No. 24-601

In the Supreme Court of the United States

THE DOE RUN RESOURCES CORPORATION, A NEW YORK CORPORATION, ET AL.,

Petitioners,

v.

SR. KATE REID, ET AL.,

Respondents.

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

BRIEF OF STATE OF MISSOURI AND 13 OTHER STATES AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI[1]

The States' interest in this petition is, ironically, their lack of interest in the underlying case. This case involves thousands of plaintiffs from Peru, arguing about injuries allegedly incurred in Peru, from conduct allegedly performed in Peru by a Peruvian corporation subject to the laws of Peru. And yet those plaintiffs decided to sue in Missouri, thousands of miles away from where all the relevant acts allegedly took place. The government of Peru has formally objected to Missouri courts hearing the case. Yet the district court and Eighth Circuit concluded that venue was proper in Missouri in part based on its determination that Missouri has an interest in this suit being heard in Missouri. Pet. App. 85a.

The State of Missouri disagrees. On behalf of the State, the Attorney General of Missouri files this brief to exercise his authority to assert "the rights and interests of the state," Mo. Rev. Stat. § 27.060, and inform this Court that the State lacks any substantial interest in this case proceeding in Missouri rather than in some other venue. To the contrary, this case on net harms the interests of the State, and other States similarly would not want these kinds of suits in their federal or state courts. Missouri and the 13 other amici States have a strong interest in protecting their court systems and economies from the negative effects of the Eighth Circuit's decision. Amici do not "pretend[ ] to be" and have no desire to become "the

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[1] Under Rule 37, counsel for *amici* provided 10 days of notice to all counsel of record of the intent to file this amicus brief.

custos morum of the whole world." *United States v. The La Jeune Eugenie*, 26 F. Cas. 832, 847 (No. 15,551) (C.C. Mass. 1822).

SUMMARY OF ARGUMENT

"It is a basic premise of our legal system that, in general, 'United States law governs domestically but does not rule the world.'" *RJR Nabisco v. Eur. Cmty.*, 579 U.S. 325, 335 (2016) (quoting *Microsoft Corp. v. AT & T Corp.*, 550 U.S. 437, 454 (2007)). The same goes for the legal systems in Missouri and other States. The Eighth Circuit's decisions opens up courts in Missouri to foreign suits based nothing more than "general corporate activity." *Nestlé USA, Inc. v. Doe*, 593 U.S. 628, 634 (2021).

The decision is not only wrong under this Court's precedent in *Nestlé*, but it also hurts Missouri in several ways. First, it will clog Missouri's court system with claims that the State has no interest in resolving. Second, it will harm Missouri's economy by driving away businesses that are now exposed to massive liability based on tenuous foreign connections. And third, it weakens Missouri's relationship with Peru and other foreign nations who will now fear that courts in Missouri will interfere with their sovereignty.

ARGUMENT

I. Missouri's interest in providing a forum for the Respondents' claim is *de minimis*.

Even if Missouri's tort law could apply in Peru, to the independent actions of a Peruvian subsidiary, and for alleged harms to Peruvian citizens, Missouri has at most a *de minimis* interest in providing a forum for that dispute. When assessing whether a dispute should be heard domestically instead of in a foreign court, courts assess the relative interests of the jurisdictions. *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1238 (11th Cir. 2004). Where, as here, the plaintiffs complain about injuries occurring in a foreign nation from acts allegedly undertaken in that foreign nation, U.S. courts regularly conclude that the foreign sovereign has the stronger interest because of the "presumption against extraterritorial application of U.S. law." *Mujica v. AirScan Inc.*, 771 F.3d 580, 605 (9th Cir. 2014) ("Not surprisingly, U.S. courts have afforded far less weight, for comity purposes, to U.S. or state interests when the activity at issue occurred abroad."). Other courts have applied this rule to determine that actions should be heard in Peru. *E.g.*, *Torres v. S. Peru Copper Corp.*, 965 F. Supp. 899, 909 (S.D. Tex. 1996) (dismissing action where the "activity and the alleged harm occurred entirely in Peru [and] Plaintiffs are all residents of Peru"), *aff'd*, 113 F.3d 540 (5th Cir. 1997).

The Respondents have not overcome the strong presumption against bringing a suit in Missouri over the operation of a foreign industrial facility allegedly causing foreign injuries. When an activity "occurred exclusively within the territory of a foreign state and

involved solely foreign victims," plaintiffs bear an especially high burden. *Mujica*, 771 F.3d at 611. Regardless of the interests of the United States or Peru, Missouri on net simply has no substantial interest in this case being heard in Missouri courts.

