No. 26-575

IN THE

Supreme Court of the United States

WEBUILD S.P.A.,

Petitioner,

v.

SOCIEDAD CONCESIONARIA
METROPOLITANA DE SALUD S.A.,

Respondent.

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

BRIEF OF *AMICUS CURIAE* PROFESSOR GEORGE A. BERMANN IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii
INTEREST OF *AMICUS CURIAE* 1
SUMMARY OF ARGUMENT 2
ARGUMENT 4
THE DECISION BELOW DEEPENS A SPLIT AMONG THE LOWER COURTS OVER THE AVAILABILITY OF *QUASI-IN-REM* JURISDICTION FOR PURPOSES OF ENFORCING FOREIGN ARBITRAL AWARDS. 4
THIS DIVISION AMONG THE LOWER COURTS UNDERMINES THE UNIFORM ENFORCEMENT OF ARBITRAL AWARDS AND THREATENS U.S. COMPLIANCE WITH THE NEW YORK CONVENTION. 11
CONCLUSION 13

TABLE OF AUTHORITIES

Cases

Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory", 283 F.3d 208 (4th Cir. 2002)..... 2, 6, 10

Braxton v. United States, 500 U.S. 344 (1991) 11

Cerner Middle E. Ltd. v. iCapital, LLC, 939 F.3d 1016 (9th Cir. 2019).....3, 7, 8, 10

CME Media Enters. B.V. v. Zelezny, No. 01 Civ. 1733 (DC), 2001 WL 1035138 (S.D.N.Y. Sept. 10, 2001)..... 7, 10

Frontera Res. Azer. Corp. v. State Oil Co. of the Azer. Republic, 582 F.3d 393 (2d Cir. 2009) 3, 7, 10

Layne & Bowler Corp. v. W. Well Works, 261 U.S. 387 (1923) 11

Scherk v. Alberto-Culver Co., 417 U.S. 506 (1974) .. 12

Shaffer v. Heitner, 433 U.S. 186 (1977) 1, 2, 5

Sociedad Concesionaria Metropolitana de Salud S.A. v. Webuild S.p.A., 177 F.4th 231 (3d Cir. 2026)..... 3, 8, 9

Sociedad Concesionaria Metropolitana de Salud S.A. v. Webuild S.p.A., No. CV 23-1175-CFC, 2024 WL 4333144 (D. Del. Sept. 27, 2024)..... 10

Southland Corp. v. Keating, 465 U.S. 1 (1984).. 11, 12

Statutes

9 U.S.C. §§ 1–16 12

Other Authorities

Brief of Amicus Curiae Professor George A. Bermann in Support of Petitioners, *CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.*, Nos. 23-1201, 24-17 (U.S. Dec. 11, 2024) 4

Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 ..... 3, 12

Rules

Sup. Ct. R. 10(a) 11

Sup. Ct. R. 37. 1

INTEREST OF *AMICUS CURIAE*[1]

Pursuant to Supreme Court Rule 37, Professor George A. Bermann respectfully submits this brief *amicus curiae* in support of Petitioner Webuild S.p.A. Sup. Ct. R. 37.

Professor Bermann is the Jean Monnet Professor of European Union Law, Walter Gellhorn Professor of Law, and Director of the Center for International Commercial and Investment Law at Columbia Law School, where he has been a faculty member since 1975. He is also an active international arbitrator in commercial and investment disputes and a co-author of the *UNCITRAL Guide to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. He also served as Chief Reporter for the American Law Institute's ("ALI") *Restatement of the U.S. Law of International Commercial and Investor-State Arbitration* ("Restatement").

Professor Bermann, as a scholar and practitioner, has a long-standing interest in the proper application of *Shaffer v. Heitner*, 433 U.S. 186 (1977), and in ensuring that the New York Convention, as well as the constitutional requirements for *quasi-in-rem* jurisdiction, are properly understood.

