

IN THE SUPREME COURT OF THE UNITED STATES

No. 23-867

REPUBLIC OF HUNGARY, ET AL., PETITIONERS

v.

ROSALIE SIMON, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MOTION OF THE UNITED STATES
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 21 and 28 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae and for divided argument, and respectfully requests that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae supporting petitioners. Petitioners have consented to this motion and agreed to cede ten minutes of their argument time to the United States. Accordingly, if this motion were granted, the argument time would be divided as follows: 20 minutes for petitioners, 10 minutes for the United States, and 30 minutes for respondents.

This case presents substantive and procedural questions about the expropriation exception to foreign sovereign immunity under the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1441(d), 1602 et seq. That exception provides that a foreign state (including its agencies or instrumentalities) is not immune from the jurisdiction of U.S. courts for certain civil lawsuits over expropriated property if “that property or any property exchanged for such property” has a specified connection to certain commercial activity in the United States. 28 U.S.C. 1605(a)(3). The court of appeals held that if a foreign state sells expropriated property and deposits the proceeds in its general treasury, the entirety of the treasury qualifies as “property exchanged for [the expropriated] property” within the meaning of the FSIA. Ibid. The court further held that a defendant sovereign bears the ultimate burden to prove that an exception to sovereign immunity does not apply, and that a court may rely on the plaintiff’s well-pleaded allegations instead of resolving contested facts underlying the claimed basis for jurisdiction near the outset of a case.

The United States has a substantial interest in the resolution of those issues because the exercise of jurisdiction by United States courts in civil suits against other sovereigns has implications for the foreign relations of the United States and the reciprocal treatment of the United States in foreign courts. The United States has filed a brief as *amicus curiae* in support of

petitioners, and previously filed amicus briefs in support of petitioners at an earlier stage of this litigation in this Court, including at the Court's invitation. See No. 18-1447.

The United States has previously presented oral argument as amicus curiae in cases concerning the interpretation and application of the FSIA, including at an earlier stage of this case. Republic of Hungary v. Simon, 592 U.S. 207 (2021) (per curiam) (No. 18-1447); e.g., Federal Republic of Germany v. Philipp, 592 U.S. 169 (2021); Opati v. Republic of Sudan, 590 U.S. 418 (2020); Republic of Sudan v. Harrison, 587 U.S. 1 (2019); Rubin v. Islamic Republic of Iran, 583 U.S. 202 (2018); Bolivarian Republic of Venezuela v. Helmerich & Payne International Drilling Co., 581 U.S. 170 (2017); OBB Personenverkehr AG v. Sachs, 577 U.S. 27 (2015); Republic of Argentina v. NML Capital, Ltd., 573 U.S. 134 (2014). The participation of the United States in the oral argument is therefore likely to be of material assistance to the Court.

Respectfully submitted.

BRIAN H. FLETCHER
Acting Solicitor General*
Counsel of Record

OCTOBER 2024

* The Solicitor General is recused in this case.