For starters, Missouri has at best only a tenuous interest in this litigation proceeding in Missouri. The allegedly tortious conduct took place in a "remote village . . . located high in the Andes mountains of Peru." Pet. App. 3a. The company running the metallurgical complex was a Peruvian company because, "[u]nder Peruvian law, only a Peruvian company could purchase" the facility. *Id.* All the alleged victims are "Peruvian citizens." *Id.* at 4a. And although Missouri takes its own environmental laws very seriously, those laws do not apply in Peru. Instead, corporate conduct in Peru is governed by "Peruvian environmental protection laws." *Id.* at 20a.

The only "interest" of Missouri identified by the district court is its generalized "interest in the conduct of its corporate citizens abroad." Pet. App. 85a. But that interest is at most "*de minimis*" where, as here, the allegedly tortious conduct occurred in a foreign country against foreign citizens. *Saleh v. Titan Corp.*, 580 F.3d 1, 12 (D.C. Cir. 2009). A state's "general interest in good corporate behavior . . . should not be overstated." *Mujica*, 771 F.3d at 610. At the very least, Missouri has less interest than does Peru, which has formally objected to this case proceeding in Missouri courts.

II. The Eighth Circuit's decision risks exposing States to a flood of foreign claims, hurting States' economies, and damaging States' relations with foreign nations.

Not only does this case fail to advance Missouri's interests; it affirmatively undermines them. For three reasons, allowing this case to proceed in Missouri courts would harm the State.

A. Missouri's already overworked courts will be clogged with thousands of foreign claims.

First, burdening Missouri courts with thousands of claims unrelated to the State delays justice for Missourians. The same would be true of any other State. This issue involves around 2,400 individual plaintiffs who are not residents of Missouri. It is not being tried as a class action. Instead, it could require as many as hundreds or thousands of trials to assess individual damages. These trials will require even more judicial resources than normal because of the need to bring evidence and witnesses across the world from Peru. This Court need only look at the record in this case to see how foreign cases can devour judicial resources and cause lengthy delays. As the district court recognized, the "long and complicated history of this litigation began in 2007," over seventeen years ago. Pet. App. 16a.

That kind of long and complicated litigation is especially burdensome on Missouri's federal courts, which are in what the Judicial Conference has described as an ongoing "judicial emergency." The Eastern District of Missouri—where this case was

filed—has four of the country's 21 judicial emergencies due to vacancies. *See Judicial Emergencies*, U.S. Courts (last updated Jan. 28, 2025).[2] That shortage comes at a time when caseloads in the Eastern District of Missouri have increased by more than 10%. *See* District Report, U.S. Dist. Ct. E. Dist. Mo. at 5 (Jan. 2024) ("For the 12-month period ending September 2023, more than 1,800 civil cases were filed in the Eastern District of Missouri, a ~13% increase from the 12-month period ending September 2022.").[3]

As a frequent litigant in both state and federal court, the Attorney General's Office understands the harms that occur when a court system becomes clogged. Allowing this case to proceed would harm the interests of all Missourians who rely on the court systems in this State.

B. The decision risks driving businesses from the State to avoid massive exposure to liability for foreign activity.

Second, allowing federal courts to proceed in cases like these would harm States' economies. On this record, the only connection between Missouri and conduct in Peru is that a Missouri company invested in, and is thus a parent of, the company accused of engaging in bad conduct in Peru. Foreign investment can often create a win-win situation where domestic companies earn a financial return while foreign companies become empowered to make infrastructural improvements that pull millions out of poverty.

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[2] https://www.uscourts.gov/data-news/judicial-vacancies/judicial-emergencies

[3] https://www.moed.uscourts.gov/sites/moed/files/documents/publications/2023_Jul_Dec_Report.pdf

If domestic companies can be haled into Missouri courts simply because of a foreign investment, then any company that wants to engage in foreign investment will think twice before establishing a presence in Missouri. After all, nobody would buy stock in a company if they knew this simple act of investment could make them personally responsible for the company's conduct overseas. The Eighth Circuit's decision will turn States into a haven for foreign plaintiffs but a wasteland for domestic businesses and their employees. *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 270 (2010).

