No. 24-601

IN THE
Supreme Court of the United States

THE DOE RUN RESOURCES CORPORATION, ET AL.,
Petitioners,

v.

KATE REID, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS

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QUESTIONS PRESENTED

Petitioners are American corporations and their American executives who bought and operated a metal smelter in Peru. Through decisions made at "offices in Missouri and New York," they "caused [the smelter] to emit toxins and other harmful substances" poisoning the children living nearby. App. 69a. Respondents, children injured by those toxic emissions, filed suit in Missouri court asserting Missouri common-law claims.

Petitioners argued that international comity required the district court to surrender its jurisdiction over those common-law claims. After applying the same factors used by every circuit that has recognized the doctrine of international-comity abstention, the district court exercised its discretion and declined to abstain. It also held that the U.S.-Peru Trade Promotion Agreement did not foreclose respondents' claims. On interlocutory appeal, the Eighth Circuit found no abuse of discretion and unanimously affirmed.

The questions presented are:

1. Whether this Court should review the Eighth Circuit's interlocutory determination that the district court committed no abuse of discretion by declining to abstain on international-comity grounds.

2. Whether this Court should review the Eighth Circuit's interlocutory determination that the district court committed no abuse of discretion in holding that the U.S.-Peru Trade Promotion Agreement does not bar respondents' common-law tort claims.

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INTRODUCTION

Respondents filed Missouri common-law claims in an American court against the American companies responsible for the lead emissions that poisoned them. Yet these American companies and their American executives would rather litigate in Peru, thousands of miles from home. To get there, they asked the district court to abstain based on international-comity concerns. Few circuits have even addressed when (if ever) a court may abstain based on international comity when there is no parallel foreign proceeding. But those to recognize the doctrine at all apply a consistent standard, balancing U.S. and foreign interests and considering the foreign forum's adequacy.

The district court carefully analyzed those same factors, citing the same cases petitioners invoke to support their invented circuit splits. Based on those factors and its view of the summary-judgment record, the court exercised its discretion to keep jurisdiction over the case. It also rejected petitioners' arguments that the U.S.-Peru Trade Promotion Agreement ("TPA") required dismissal, finding that the TPA's text does not bar respondents from pursuing private tort claims in U.S. court. And it rejected petitioners' reliance on *Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021), reading the summary-judgment record to support a reasonable inference that petitioners' tortious conduct occurred in the United States.

The Eighth Circuit affirmed on interlocutory appeal. It assumed without deciding that "prospective international comity exists as an abstention doctrine." App. 10a. Using the factors applied in other circuits, the Eighth Circuit discerned no abuse of discretion in the district court's refusal to abstain. It also held that the district court correctly analyzed the TPA. And it

agreed with the district court that the facts here differ from those in *Nestlé*.

The Eighth Circuit's factbound decision implicates no circuit split. It applied the same standard every other circuit has used when deciding whether to abstain based on international comity. None has abstained where, as here, no sovereign asked the court to do so. And no other circuit has addressed whether the TPA's language precludes private tort litigation.

Nor does the Eighth Circuit's decision conflict with any decision of this Court. Unlike *Nestlé*, this case involves an evidentiary record, which both courts below read to show that petitioners' tortious conduct occurred in the United States. Petitioners cite no decision barring state common-law claims in comparable circumstances.

The petition's interlocutory posture is yet another reason to deny it. Review now would delay resolution of this long-litigated case. Review is also unnecessary because international-comity abstention rarely arises. Other doctrines for dismissing claims that belong elsewhere exist, such as forum non conveniens. Petitioners forfeited that defense, forcing them to rely on the novel doctrine of international-comity abstention. Because few (if any) other litigants will take the same approach, the questions presented are neither recurring nor important. The Court should deny the petition.

STATEMENT

A. Factual Background

The following facts are drawn largely from the lower courts' reading of the summary-judgment record, which this Court will not disturb absent "'a very obvious and exceptional showing of error.'" *Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 841 (1996) (quoting *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949)).

1. Petitioners are American citizens and residents. They are Ira Rennert; several of his companies, including Missouri-based Doe Run Resources Corporation and New-York-based The Renco Group, Inc. ("Renco"); and three former Doe Run Resources executives. App. 23a-28a. As Renco's CEO and primary shareholder, "Rennert controls Renco." App. 23a.

In 1997, petitioners bought a metal smelting and refining complex in the remote mountain town of La Oroya, Peru. App. 19a. Because Peruvian law required the purchaser to be a Peruvian company, Renco and Doe Run Resources formed Doe Run Peru to hold the smelter's assets and liabilities. App. 19a-20a.

