No. 26-53

In the Supreme Court of the United States

INDIAN HARBOR INSURANCE CO., ET AL.,
PETITIONERS

v.

ONE LAKESIDE PLAZA, L.L.C., RESPONDENT.

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

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

Raffi Melkonian
Counsel of Record
Thomas C. Wright
Eric B. Boettcher
Landon J. Francois
WRIGHT CLOSE BARGER
& GUZMAN, LLP
700 Louisiana Street, Suite 3000
Houston, TX 77002
(713) 572-4321
melkonian@wcbglaw.com
Counsel for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

REPLY BRIEF

The petition presents one purely legal question: whether federal common law or state law determines when a nonsignatory may invoke equitable estoppel to enforce an arbitration agreement governed by the New York Convention.

Respondent never denies the conflict the Petition presents. Nowhere does Respondent assert that the First, Second, Fourth, or Ninth Circuits apply state law to the question presented, or that the Fifth Circuit applies federal law. Nor could it. Only days ago, the Seventh Circuit confirmed in a case presenting exactly this question that "four circuits have held that federal common law provides the rule of equitable estoppel for agreements governed by Chapter 2" while "[a] fifth holds, to the contrary, that state law applies." *Kim v. Jump Trading, LLC*, No. 25-1964, ___F.4th___, 2026 WL 2348464, at *5 (7th Cir. Aug. 13, 2026) (Easterbrook, J.). The Seventh Circuit joined the short end of the split, "agree[ing] with *Vinton*" that state law should control that question. *Id.* This case now presents a solidified 4-2 circuit split on a crucial issue of federal law.

Instead, Respondent devotes eleven pages to service-of-suit endorsements the Fifth Circuit never construed, BIO.9-19; several more to the Contract Allocation Endorsement and the resulting conclusion that the Policy comprises eight separate contracts, BIO.4-6; and the remainder to why, in its view, equitable estoppel should not apply on these particular facts, BIO.26-31.

Rather than recognize the importance of resolving an ever-growing circuit split, Respondent's principal move is to distinguish the decisions on the other side of the split on their facts. That effort fails on its own terms, but its more basic problem is that it answers the wrong question. The question presented concerns which sovereign's law supplies the rule of decision—a threshold analysis each of those courts resolved prior to, and independent of, any application of the chosen standard to particular allegations. If federal law governs, as those cases held, this case returns to the district court to apply the federal standard in the first instance. That is no reason to deny review.

Respondent's remaining arguments confirm rather than dispel the need for review. Respondent leans on the Louisiana Supreme Court's declaration that *Bufkin* was wrongly decided and that "a domestic insurer may not resort to equitable estoppel under Louisiana law to enforce an arbitration clause in another insurer's policy." BIO.27 (quoting *Police Jury*, 395 So. 3d at 730). Just so—which is why the choice of law is so important in this case. Respondent invokes the McCarran-Ferguson Act, BIO.28-29, 31, but that argument again misses the point, because the Act comes into play only if the Convention does not govern—which depends on the question presented. And Respondent downplays this Court's repeated recognition of the importance of arbitration by inverting the very footnote it cites: *Arthur Andersen* held that the "vague prescription" of a federal policy favoring arbitration "cannot possibly require the disregard of state law *permitting* arbitration by or against nonparties." 556 U.S. 624, 630 n.5 (2009) (emphasis added). Whatever that footnote does, it does not license a state-law rule *forbidding* arbitration to displace a treaty.

The brief in opposition does nothing to blunt the case for review. If anything, it confirms it. Respondent's defense of the judgment below reduces to the proposition that a Louisiana statute prohibiting insurance arbitration supplies the rule of decision for arbitration agreements governed by a federal treaty. That is precisely the rule four courts of appeals reject, and precisely why this Court's intervention is needed — both here and in *Town of Vinton*, No. 25-1383, which presents the identical question and supplied the reasoning that the per curiam below simply adopted. The Court should hold this petition pending its disposition of *Town of Vinton* and then dispose of it consistently with that case.