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[1] Pursuant to Rule 37.6, no counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus* or its counsel has made a monetary contribution to the preparation or submission of this brief. This brief is filed more than ten days prior to the deadline and therefore suffices in itself to provide notice to counsel of record for all parties as required by Rule 37.2.

SUMMARY OF ARGUMENT

This petition should be granted because the decision below deepens a split among the lower courts over the jurisdictional requirements for enforcing foreign arbitral awards, which is a question that only this Court can settle.

The decision below amplifies the split on whether minimum contacts are required for the exercise of *quasi-in-rem* jurisdiction to enforce foreign arbitral awards. That conflict arises from this Court's decision in *Shaffer v. Heitner*, 433 U.S. 186 (1977). *Shaffer* held that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in International Shoe and its progeny." *Id.* at 212. But, in a highly important footnote, the Court suggested the possibility that minimum contacts may not be required to enforce a debt against the defendant's property in the forum "[o]nce it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff." *Id.* at 210 n.36.

Lower courts are split on what *Shaffer* requires in actions to enforce foreign arbitral awards. The Fourth Circuit has held that *Shaffer* "eliminated all doubt that the minimum contacts standard in *International Shoe* governs *in rem* and *quasi in rem* actions as well as *in personam* actions," including in enforcement actions. *Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory"*, 283 F.3d 208, 213 (4th Cir. 2002). Meanwhile, the Second and Ninth Circuits have held that there is no need under *Shaffer* to have minimum contacts in order to exercise *quasi-in-rem* jurisdiction over a named party to an arbitration. *Fron-*

tera Res. Azer. Corp. v. State Oil Co. of the Azer. Republic, 582 F.3d 393, 396 (2d Cir. 2009); *Cerner Middle E. Ltd. v. iCapital, LLC*, 939 F.3d 1016, 1021–22 (9th Cir. 2019).

Now the Third Circuit has compounded the existing split. There is no dispute in this case that an arbitral tribunal with valid jurisdiction rendered an award against the respondent in the arbitration. *Sociedad Concesionaria Metropolitana de Salud S.A. v. Webuild S.p.A.*, 177 F.4th 231, 236 (3d Cir. 2026). But the claimant subsequently sought to enforce the award not against the respondent but rather against a third party who they alleged was a successor to the liability. *Id.* at 237. In these novel circumstances, the Third Circuit held that *Shaffer* permits an enforcing district court to exercise *quasi-in-rem* jurisdiction without minimum contacts over a *non-party* to the arbitration so long as the district court determines for itself in the first instance that the non-party is liable for the award. *Sociedad Concesionaria Metropolitana de Salud S.A. v. Webuild S.p.A.*, 177 F.4th 231, 250–51 (3d Cir. 2026).

This growing disagreement demonstrates that the lower courts require guidance, and this Court should resolve this important conflict. The growing split on *Shaffer* undermines this nation's pro-arbitration policy by imposing inconsistent jurisdictional requirements for the recognition and enforcement of arbitral awards. It also threatens U.S. compliance with international treaty obligations by imposing jurisdictional barriers to recognition and enforcement, contrary to

the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 (the "New York Convention").

The scope of this amicus brief is limited. Professor Bermann at this stage does not opine on the correctness of any interpretation of *Shaffer*, as he has elsewhere, including as *amicus curiae* before this Court. *See, e.g.*, Brief of Amicus Curiae Professor George A. Bermann in Support of Petitioners, *CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.*, Nos. 23-1201, 24-17 (U.S. Dec. 11, 2024). Instead, Professor Bermann submits only that the split on this issue is growing and important and thus warrants the Court's resolution.

ARGUMENT

THE DECISION BELOW DEEPENS A SPLIT AMONG THE LOWER COURTS OVER THE AVAILABILITY OF *QUASI-IN-REM* JURISDICTION FOR PURPOSES OF ENFORCING FOREIGN ARBITRAL AWARDS.