Before even buying the smelter, petitioners knew that air-pollution levels in La Oroya were "exceedingly high" and that "fugitive" emissions were a big reason why. App. 75a-76a. The pollution was so bad that Peru's Ministry of Energy and Mines had developed an emission-control plan for the smelter called "PAMA." App. 20a-21a. Under that plan, petitioners agreed "to reduce or eliminate emissions" by making various upgrades to the smelter so that it would

"comply with [Peru's] Maximum Allowable Levels." Pls. App. 176.[1]

2. Petitioners did not reduce the smelter's emissions as PAMA required. Instead, they ramped up production, causing toxic emissions to soar. App. 76a-77a. La Oroya's air quality deteriorated dramatically. By 2004, air-lead levels near the plant exceeded 3.5 $\mu g/m^3$ – seven times Peru's annual standard. Pls. App. 198, 200.

That lead did not stay in the air; it poisoned the children living nearby. The Centers for Disease Control and Prevention ("CDC") found that "virtually the entire childhood population" of La Oroya had blood-lead levels far above dangerous levels. *Id.* at 161. The CDC advised that "[r]educ[ing] air lead emissions" should be the smelter's "immediate priority." *Id.* at 158-59.

Petitioners did not heed that advice. They did not even attempt to address fugitive emissions until 2005, when Rennert declared during a meeting in St. Louis that the company "needed to develop a long-term plan regarding lead abatement." App. 77a. Petitioners' tardy effort to reduce fugitive emissions was too little too late. As an independent panel of scientists found in 2006, petitioners' "measures to collect fugitive emissions" were "inadequate" to address the "severe health problem" they had caused. Pls. App. 205, 208.

Petitioners closed the smelter in 2009, thrusting Doe Run Peru into bankruptcy. App. 3a. During the decade petitioners operated the smelter, nearby air-lead levels always were at least double the World

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[1] "Pls. App." refers to Plaintiffs-Appellees' Eighth Circuit Appendix. "ECF" refers to the district court docket, and citations follow the ECF-header pagination.

Health Organization's recommended limit. Pls. App. 199-200.

3. Petitioners' U.S. conduct caused the smelter's toxic emissions. App. 70a-77a. Acting from St. Louis and New York, petitioners "dominated and controlled" Doe Run Peru. App. 70a. For example, they required the company to obtain permission before spending money – even for minor expenses like renting a pickup truck. Pls. App. 129; ECF 640-25. Under this policy, Doe Run Peru's expense requests were "forwarded to St. Louis for review and approval." Pls. App. 131. By 2004, "all expenditures exceeding $5,000" – including environmental remediation projects – required Rennert's sign-off. App. 75a.

Petitioners also ensured the smelter's continued toxic emissions by depriving Doe Run Peru of the capital it needed to meet its PAMA obligations. App. 71a-74a. Within hours of buying the smelter, petitioners executed several loans obligating Doe Run Peru to repay the smelter's $247 million price tag, plus interest. App. 71a. Petitioners then immediately forced Doe Run Peru to make more than $100 million in intercompany payments to Missouri-based Doe Run Resources and Renco. *Id.*

Petitioners "knew that these upstream payments and financial structures hampered [the smelter's] ability to meet its PAMA obligations." App. 72a. They knew "that fugitive emissions were a significant source of contamination that was not being controlled under the PAMA." App. 76a. And they "received regular reports" about the smelter's emissions and "addressed the environmental affairs during monthly meetings in Missouri that were attended by Rennert" and Doe Run Resource's top executives. App. 75a. Yet

petitioners "continued to demand the payments anyway." App. 74a. Through these and other decisions made at "offices in Missouri and New York," petitioners "caused [Doe Run Peru] to emit toxins . . . at levels harmful to" human health. App. 69a.

The results were catastrophic. Respondents were children who lived in or near La Oroya when petitioners controlled the smelter. App. 21a. Each experienced lead poisoning as a child and today suffers from irreversible cognitive impairments, including learning disabilities and memory loss.

B. Procedural History

1. In 2007, respondents brought Missouri common-law tort claims in Missouri court. App. 16a-17a. Petitioners removed, but the district court remanded because respondents alleged "only Missouri state-law claims." *A.A.Z.A. v. Doe Run Res. Corp.*, 2008 WL 748328, at *2 (E.D. Mo. Mar. 18, 2008). The remand order did not resolve petitioners' initial motion to dismiss, which had sought dismissal based on forum non conveniens, international comity, and other grounds. *See* Defs.' Mot. To Dismiss at 2-4, *A.A.Z.A. v. Doe Run Res. Corp.*, No. 4:07-CV-1874 CDP, ECF 35 (E.D. Mo. Dec. 17, 2007).

