No. 18A942

In the Supreme Court of the United States

REPUBLIC OF HUNGARY, ET AL,

Applicants,

v.

ROSALIE SIMON, ET AL.,
INDIVIDUALLY AND FOR ALL OTHERS SIMILARLY SITUATED,

Respondents.

On Application to Stay or Recall the Mandate of the U.S. Court of Appeals for the District of Columbia Circuit

REPLY IN SUPPORT OF APPLICATION FOR STAY OF PROCEEDINGS PENDING THE FILING AND DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

Konrad L. Cailteux
Gregory Silbert
Counsel of Record
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8846
konrad.cailteux@weil.com
gregory.silbert@weil.com

Counsel for Applicants

Respondents do not seriously contest that this case presents strong grounds for granting a writ of certiorari. Respondents note that this Court does not always resolve every circuit split. Opp. Br. 12. But the international comity issue presented here is undeniably important, and should not languish in uncertainty. It is important not just to Hungary and other foreign sovereigns but also to the United States' own foreign policy interests, as shown by the government's amicus brief supporting en banc review in the D.C. Circuit in *Philipp*.[1] The issue will not resolve itself in the lower courts. And, with four published appellate opinions already on the books, no further percolation is needed in the courts of appeals. Nor do Respondents propose any reason to doubt that this case is an appropriate vehicle to decide the issue.[2]

Respondents' opposition to the stay application mostly focuses on irreparable harm. They claim harm is lacking because Hungary could assert its remaining jurisdictional defenses in the district court and, according to Respondents, "air and protect fully any comity concerns it may be entitled to under the [FSIA]." Opp. Br. 4.

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[1] Like the panel majority, Respondents note that the United States' amicus brief in *Simon* "favors the speedy and just resolution of Holocaust claims such as this." Opp. Br. 10, 11 (quoting *Simon IV*, 911 F.3d at 1188-89). But—again like the panel majority—Respondents neglect to mention that "the government seeks to further that interest by encouraging parties 'to resolve matters of Holocaust-era restitution and compensation through dialogue, negotiation, and cooperation,' not by sweeping foreign-centered cases into United States courts." *Simon IV*, 911 F.3d at 1195 (Katsas, J., dissenting) (quoting U.S. Amicus Br. 10).

[2] Contrary to Respondents' contentions (Opp. Br. 11), the D.C. Circuit's forum non conveniens ruling is certworthy in its own right. Among other grounds for review, it conflicts with the Seventh Circuit's forum non conveniens dismissal on identical facts in *Fischer*, and with the Second Circuit's en banc decision in *Iragorri v. United Techs. Corp.*, 274 F.3d 65, 71 (2d Cir. 2001) (en banc). It is also incorrect, as the dissenting opinion persuasively shows.

But the whole point of Hungary's forthcoming certiorari petition is that this case presents comity concerns that do *not* arise under the FSIA. In any event, Respondents go on to state that the Hungarian national railway would "merely be a spectator" to those jurisdictional arguments because, in Respondents' view at least, the D.C. Circuit has already "held . . . that jurisdiction over the railroad has been established." Opp. Br. 7-8. So Respondents do expect to proceed to litigation on the merits against at least one of the sovereign defendants.[3]

Respondents contend that "if Hungary loses on the merits, there will have been no legally cognizable injury to international comity." Opp. Br. 7. But moving forward with this litigation will be an injury to comity no matter what, just as comity would be harmed if a foreign court entertained equivalent claims against the United States. Even if Respondents are ultimately proved correct that it is an injury to comity that the FSIA requires, the injury is not lessened.

It makes no difference that Hungary did not seek further review after *Simon II*. *Cf.* Opp. Br. 8-9. The D.C. Circuit there remanded for the district court to consider the comity and forum non conveniens defenses that had been dispositive in the Seventh Circuit—defenses the district court found to be meritorious in *Simon III*. The

[3] Hungary did not forfeit its irreparable harm arguments, as Respondents contend. *See* Opp. Br. 5. The D.C. Circuit applies a different standard for staying its mandate than this Court does, and does not require irreparable harm. *See Judicial Watch, Inc. v. Nat'l Energy Policy Dev. Grp.*, No. 02-5355, 2003 WL 22319584, at *1 (D.C. Cir. Sept. 30, 2003) (movant "must show that the 'petition would present a substantial question and that there is good cause for a stay.'") (Edwards, J., concurring) (citation omitted); *see also* D.C. Cir. R. 41(a)(2) (movant must provide "facts showing good cause for the relief sought"). In any event, this is an original application made in this Court, not an appeal from the D.C. Circuit's denial of the stay motion there.

D.C. Circuit's subsequent reversal in *Simon IV* conflicts with the *Abelesz/Fischer* decisions in the Seventh Circuit and warrants this Court's review.

The fact that four of the fourteen original plaintiffs have become U.S. citizens does not change the foreign complexion of this case. *Cf.* Opp. Br. 1 n.1, 6. As in *Kiobel*, these plaintiffs were foreign nationals when they sustained their injuries and migrated to the United States some time afterward. Most of the named plaintiffs here still reside outside the United States. And all the named plaintiffs together seek to represent a worldwide class of current and former Hungarian nationals. Whether these facts should be described as "foreign-cubed" is a semantic dispute. The underlying substantive issue remains: "This case is 'localized' in Hungary; it involves the taking of Hungarians' property by other Hungarians in Hungary. In addition, claims arising out of the Hungarian Holocaust are plainly a matter of historical and political significance to Hungary." *Simon IV*, 911 F.3d at 1194 (Katsas, J., dissenting).

Even if the FSIA gives a U.S. court jurisdiction over these claims, the court should not decide them—just as a foreign court should not order the United States to pay reparations for slavery or other historic injustices committed on U.S. soil. The question of which nation's courts should hear the claims does not come down to how bad the conduct was. Let's not mince words: The conduct giving rise to Plaintiffs' claims was utterly reprehensible. Even so, providing monetary relief now, seventy-five years later, to a worldwide class of victims and their descendants implicates

strong Hungarian interests.[4] This does not mean that victims become "wrongdoers for seeking justice." Opp. Br. 10 n.4. It simply recognizes the truth that the questions raised by this litigation are profoundly important to Hungary and its people. And they are much more important to Hungary than they are to the United States.

In the United States today, we continue to debate whether our government should pay reparations to the descendants of slaves. But we all assume that *our government* will make the decision. If a foreign court, applying its own domestic law, heard a reparations case against the United States, no one here would seriously question the injury to comity. The Court should not indulge the fiction that there will be no injury to comity if a U.S. court hears these claims against Hungary.

[4] Respondents suggest that the long time that has elapsed since they suffered their injuries is a reason to deny Hungary's stay application. *See* Opp. Br. 2. "But," as the Seventh Circuit observed, "plaintiffs are pursuing their claims *now*, more than 65 years after the expropriations took place and after Hungary has had more than 20 years of government not dominated by the Soviet Union." *Abelesz v. Magyar Nemzeti Bank*, 692 F.3d 661, 681 (7th Cir. 2012). And Plaintiffs choice to sue first in the United States, without pursuing Hungarian remedies, raises comity issues that must be addressed before the case goes forward.

CONCLUSION

For the foregoing reasons, this Court should stay further proceedings in this case pending the disposition of Hungary's certiorari petition and, if a writ of certiorari is granted, pending this Court's decision on the merits.

Respectfully submitted,

/s/ Gregory Silbert
Gregory Silbert
Konrad L. Cailteux
Counsel of Record
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8846
gregory.silbert@weil.com
Attorneys for Applicants