I. Only this Court can resolve the ever-deepening circuit split.

A. Respondent does not deny the circuit split.

Respondent does not dispute that the First, Second, Fourth, and Ninth Circuits hold that federal common law governs whether a nonsignatory may enforce a Convention arbitration agreement through equitable estoppel. *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 (2d Cir. 1999); *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 373-75 (4th Cir. 2012); and *Setty v. Shrinivas Sugandhalaya LLP*, 3 F.4th 1166, 1168 (9th Cir. 2021). Nor does Respondent dispute that the Fifth Circuit holds that "[s]tate contract law" governs. App.9a. Respondent's section heading asserts that there is no "split in the circuits." BIO.20.

Its argument says nothing of the kind as to the actual question presented here. To the contrary, Respondent embraces the Fifth Circuit's choice-of-law rule and defends it on the merits, insisting that Respondent's claims do not "implicate a uniquely federal interest" and that no "significant conflict" exists "between an identifiable federal policy and the operation of state law." BIO.26.

But the Fifth Circuit's choice-of-law rule applying state law in Convention cases is in direct conflict with holdings of the First, Second, Fourth, and Ninth Circuits. The Seventh Circuit recently deepened that split, which only confirms that this Court's intervention is necessary to resolve the split. *Kim*, 2026 WL 2348464, at *5 (recognizing that "four circuits have held that federal common law provides the rule of equitable estoppel," but joining the Fifth Circuit instead). That alone supports review.

B. Respondent's factual distinctions address application, not the Question Presented.

Instead of acknowledging the split, Respondent instead delves into a case-by-case account of the facts of *InterGen*, *Smith/Enron*, *Aggarao*, and *Setty*, concluding that in each "the plaintiff was basing its action on the existence of" the arbitration agreement. BIO.20-24. That effort misfires.

It is wrong first because the split concerns the antecedent choice of law governing equitable estoppel, not the outcome of any particular case. Each of those courts resolved the governing-law question as a discrete, threshold holding, and only then applied the standard it had selected. *InterGen* held that "federal common law" "govern[s]" the nonsignatory question because the Convention demands "national uniformity," 344 F.3d at 143—and then held that ALSTOM could not compel arbitration on those facts, *id.* at 145-46. *Setty* held that federal substantive law applies because the Convention and its implementing legislation "emphasize the need for uniformity," 3 F.4th at 1168—and then affirmed the denial of arbitration, *id.* at 1169. *Aggarao* likewise applied federal equitable estoppel law and affirmed the district court's use of equitable estoppel on the facts. 675 F.3d at 374. And *Smith/Enron* similarly applied federal law, affirming the district court's finding that equitable estoppel permitted the Enron petitioners to compel arbitration. 198 F.3d at 96-98.

Respondent is also wrong because Respondent's account of the federal equitable-estoppel standard is wrong. Respondent asserts repeatedly that federal equitable estoppel applies "only when" a signatory "must rely upon the terms of the agreement in asserting its claims against a non-signatory." BIO.2, 24, 26 (quoting *GE Energy*, 590 U.S. at 438). But *GE Energy* described one recognized branch of the doctrine; it did not announce an exclusive federal test, and it expressly declined to decide "which body of law governs that determination." *Id.* at 445. The federal doctrine is disjunctive. It applies where a signatory relies on the agreement *or* where the signatory "raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." *Aggarao*, 675 F.3d at 373 (quoting *Brantley*, 424 F.3d at 396); *accord Grigson*, 210 F.3d at 527. *Aggarao* compelled arbitration under that second branch, because the plaintiff's allegations against the signatory and the nonsignatories arose from the same occurrence, were “based on the same facts,” and were “inherently inseparable.” 675 F.3d at 373-74. That is the branch the Insurers invoke, and it is the branch the Fifth Circuit applied in *Bufkin*, where a materially identical complaint “d[id] not differentiate between conduct of foreign and domestic insurers.” 96 F.4th at 731-32.

C. Dismissing the Foreign Insurers neither answers the federal test nor justifies denying review.

Respondent claims it “dismissed the foreign carriers with prejudice” and therefore has not invoked any contract containing a valid arbitration clause at all. BIO.2-3, 26. That is wrong and irrelevant.

It is wrong because the federal test for equitable estoppel looks to what the complaint alleges, not to whom the plaintiff has elected to keep as a defendant. In *Smith/Enron* itself, the plaintiff had not sued EDR and EDRO—the signatories to the operative 1994 agreement—yet the Second Circuit still compelled arbitration at the behest of parties that had not signed an agreement with the plaintiff. 198 F.3d at 97-98. Nothing in the doctrine makes a nonsignatory’s right to compel arbitration contingent on the signatory’s continued presence in the litigation.