Three years later, petitioners removed again, this time based on a 2011 arbitration Renco had commenced against Peru. App. 17a. The district court took the case but refused to stay it pending the arbitration. *Id.* On interlocutory appeal, the Eighth Circuit affirmed. *See Reid v. Doe Run Res. Corp.*, 701 F.3d 840, 842 (8th Cir. 2012). In affirming, the court rejected petitioners' argument that respondents' claims hinged on Peru's environmental policies, explaining that a jury only needs to "consider whether

each defendant sufficiently caused the children's injuries according to the applicable law." *Id.* at 847.

2. In 2017, petitioners again moved to dismiss based on international comity (but not forum non conveniens). The district court denied the motion. The court first held that Missouri law applied, discerning no conflict between Missouri law and Peruvian law. *See A.O.A. v. Rennert*, 350 F. Supp. 3d 818, 847-48 (E.D. Mo. 2018), *appeal dismissed*, 2019 WL 13220273 (8th Cir. June 4, 2019). As for international comity, the district court found that U.S. and Peruvian "sovereign interests" did "not advocate for dismissal." *Id.* at 851. The State Department had "not expressed any position on this litigation." *Id.* at 850. And "competing letters" the parties had submitted "purporting to reflect the views of the Peruvian government" were "not persuasive either way regarding Peru's interest" because they "contradict one another" and "none fully represents the position of the Peruvian government." *Id.* at 851. The court further observed that petitioners are U.S. residents based largely in Missouri, and Missouri "has a cognizable state interest in regulating the conduct of its citizens." *Id.* It rejected petitioners' TPA argument. *Id.* at 852.

3. In 2021, after years of discovery, petitioners moved for summary judgment under Peruvian law and renewed their request for dismissal based on international-comity abstention, preemption, and the act-of-state doctrine – but not forum non conveniens. App. 57a-58a. After considering the voluminous evidentiary record, the district court denied the motion in an 80-page decision. App. 12a-98a.

The district court first revisited its choice-of-law analysis. The court reaffirmed that Missouri law largely governs, because "the laws of Missouri and

Peru" do not "conflict on the torts alleged." App. 35a. There was one exception: the court held that Peruvian law governs petitioners' "immunity *defense* under Article 1971" of Peru's Civil Code. App. 36a. That ruling allowed petitioners to claim immunity "so long as they complied with the requirements of the PAMA." *Id.*

Next, the district court again declined to abstain on international-comity grounds. App. 85a. It agreed with petitioners that "the nexus between the challenged conduct and the United States is critical" to the analysis, but it found that, unlike *Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021), there was substantial evidence that "conduct and decisions made in the United States" harmed respondents. App. 69a, 77a.

The district court "continue[d] to disagree" with how petitioners read the TPA, finding the TPA's "plain language" supports "jurisdiction over plaintiffs' claims . . . that United States defendants violated Missouri law." App. 78a-79a. The court also found no tension with the TPA because "plaintiffs' claims do not hinder Peru's ability" to set environmental policy. App. 91a.

The district court further discerned "nothing . . . showing that the powerful diplomatic interests of the United States and Peru are aligned in supporting dismissal." App. 83a. As for Peru's interests, the court again was unpersuaded by "competing letters" from "Peruvian officials" that were "contradictory" and "obtained for purposes of this litigation." App. 80a-82a. "Notably absent" from the record, the court observed, was any credible "articulation that [Peru's] sovereign interests are jeopardized by this Court's exercise of jurisdiction." App. 83a. As for U.S. interests, "the State Department has thus far remained silent." App. 84a. Accordingly, the court found

petitioners had "failed to identify 'exceptional circumstances' justifying what would be a rare surrender of jurisdiction." *Id.*[2]

4. A unanimous Eighth Circuit panel affirmed on interlocutory appeal. App. 11a. The court rejected petitioners' TPA arguments. The TPA's "plain language," the court said, "provide[s] a pathway" for respondents' lawsuit because it requires Peru and the United States to provide "'appropriate and effective access to remedies'" for violations of its laws "'relating to the environment or environmental conditions affecting human health.'" App. 8a (quoting TPA Art. 18.4(4) (App. 103a)). The court found the TPA's implementing statute, which contains a savings clause preserving state law, "further support[s]" respondents' lawsuit. *Id.*