C. Forcing states to interfere with a country's sovereignty harms Missouri's relationship with other foreign nations.

Third, it is against States' interests to become involuntarily entangled in an international dispute. Since the inception of this decades-long litigation, Peru has made its position clear: it views Missouri's (involuntary) involvement here as interference with its sovereign interests. After this case was first filed in Missouri state court in 2007, Peru delivered a message to the U.S. Ambassador to Peru stating that "any claim and/or lawsuit with respect to [the facts of this case] must be the exclusive jurisdiction of the administrative and/or jurisdictional authorities of Peru." Dkt. 545-13 at 2. Peru explained that the "universally accepted" principle of "sovereignty" includes the "right of the Republic of Peru to regulate and control its natural resources and the mining activities conducted within its territory." *Id.* at 3. And Peru warned that the Missouri court's failure to dismiss the

case would "constitute a disturbing precedent for investors of both countries and undermine the judicial security that we have to protect." *Id.*

Ten years later, Peru renewed its protest in a letter to the U.S. Department of State. Peru again stated its concern that this case would "require a court of the United States to pass judgment on the official acts and policies of the Peruvian State" and "rule on arguments relating to compliance with the laws and regulations of Peru." Dkt. 545-3 at 7. And it reiterated its position from the 2007 letter that "any claim and/or lawsuit with respect to [the conduct at issue] must be the exclusive jurisdiction of the administrative and/or jurisdictional authorities of Peru." *Id.*

Peru has the sovereign authority to regulate use of its natural resources within its territory. As to the metallurgical complex in this case, Peru had to balance different competing policy goals. Faced with a factory that produced both bad outputs (substantial pollution) and good outputs (thousands of jobs in a region struggling economically), Peru decided not to throw the good out with the bad. It instead sought to limit pollution while allowing the facility to continue operating. To that end, it sought outside capital investment to improve infrastructure. Pet. 5-6. And to attract that investment, Peru exercised sovereign authority to give potential investors limited immunity as long as the complied with Peru's environmental remediation program. *Id.* at 6.

If this case is permitted to proceed in Missouri courts, it risks overriding that sovereign decision by Peru. Missouri would certainly object if Peruvian courts exercised jurisdiction to override Missouri's

sovereign interests, so Missouri has no problem here with extending comity to Peru. The entire point of the comity doctrine is to prevent disputes from "implicat[ing] the nation's foreign relations." *Ungaro-Benages*, 379 F.3d at 1232. Yet as Peru's formal objection to jurisdiction has established, this case is already causing negative foreign entanglement between Peru and the courts of Missouri.

That entanglement is especially difficult for Missouri because Missouri lacks the foreign affairs powers it could use to resolve entanglement if it were an independent nation. "When a State enters the Union, it surrenders certain sovereign prerogatives," *Massachusetts v. E.P.A.*, 549 U.S. 497, 519 (2007), such as the power over foreign affairs, *Holmes v. Jennison*, 39 U.S. 540, 574 (1840). The "concern for uniformity in this country's dealings with foreign nations" is what "animated the Constitution's allocation of the foreign relations power to the National Government in the first place." *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 413 (2003) (citation omitted). Unlike the United States, which can engage in foreign affairs diplomacy to resolve concerns about foreign litigation, Missouri's foreign affairs toolbox is limited. Missouri has very few means it can use to mitigate tension with Peru that may be created by these cases in the future.

What influence over foreign affairs States do have are further curtailed when States are involuntarily dragged into foreign disputes like the one here. While the Federal Government is afforded power over foreign relations, States regularly work to strengthen trade relations with other nations. Missouri's governor, for example, recently "led ten trade delegations to

18 countries, resulting in more than 1,500 new jobs and over $3 billion in business investment for the State of Missouri." Press Release, Mike Parson, Governor, Missouri, *Governor Parson Highlights Administration's Successes After Completing Final Trade Mission* (Aug. 19, 2024).[4] Actions like these cases jeopardize the success of similar ventures.

Because of the effect this litigation—and the future cases it will encourage—will have on foreign affairs, the Court should at least call for the view of the United States Solicitor General. *See United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936) (describing the "plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations").

[4] https://web.archive.org/web/20240920205522/https://governor.mo.gov/press-releases/archive/governor-parson-highlights-administrations-successes-after-completing-final

CONCLUSION

This Court should conclude that Missouri has no interest in this case proceeding in courts in Missouri. To the contrary, it is emphatically against the interests of the State. This Court should grant the Petition to protect the interest of Missouri and its sister States and resolve the thorny questions created by the Eighth Circuit's decision.

Respectfully submitted,

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