It is also self-defeating. On Respondent’s theory, an insured may extinguish a Convention arbitration right by naming the foreign signatory and dismissing it the same day—which is precisely what happened here. BIO.App.1a-4a (motion and order dated November 18, 2021). A rule under which the treaty’s application is governed not by the identity of the parties to the agreement but by a plaintiff's creative pleading maneuver is not a reason to deny review. It is a reason to grant it.

II. Respondent litigates holdings the petition does not challenge.

A. The Contract Allocation Endorsement is not at issue.

Respondent's lead argument is that the Contract Allocation Endorsement created eight separate bilateral contracts, each between Respondent and a single domestic insurer. BIO.1-2, 4-6, 25-26. The Insurers have not sought certiorari on that holding. The question presented assumes it.

That is the entire basis of the equitable estoppel argument, and Respondent never grapples with that argument. Even accepting Respondent's premise that the Policy comprises separate contracts, two of those contracts—with Certain Underwriters at Lloyd's, London, and HDI Global Specialty SE—indisputably are written agreements with foreign parties containing arbitration clauses, and just as indisputably fall within the Convention. The domestic Insurers do not seek to enforce the arbitration clauses in their own contracts. They seek, as nonsignatories, to enforce the arbitration agreements in the foreign Insurers' contracts. *See Bufkin*, 96 F.4th at 730-31 ("If we presume there are ten separate contracts, the signatories to the arbitration agreements subject to the Convention are Bufkin and the foreign insurers."). Whether they may do so turns entirely on which body of law supplies the estoppel rule. Respondent's contract-construction arguments do not touch that question.

B. The service-of-suit endorsements are not at issue.

Respondent devotes the single largest portion of its brief—eleven pages—to arguing that service-of-suit endorsements "supersede" the arbitration provisions. BIO.9-19. That issue is not before the Court, for three independent reasons. *First*, the Fifth Circuit did not decide it in either this case or in *Town of Vinton*. *Second*, the petition does not raise it. *Third*, Respondent cites no court that has held that a service-of-suit clause displaces an arbitration agreement. The Fifth Circuit has held the opposite, construing a policy containing both provisions to treat the service-of-suit clause as a "co-equal forum selection clause" that "could be interpreted consistent with the arbitration clause." *McDermott*, 944 F.2d at 1205. Respondent's contrary reading rests on *City of Rose City v. Nutmeg*—a removal-waiver case that *McDermott* itself distinguished, 944 F.2d at 1206-07 (5th Cir. 1991)—and on the premise that an endorsement announcing that it "changes the policy" must change the arbitration clause in particular. Whatever the merits of that debate, it has nothing to do with whether federal or state law governs equitable estoppel under the Convention.

III. Respondent's arguments against the application of federal estoppel law fail.

A. Respondent's argument proves the Question Presented is outcome-determinative.

Respondent relies on *Police Jury* for the proposition that "a domestic insurer may not resort to equitable estoppel under Louisiana law to enforce an arbitration clause in another insurer's policy in contravention of the positive law prohibiting arbitration in La. R.S. 22:868(A)(2)." BIO.27 (quoting 395 So. 3d at 730). Petitioners agree that is what Louisiana law provides. That is the point. The Fifth Circuit has itself held that these Insurers prevail under federal equitable estoppel principles on materially identical facts, *Bufkin*, 96 F.4th at 730-32, and Respondent insists they lose under Louisiana's rule. Few petitions present so clean a demonstration that the question presented decides the case.

B. The McCarran-Ferguson argument is circular and foreclosed.

Respondent's McCarran-Ferguson argument, BIO.28-29, 31, is circular because it assumes the Convention does not apply—the very issue that equitable estoppel resolves. And it is foreclosed because every court of appeals to address the question has held that the Act does not reach treaties. *3131 Veterans Blvd*, 136 F.4th at 411; *Green Enters.*, 68 F.4th at 667; *CLMS Management Services Limited Partnership v. Amwins Brokerage*, 8 F.4th 1007, 1016 (9th Cir. 2021); *Zurich Insurance PLC v. ESAB Group, Inc.*, 685 F.3d 376, 390-91 (4th Cir. 2012); *Safety Nat'l*, 587 F.3d at 721-25 (en banc). Respondent's own authority acknowledges as much, describing the Convention as "[t]he lone exception to the rule." BIO.28-29 (discussing *McDonnel Grp.*, 923 F.3d at 431-32).