"Assuming without deciding that prospective international comity exists as an abstention doctrine," the Eighth Circuit found "no abuse of discretion by the district court in the denial of abstention based on international comity." App. 10a. It recognized that courts have abstained based on international comity "without a conflicting foreign proceeding" "[o]nly in rare circumstances." App. 9a. But from this precedent, the court identified "three guiding factors" for deciding whether to abstain: "the strength of the United States' interest in using a foreign forum, the strength of the foreign governments' interests, and the adequacy of the alternative forum." *Id.*

Considering those factors, the Eighth Circuit agreed with the district court that this was not the "rare case" where "international comity may be warranted." App.

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[2] The district court also rejected petitioners' act-of-state and foreign-affairs-preemption arguments. App. 88a-92a. Petitioners did not appeal those rulings.

10a. Petitioners' "conduct occurred in Missouri." *Id.* "Neither the State Department nor the government of Peru has submitted a declaration of its position in this case, despite requests from the parties," during the "fifteen years while this matter has been in litigation." *Id.* And not only had petitioners been "unwilling to submit to Peru's jurisdiction" for much of the litigation, but "the record also contains letters from Peruvian officials suggesting there does not appear to be an adequate forum or remedy available to the plaintiffs under Peruvian law." *Id.*

The Eighth Circuit lastly rejected petitioners' reliance on *Nestlé*. This case, the court explained, "differs from *Nestlé* in two important ways." App. 11a. First, whereas "*Nestlé* involved foreign application of a federal statute," respondents' claims concern the "domestic application of state common law." *Id.* Second, whereas "nearly all the alleged conduct occurred overseas" in *Nestlé*, respondents "allege conduct that occurred within the United States as the basis for liability" and "the district court detailed the discovery that supported the allegations." *Id.* Accordingly, it was "not an abuse of discretion" for the district court "to determine the record sufficiently supported" respondents' claims that domestic conduct caused their injuries. *Id.*

The Eighth Circuit denied petitioners' request to stay the mandate. Order (Sept. 3, 2024). On remand, the district court lifted the stay it had imposed during the appeal. Order, ECF 1421 (Sept. 24, 2024). It is now working to resolve petitioners' motion for summary judgment under Missouri law and then "prepare for hybrid jury and non-jury trials." App. 95a.

REASONS FOR DENYING THE PETITION

I. THERE IS NO CIRCUIT SPLIT

This case does not implicate any circuit split. Few circuits have held that a court may abstain based on international comity where there are no parallel foreign proceedings. And the few circuits that have recognized such an abstention doctrine apply the same factors as the Eighth Circuit. That court's fact-bound application of those factors does not warrant further review.

Nor do petitioners identify a conflict over the TPA. There is not and could not be any split, for only the Eighth Circuit has addressed whether the TPA displaces state-law tort claims brought against U.S. defendants in U.S. courts. That is reason enough to deny review of petitioners' second question.

A. There Is No Circuit Conflict Over International-Comity Abstention

"Only in rare circumstances" – in fact, almost never – have courts abstained based on international comity "without a conflicting foreign proceeding." App. 9a; *see GDG Acquisitions, LLC v. Government of Belize*, 749 F.3d 1024, 1030 (11th Cir. 2014) (such abstention "rarely" occurs). Indeed, petitioners cite (and respondents know of) only *four* circuit decisions to abstain under international comity without a parallel foreign proceeding. *See Cooper v. Tokyo Elec. Power Co. Holdings, Inc.*, 960 F.3d 549 (9th Cir. 2020); *Mujica v. AirScan Inc.*, 771 F.3d 580 (9th Cir. 2014); *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227 (11th Cir. 2004); *Torres v. Southern Peru Copper Corp.*, 113 F.3d 540 (5th Cir. 1997). Given the dearth of cases applying international-comity abstention, this Court has denied every prior petition that sought review of the question presented here. *See Cooper*, 960 F.3d

549, *cert. denied*, 141 S. Ct. 1735 (2021); *Mujica*, 771 F.3d 580, *cert. denied*, 577 U.S. 1049 (2015).

Despite this scant precedent, petitioners assert (at 14) that the Eighth Circuit's decision "deepened one split" and "created two more" over the standard for international-comity abstention. Those concocted conflicts do not withstand scrutiny. Rather than reveal disagreement, petitioners' cases applied common legal principles to different facts. That is not a circuit split.