Professor Bermann explained in 2024 that "[c]ircuit courts have adopted inconsistent positions on the need for minimum contacts in actions to enforce awards against foreign award debtors under the New York Convention." Brief of Amicus Curiae Professor George A. Bermann in Support of Petitioners, *CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.*, Nos. 23-1201, 24-17, 2024 WL 5119390, at *21 (U.S. Dec. 11, 2024). The decision below compounds that inconsistency in the context of *quasi-in-rem* jurisdiction. It shows that lower courts, lacking guidance, are likely to continue to diverge on this issue.

The conflict among the lower courts arises from their competing interpretations of the Court's decision in *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977). The split rests on the meaning of footnote 36. *Shaffer*, 433 U.S. at 210 n.36.

In *Shaffer*, a shareholder brought a derivative suit against the directors of the Greyhound Corporation in Delaware, based solely on the directors' ownership of stock in Greyhound, whose shares Delaware law deemed to be located in Delaware, for alleged violations in Oregon. *Id.* at 189–92. The Court held that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in International Shoe and its progeny," including assertions based on a defendant's property. *Id.* at 212. It therefore held that the Delaware court lacked personal jurisdiction because the directors did not have minimum contacts with the forum and their stock holding was "completely unrelated to the plaintiff's cause of action." *Id.* at 209. *Shaffer*, however, raised the possibility in footnote 36 that these requirements may not apply in actions to enforce previous judgments: "Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter." *Id.* at 210 n.36.

Courts have split over whether footnote 36 of *Shaffer* obviates the minimum contacts requirement for the

exercise of *quasi-in-rem* jurisdiction to recognize and enforce foreign arbitral awards.

On one side, the Fourth Circuit has concluded that *Shaffer* "eliminated all doubt that the minimum contacts standard in *International Shoe* governs *in rem* and *quasi in rem* actions as well as *in personam* actions." *Base Metal Trading*, 283 F.3d at 213.

In *Base Metal Trading*, the plaintiff sought to recognize and enforce a foreign arbitral award against the defendant in Maryland solely on the basis that a large shipment of aluminum alleged to belong to the defendant had been unloaded in Baltimore Harbor. *Id.* at 214. The district court dismissed the plaintiff's suit for lack of personal jurisdiction. *Id.* at 212. The Fourth Circuit affirmed, holding that "sufficient minimum contacts are simply not present" because "the aluminum bears no relationship to the arbitration award." *Id.* at 214. It concluded that "when the property which serves as the basis for jurisdiction is completely unrelated to the plaintiff's cause of action, the presence of property alone will not support jurisdiction." *Id.* at 213.

On the other side, by contrast, the Second and Ninth Circuits have held that forum property, unrelated to the dispute and without minimum contacts, suffices to establish *quasi-in-rem* jurisdiction over a named party to the arbitration.

The Second Circuit has held that the exercise of *quasi-in-rem* jurisdiction without minimum contacts "in no way conflicted with *Shaffer*." *Frontera*, 582 F.3d at 396–398. In *Frontera*, the plaintiff sought to enforce

a Swedish arbitral award in New York. 582 F.3d 393, 395 (2d Cir. 2009). The district court ultimately dismissed for lack of jurisdiction but opined that "in the absence of minimum contacts, quasi in rem jurisdiction may be exercised to attach property to collect a debt." *Id.* at 396.

The Second Circuit vacated on other grounds but affirmed that the district court's view of *quasi-in-rem* jurisdiction was consistent with *Shaffer*. *Id.* at 398. It explained that although footnote 36 "indicated, in dicta, that a court might not need jurisdiction over a respondent's person when enforcing a debt . . . it nonetheless assumed that such a court would still have jurisdiction over the respondent's property." *Id.* District courts in the Second Circuit have taken the same approach. *See, e.g.*, *CME Media Enters. B.V. v. Zelezny*, No. 01 Civ. 1733 (DC), 2001 WL 1035138, at *3 (S.D.N.Y. Sept. 10, 2001) ("Minimum contacts are not required because an arbitration panel . . . has already adjudicated CME's claims against [the defendant] and determined that he is a debtor of [the plaintiff]").