C. Respondent inverts *Arthur Andersen* and *GE Energy* refutes Respondent's argument.

Respondent contends that this Court has backed away from arbitration's importance, pointing to *Arthur Andersen*'s description of the "federal policy favoring arbitration" as a "vague prescription." BIO.30-31 (also citing *Morgan v. Sundance, Inc.*, 596 U.S. 411 (2022)). The *Arthur Andersen* footnote says the opposite of what Respondent needs. Its point was that the federal policy "cannot possibly require the disregard of state law *permitting* arbitration by or against nonparties to the written arbitration agreement." 556 U.S. at 630 n.5 (emphasis added). The Court was declining to let a pro-arbitration policy override a state rule that *allowed* nonparty arbitration. Respondent reads it to authorize a state rule *forbidding* arbitration to override a treaty. In any event, the specific outcome on the issue of arbitrability is irrelevant; the primary issue is whether *Arthur Andersen* determines which sovereign's law supplies the rule of decision under a treaty. It does not.

Arthur Andersen's actual holding is no more helpful to Respondent. It rested on the text of Chapter 1—Section 2's command that arbitration agreements are enforceable "save upon such grounds as exist at law or in equity for the revocation of any contract," and Section 3's reference to issues "referable to arbitration under an agreement in writing." 556 U.S. at 630-31. Neither the Convention nor Chapter 2 contains any comparable reference to state law. The Convention instead provides that an agreement's validity is determined by "the law to which the parties have subjected it" or, failing that, the law of the country where the award was made. Article V(1)(a), 21 U.S.T. at 2520 (New York Convention).

Nor do *Morgan* and *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341 (2011), advance Respondent's cause. BIO.2, 30. *Morgan* held that courts may not fashion arbitration-specific procedural rules—there, a prejudice requirement for waiver. 596 U.S. at 417-18. It says nothing about which sovereign's law supplies the rule of decision under a treaty. And *Concepcion* invalidated a state anti-arbitration rule as preempted, 563 U.S. at 341—an odd authority for a party defending an outlier state rule.

Above all, the dispositive answer to Respondent's *Arthur Andersen* argument is *GE Energy Power Conversion France SAS, Corp. v. Outokumpo Stainless USA, LLC*, 590 U.S. 432 (2020). Eleven years after *Arthur Andersen*, this Court unanimously held that the Convention does not conflict with the enforcement of arbitration agreements by nonsignatories under equitable estoppel doctrines and expressly reserved "which body of law governs that determination." 590 U.S. at 445. Had *Arthur Andersen* already settled the question, there would have been nothing left to reserve. Four courts of appeals have since supplied one answer and the Fifth and Seventh Circuits another. Only this Court can supply the right one.

IV. The Petition should be held in light of *Town Of Vinton.*

The petition asks this Court to hold this case pending its disposition of *Town of Vinton*, No. 25-1383, and then to dispose of it accordingly. Pet.30-36. Respondent's brief never mentions that petition, never disputes that it presents the identical question, and never explains why the two cases should be resolved differently.

Nor does Respondent identify any vehicle problem, any jurisdictional obstacle, or any antecedent factual dispute that must be resolved before the legal question can be reached. The question was pressed below, passed upon below, and outcome-determinative below. If this Court grants review in *Town of Vinton* and holds that federal common law governs the equitable estoppel inquiry under the Convention, the judgment in this case cannot stand.

CONCLUSION

The Court should hold this petition pending the disposition of *Town of Vinton*, No. 25-1383, and then dispose of this petition consistently with its ruling in that case.

Respectfully submitted.

Raffi Melkonian
Counsel of Record
Thomas C. Wright
Eric B. Boettcher
Landon J. Francois
WRIGHT CLOSE BARGER
& GUZMAN, LLP

700 Louisiana Street, Suite 3000
Houston, TX 77002
(713) 572-4321
melkonian@wcbglaw.com
Counsel for Petitioners

August 26, 2026