1. Petitioners erroneously argue (at 14) that the Eighth Circuit waded into a split between the Third, Fifth, Ninth, and Eleventh Circuits over whether a "heightened" standard applies to international-comity abstention. *See* App. 9a.[3] The Eleventh Circuit has held three "factors" guide the decision to abstain where there are no foreign proceedings: "the strength of the United States' interest in using a foreign forum, the strength of the foreign governments' interests, and the adequacy of the alternative forum." *Ungaro-Benages*, 379 F.3d at 1238; *see GDG Acquisitions*, 749 F.3d at 1030 (same). The Third and Ninth Circuits apply the same "three-part framework articulated by the Eleventh Circuit in *Ungaro-Benages*." *Mujica*, 771 F.3d at 603, 609-15 (applying factors); *see Gross v.*

[3] Petitioners' reliance (at 16) on Second and Seventh Circuit decisions is misplaced: those decisions involved parallel foreign proceedings, which require courts to consider different factors, such as "the similarity of the parties, the similarity of the issues, [and] the order in which the actions were filed." *Royal & Sun All. Ins. Co. of Canada v. Century Int'l Arms, Inc.*, 466 F.3d 88, 94 (2d Cir. 2006); *see id.* (reversing dismissal because "the district court did not identify any exceptional circumstances that would support abstention"); *AAR Int'l, Inc. v. Nimelias Enters. S.A.*, 250 F.3d 510, 518 (7th Cir. 2001) (similar). The Eighth Circuit properly held that this case, which undisputedly lacks any such proceeding, raises a different question. App. 9a.

German Found. Indus. Initiative, 456 F.3d 363, 393-94 (3d Cir. 2006) (citing *Ungaro-Benages* and applying factors).

The district court in *Torres v. Southern Peru Copper Corp.* weighed functionally the same factors and abstained because Peru filed a brief "express[ing] strenuous objection" to the court retaining jurisdiction. 965 F. Supp. 899, 909 (S.D. Tex. 1996). The Fifth Circuit affirmed, holding "the record reflect[ed] neither error nor abuse of discretion in the district court's dismissal" based on "comity among nations." 113 F.3d at 544.

The Eighth Circuit considered the same three factors as these cases. App. 9a. As for U.S. interests, the court observed that petitioners' "conduct occurred in Missouri," and the State Department had not "submitted a declaration of its position in this case." App. 10a. As for Peru's interests, the court observed that Peru "has had fifteen years while this matter has been in litigation to directly assert its sovereignty" but had "remained silent." *Id.* As to forum adequacy, the court credited "letters from Peruvian officials suggesting there does not appear to be an adequate forum or remedy available to the plaintiffs under Peruvian law." *Id.* "Under th[ose] circumstances," the court said, the district court reasonably exercised its discretion in declining to abstain based on international comity. *Id.*

The government's filings on international-comity abstention do not highlight this nonexistent conflict, as petitioners contend (at 16-17). To the contrary, the government has explained that international-comity abstention – "like other common-law abstention doctrines" – is permissible only in "exceptional circumstances." U.S. Br. 12-14, *Republic of Hungary v. Simon*, No. 18-1447 (U.S. Sept. 11, 2020), 2020 WL

5535982 (citing *Ungaro-Benages* and *Mujica*). And it recognized that the circuits agree on the factors to apply, explaining that courts have "cohered" around the "same three considerations" for deciding whether to abstain based on international comity. *Id.* at 14.

2. Petitioners fare no better in arguing (at 17-18) that the Eighth Circuit created a split over the weight due to the foreign sovereign's interests by treating Peru's interests as a "nullity" because it did not file an *amicus* brief. What the Eighth Circuit instead found significant was that "the government of Peru" had not expressed "its position in this case, despite requests from the parties" during the "fifteen years while this matter has been in litigation." App. 10a. Petitioners fixate on two letters from Peruvian officials, but they omit that members of Peru's Congress also submitted letters objecting to petitioners' letters. App. 81a. The Eighth Circuit's determination that the district court reasonably exercised its discretion in weighing those "competing letters," App. 80a, does not merit certiorari. *See Martin v. Blessing*, 571 U.S. 1040, 1045 (2013) (Alito, J., respecting the denial of certiorari) (the Court is "not a court of error correction").