The Ninth Circuit has similarly held that "*[q]uasi in rem jurisdiction* exists when a plaintiff seeks to collect on an existing judgment by executing on the defendant's in-state property." *Cerner*, 939 F.3d at 1021–22. In *Cerner*, the plaintiff sought to recognize and enforce an ICC arbitration award rendered in France by attaching funds in an Oregon bank account. *Id.* at 1019–21. The district court dismissed the action on the basis that the defendant's jurisdictional objections

to the arbitral award had not been adjudicated. *Id.* at 1022. While that dismissal was being appealed, the Court of Appeal of Paris confirmed the award and held the defendant was subject to the arbitration. *Id.* at 1020.

On appeal, the Ninth Circuit reversed and held that the plaintiff had established the bases for *quasi-in-rem* jurisdiction. Those bases did not include minimum contacts but comprised only "that (1) a court of competent jurisdiction rendered a judgment against [the defendant], and (2) [the defendant] owns property in the forum state." *Id.* at 1022. The Paris Court of Appeal's judgment supplied the first prong as a "court of competent jurisdiction ha[d] determined that [defendant] was properly within the jurisdiction of the arbitration." *Id.* at 1028–29.

In the decision below, the Third Circuit broke new ground in holding that property unrelated to the dispute, standing alone and without minimum contacts, can support jurisdiction against a *non-party* to the arbitration, so long as the enforcing district court determines for itself that the non-party is liable for the award. *Sociedad Concesionaria Metropolitana de Salud S.A.*, 177 F.4th at 250–51.

In this case, Sociedad Concesionaria Metropolitana de Salud S.A. ("SCMS") obtained a Chilean arbitral award against an Italian company, Astaldi S.p.A. ("Astaldi"). *Id.* at 236. It then sought to recognize and enforce the award against another Italian company, Webuild S.p.A. ("Webuild"), arguing that Webuild had

assumed Astaldi's liabilities during restructuring proceedings in Italy. *Id.* at 237. SCMS launched these enforcement proceedings in Delaware on the theory that Webuild's ownership of shares in a U.S. subsidiary provided sufficient basis for personal jurisdiction. *Id.* at 237.

After the district court dismissed SCMS's petition to enforce the award for lack of jurisdiction, the panel below vacated and remanded. *Id.* at 245, 250–51. The Third Circuit held that "[w]ithout regard to minimum contacts . . . a court can exercise attachment jurisdiction based on the mere presence of . . . an arbitral-award debtor's property, and the property does not need any relation to the underlying cause of action." *Id.* at 249–50. It then held that the rule could extend to Webuild because, under *Shaffer*, "[i]f the District Court [below] determines that Webuild is Astaldi's successor in interest, then a 'court of competent jurisdiction' will have determined that 'the defendant is a debtor of the plaintiff.'" *Id.* at 250–51. The district court could thus exercise *quasi-in-rem* jurisdiction based on unrelated property over a non-party to an arbitration if it determined for itself that the non-party was liable for the award.

The decision below deepens the existing circuit split. The present enforcement action would be dismissed in the Fourth Circuit because, as the district court found, Webuild lacked minimum contacts with Delaware and its forum property was unrelated to the arbitration. *See Sociedad Concesionaria Metropolitana de Salud S.A. v. Webuild S.p.A.*, No. CV 23-1175-

CFC, 2024 WL 4333144, at *1–2 (D. Del. Sept. 27, 2024), *vacated and remanded*, 177 F.4th 231 (3d Cir. 2026); *Base Metal Trading*, 283 F.3d at 213 ("[W]hen the property which serves as the basis for jurisdiction is completely unrelated to the plaintiff's cause of action, the presence of property alone will not support jurisdiction."). Nor would the action necessarily proceed under the approach taken by the Ninth Circuit. As explained above, the Ninth Circuit's rationale for granting *quasi-in-rem* jurisdiction relies on the existence of a prior and separate judgment of liability for the award. *Cerner*, 939 F.3d at 1028–29. The same is true of cases in the Second Circuit. *See, e.g.*, *CME Media Enters.*, 2001 WL 1035138, at *3 ("Quasi in rem jurisdiction is used primarily for two purposes: to secure a pre-existing claim in the designated property or to apply property of a defendant towards satisfaction of a judgment previously obtained against the defendant."). These cases nowhere indicate that an enforcing court can make that determination for itself, including as to a non-party to the arbitration.

