016); *see also Lawrence v. Chater*, 516 U.S. 163, 166 (1996) (per curiam) (noting the Court has "GVR'd in light of a wide range of developments, including [its] own decisions"); *Id.* at 181 (Scalia, J., dissenting) ("We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted in order that (if appropriate) they may be 'GVR'd' when the case is decided.") (emphasis omitted).

Because this case raises the same question that is directly at issue in *Town of Vinton*, the Court should follow that course here to ensure that this case is resolved in a consistent manner. If this Court grants certiorari in *Town of Vinton*, and rules that the equitable estoppel analysis in New York Convention cases is controlled by federal law, then it would be fundamentally unfair to permit the infirm judgment in this case to stand. Thus, the Court should hold this petition pending the resolution of *Town of Vinton*, and, if this Court grants review and vacates or reverses, it should thereafter grant, vacate, and remand in this case.

CONCLUSION

The Court should hold this petition pending the disposition of *Town of Vinton* and then dispose of this petition consistently with its ruling in that case.

Respectfully submitted.

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