Nor does the Eighth Circuit's assessment of Peru's sovereign interests conflict with the approach of any circuit. In *Torres*, which petitioners assert (at 20) is "nearly identical" to this case, Peru filed a brief in the district court expressing "strenuous objection" to adjudication in U.S. courts, 965 F. Supp. at 909, and then "submitt[ed] an amicus brief" in the Fifth Circuit repeating that objection, 113 F.3d at 542. In *Mujica*, the State Department provided the Ninth Circuit "two démarches" from Colombia's Ministry of Foreign Affairs warning that the litigation "show[ed] disrespect for the 'legitimacy of Colombian judicial institutions.'"

771 F.3d at 611. In *Cooper*, Japan filed an *amicus* brief "unequivocal[ly] object[ing] to the exercise of jurisdiction in U.S. courts." 960 F.3d at 569. Petitioners' stale, disputed letters do not come close to the compelling demands for dismissal these courts found favored abstention.[4]

3. Petitioners' claim (at 19) of a circuit split over how courts weigh U.S. foreign-policy interests also fails. They mischaracterize (at 19) the decision as holding that U.S. interests "must weigh against dismissal" when the State Department does not file a Statement of Interest. But the Eighth Circuit simply found "no abuse of discretion by the district court in the denial of abstention based on international comity" where, among other things, the State Department "remained silent" during the "fifteen years . . . this matter has been in litigation" and "despite requests from the parties" to weigh in. App. 10a. That tracks *Mujica*, where the Ninth Circuit recognized that the interest balancing would differ when "the State Department has issued no [Statement of Interest]." 771 F.3d at 610.

Petitioners' criticism (at 20) of the courts below for not asking the State Department to file a Statement of Interest rings hollow: they never asked the district court to request such a statement, and they told the Eighth Circuit that such a request was "unnecessary." Reply Br. of Defs.-Appellants 23 (Oct. 23, 2023). No

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[4] In fact, in the arbitration that petitioners commenced against Peru, Peru criticized petitioners' "strategic[]" efforts to "use[] the Renco international arbitrations to orchestrate ostensible conflicts with the Missouri Litigations," explaining Peru is not "responsible for lawsuits based on [petitioners'] own corporate decision." Respondent's Counter-Memorial at 132, 136, *Renco Group, Inc. v. Republic of Peru*, PCA Case No. 2019-46 (Apr. 1, 2022), https://tinyurl.com/4h64hfxw.

court has ever held that a lower court is obligated to solicit the State Department's input when no party has asked it to. Even if the Eighth Circuit should have invited the State Department's views, that hardly creates a circuit conflict warranting this Court's review.

B. There Is No Circuit Conflict Over The TPA

Petitioners make no effort to show that the Eighth Circuit's interpretation of the TPA creates a conflict. Nor could they. To respondents' knowledge, the decision below is the only federal appellate decision interpreting the TPA or its implementing statute.

The Court should not grant certiorari to consider a question on which there is no disagreement. Review now would force this Court to interpret the TPA without the benefit of the lower courts' "insights." *Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring in part and concurring in the judgment). There is no reason to depart from this Court's ordinary practice of "permitting several courts of appeals to explore" an issue and "waiting for a conflict to develop" before granting review. *United States v. Mendoza*, 464 U.S. 154, 160 (1984).

II. THE EIGHTH CIRCUIT'S DECISION IS CORRECT

Review also is unwarranted because the Eighth Circuit was correct. The court properly held that the district court did not abuse its discretion in declining to abstain after balancing the international-comity factors other circuits recognize. The court also rightly concluded that neither the TPA nor *Nestlé* requires abstention.

A. The International-Comity Factors Do Not Support Abstention

Federal courts "are obliged to decide cases within the scope of federal jurisdiction." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013). That weighty obligation "is not diminished simply because foreign relations might be involved." *Gross*, 456 F.3d at 394. Courts thus may surrender their jurisdiction only in "exceptional" circumstances. *Colorado River Water Conserv. Dist. v. United States*, 424 U.S. 800, 813 (1976). After considering the sovereigns' interests and forum adequacy, the district court and the Eighth Circuit correctly discerned no "exceptional" circumstances warranting abstention here. App. 10a. Petitioners identify no error in that determination.

U.S. interests. The United States does not have a significant interest in the foreign adjudication of this case. When U.S. foreign-policy interests are strong enough to justify dismissal, the State Department typically files an *amicus* brief or Statement of Interest saying so. *See*, *e.g.*, *Mujica*, 771 F.3d at 609-10 (State Department filed both); *Ungaro-Benages*, 379 F.3d at 1231 n.6 (same). The State Department "has remained silent" here "despite requests from the parties" during 17-plus years of litigation. App. 10a. That silence does not support abstention.