As the foregoing shows, the growing split on the requirements of *quasi-in-rem* jurisdiction stems from *Shaffer* and the meaning of its footnote 36. *See, e.g.*, *Base Metal Trading*, 283 F.3d at 213 ("[*Shaffer*] eliminated all doubt that the minimum contacts standard in *International Shoe* governs *in rem* and *quasi in rem* actions."); *Frontera*, 582 F.3d at 398 ("[T]he district court's approach in no way conflicted with *Shaffer*" in considering, in the absence of minimum contacts, "whether it could assert jurisdiction over [defendant's] property.").

The Court can resolve the conflict by clarifying whether *Shaffer*, properly understood, requires minimum contacts for *quasi-in-rem* jurisdiction in actions to enforce foreign arbitral awards.

THIS DIVISION AMONG THE LOWER COURTS UNDERMINES THE UNIFORM ENFORCEMENT OF ARBITRAL AWARDS AND THREATENS U.S. COMPLIANCE WITH THE NEW YORK CONVENTION.

The requirements of *quasi-in-rem* jurisdiction for enforcement of foreign arbitral awards merit the Court's review because they present an important question of federal law on which the lower courts are divided. Sup. Ct. R. 10(a); *Layne & Bowler Corp. v. W. Well Works, Inc.*, 261 U.S. 387, 393 (1923) (stating that this Court will grant certiorari for questions "the settlement of which is of importance to the public"). As a threshold matter, "conflicts among the United States courts of appeals" on recurring questions of federal law are "[a] principal purpose" of the Court's certiorari jurisdiction. *Braxton v. United States*, 500 U.S. 344, 347 (1991). Such conflict and inconsistency exist on this issue, as described above, and show no sign of abating.

In addition, two factors make this a particularly important circuit split. First, the split undermines this nation's pro-arbitration policy by admitting nonuniform requirements for the enforcement of arbitral awards. In enacting the Federal Arbitration Act, 9 U.S.C. §§ 1–16 ("FAA"), "Congress declared a national policy favoring arbitration." *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984). That policy is thwarted by uneven requirements for enforcement. *See id.* at 15

(stating that regional variation in the enforceability of arbitral agreements would "encourage and reward forum shopping."). It is contrary to legislative intent. *See id.* ("We are unwilling to attribute to Congress the intent . . . to create a right [in the FAA] to enforce an arbitration contract and yet make the right dependent for its enforcement on the particular forum in which it is asserted."). The division on the requirements of *quasi-in-rem* jurisdiction admits precisely such nonuniformity and undermines national policy. Whatever the right answer, uniformity is critical.

Second, the division threatens U.S. compliance with international treaty obligations. The confirmation and enforcement of international arbitral awards are governed by the New York Convention, which imposes an obligation on the United States to "recognize arbitral awards as binding and enforce them" and to avoid the imposition of "onerous conditions" or barriers on enforcement. New York Convention art. III. This Court has described the Convention's aim as to "unify the standards by which . . . awards are enforced in the signatory countries." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974). A patchwork of jurisdictional rules, under which the same kind of foreign arbitral award is enforceable in Wilmington but not in Baltimore, is the opposite of the uniform standards required by the New York Convention. Without guidance from this Court, the requirements for enforcing a foreign award against property in the forum will continue to depend on where the creditor files.

This Court can and should resolve the conflict between the circuits on the requirements of *quasi-in-rem* jurisdiction under *Shaffer*. Its guidance would safeguard this nation's pro-arbitration policy and help ensure its compliance with the New York Convention.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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