Missouri's interests likewise cut against abstention. Petitioners include Missouri citizens who committed tortious acts in Missouri. As the record makes clear, Missouri's connections to this case are substantial: "pivotal decisions regarding [Doe Run Peru's] capitalization were made in Missouri," petitioners "controlled [Doe Run Peru] from Missouri," and they "lived and conducted business in Missouri during the relevant time." App. 46a, 48a, 55a. Given those "significant

contacts," the district court found that Missouri law largely governs respondents' claims. App. 55a. That elevates Missouri's interests, for a State "has a legitimate interest in the continued enforceability of" its law. *Maine v. Taylor*, 477 U.S. 131, 137 (1986).[5]

Peru's interests. Nor do Peru's interests support dismissal. In three of the four appellate cases to apply international-comity abstention without parallel foreign proceedings, the foreign sovereign filed a brief urging dismissal. *See Cooper*, 960 F.3d at 568; *Ungaro-Benages*, 379 F.3d at 1231 n.6; *Torres*, 113 F.3d at 542. In the other case, the State Department registered Colombia's objections through its own Statement of Interest. *See Mujica*, 771 F.3d at 586, 611.

Here, by contrast, the district court received "competing letters" from four Peruvian officials "purporting to reflect the view of the Peruvian government." App. 80a-81a. A disputed letter is not an authoritative expression of Peru's sovereign interests. That is especially true because petitioners "obtained" their letters "for the purpose of supporting their positions

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[5] Missouri's Attorney General, Andrew Bailey, has expressed his intent to file an *amicus* brief in support of petitioners. He also filed an *amicus* brief in the Eighth Circuit supporting petitioners. Yet despite General Bailey certifying that "[n]o person other than amicus curiae made a monetary contribution to the preparation or submission of this brief," three months later he received a $50,000 donation from Renco – its first-ever to him. Pls.' Mot. To Correct, or in the Alternative To Strike, the State of Missouri's Amicus Br. 3 (8th Cir. Oct. 18, 2023). That was only Renco's second donation to a Missouri state politician. In 2018, Renco donated $25,000 to Governor Mike Person, who then sent a letter to the State Department urging it to file a Statement of Interest seeking dismissal. *See id.* at 3-4. This Court should thus accord no weight to the Attorney General's filing supporting his campaign donor.

in this litigation" – something they tried to hide from the district court. *Rennert*, 350 F. Supp. 3d at 851 & n.12. The district court rightly found "cause for caution" in those "conflicting statements" offered "in the context of litigation." *Animal Sci. Prods, Inc. v. Hebei Welcome Pharm. Co.*, 585 U.S. 33, 43 (2018).

Forum adequacy. At the pleading stage, the district court found "it was not clear that Peru provided an adequate alternative forum," App. 62a, because the individual petitioners had refused to consent to suit in Peru, *see Rennert*, 350 F. Supp. 3d at 852 n.13. Petitioners never changed position in the district court, failing to raise forum adequacy as a comity factor at summary judgment. Only in their opening appellate brief – 17 years after this lawsuit was first filed – did petitioners finally change their position and consent to jurisdiction in Peru. *See* Opening Br. of Defs.-Appellants 48 n.9 (June 30, 2023).

Regardless, even if Peru were an adequate forum, the district court reasonably determined that keeping the case promotes "judicial economy and fairness," while dismissal would "be unfair to plaintiffs and substantially postpone resolution of their claims." App. 85a; *see Royal & Sun All.*, 466 F.3d at 94 (identifying "fairness" and "judicial efficiency" as international-comity "principles").

In sum, no comity factor favors abstention. The Eighth Circuit and the district court rightly determined that this was not the "rare case," App. 10a, where "exceptional circumstances" required the district court to surrender its jurisdiction, App. 84a.

B. The TPA Does Not Support Abstention

Petitioners' contentions (at 27-31) about the TPA misread the decision below and the TPA. They say (at 27) the Eighth Circuit interpreted the TPA to "require"

U.S. courts to hear cases for "environmental torts in Peru." What the Eighth Circuit actually said was that the district court "did not abuse its discretion in concluding that dismissal is not required under the TPA," because the TPA's "plain language" does not bar respondents' "specific claims" for injuries "caused by conduct that occurred in the United States." App. 8a-9a. The Eighth Circuit was correct.

To start, neither the TPA nor its implementing statute[6] includes an express-preemption clause precluding any type of state-law claim. Nor is there any clause stripping U.S. courts of jurisdiction over such claims. And the TPA designates no venue at all – much less an exclusive one – for resolving private tort litigation. The absence of such language is strong evidence the government did not intend the TPA to oust private litigation from U.S. courts given the government's "longstanding practice" of "[m]aking executive agreements to settle claims of American nationals against foreign governments." *American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 415 (2003).

The TPA's text reinforces that conclusion. Petitioners fixate (at 28-29) on Article 18.4(4), which requires the United States to provide all "persons with a legally recognized interest under its law" with "appropriate and effective access to remedies" for "violations of a legal duty under [U.S.] law relating to the environment," including the right "to sue another person under [U.S.] jurisdiction for damages." App. 103a. Both the Eighth Circuit and the district court correctly read that

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[6] The TPA entered into force under U.S. law only when Congress enacted an implementing statute approving it. *See* 19 U.S.C. § 3805(a)(1); United States-Peru Trade Promotion Agreement Implementation Act, Pub. L. No. 110-138, 121 Stat. 1455 (2007).

language to permit respondents' claims. App. 8a; App. 78a-80a. Respondents are within the class this clause protects – they have "a legally recognized interest" under Missouri law – and petitioners are undisputedly U.S. persons falling "under [U.S.] jurisdiction." Art. 18.4(4) (App. 103a). It would invert that language to force respondents to bring claims against U.S. companies under U.S. law only in Peru.

Finally, the TPA's implementing statute confirms that the agreement does not eject private tort litigation from U.S. courts. That statute provides that, "except in an action brought by the United States," no "State law" or its "application" may "be declared invalid" as "inconsistent with the Agreement." § 102(b)(1), 121 Stat. 1457. That language forecloses petitioners from invoking the TPA to defeat respondents' Missouri common-law claims. *See Dandamudi v. Tisch*, 686 F.3d 66, 81 (2d Cir. 2012) (identical clause in NAFTA implementing statute barred party from "argu[ing] that the state law is preempted").

C. *Nestlé* Does Not Support Abstention

Petitioners assert that the Eighth Circuit misapplied *Nestlé*, insisting (at 22) that *Nestlé* is "on all fours" here. But both lower courts rejected that comparison, concluding "the record sufficiently support[s]" the inference that petitioners' "decision-making in the United States caused" respondents' injuries. App. 11a; *see* App. 68a-77a. Petitioners' arguments seek to relitigate those factual disputes for a third time.

In *Nestlé*, foreign plaintiffs sued U.S. companies under the Alien Tort Statute to remedy "child slavery" in Ivory Coast. 593 U.S. at 631. "Nearly all the conduct" that allegedly facilitated the forced labor "occurred in Ivory Coast." *Id.* at 634. The only U.S. nexus was that the plaintiffs "pleaded as a general

matter that every major operational decision by [the defendants] is made in or approved in the U.S." *Id.* (cleaned up). This Court held such "generic allegations" of the U.S. companies' "corporate activity" did not establish "domestic application" of the Alien Tort Statute. *Id.*

This case is nothing like *Nestlé*. As the district court explained, respondents "do not merely make generic allegations" concerning "general operational decisions"; they alleged that petitioners "exerted complete control over [the smelter] from their offices in Missouri and New York," where they made "decisions that caused [the smelter] to emit toxins and other harmful substances." App. 69a. And, unlike in *Nestlé*, the voluminous summary-judgment record here overwhelmingly supported a finding that petitioners' "conduct and decisions made in the United States" caused respondents' injuries. App. 77a. The Eighth Circuit agreed, holding that "the record sufficiently supported" respondents' "claims that decision-making in the United States caused [their] injuries for purposes of summary judgment." App. 11a. Indeed, petitioners' conduct and decisions – micromanaging the smelter's daily operations and expenses – are not activity "common to most corporations." *Nestlé*, 593 U.S. at 634.

Although petitioners do not directly challenge these findings – despite insisting (at 22) that respondents' allegations are "false" – their arguments about *Nestlé* are merely a disagreement with how the courts below read the evidentiary record. Those factual nitpicks do not warrant certiorari. Indeed, petitioners identify no "very obvious and exceptional showing of error" that this Court requires "to review concurrent findings of fact by two courts below." *Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 841 (1996).

III. THIS INTERLOCUTORY PETITION IS A POOR VEHICLE FOR REVIEWING THE QUESTIONS PRESENTED, WHICH RARELY ARISE

Although the questions presented in the petition are not certworthy at any juncture, the petition's interlocutory posture provides another reason to deny it. Review is further unwarranted because any difference between the Eighth Circuit's application of the international-comity factors and the approaches of other circuits lacks significance given how infrequently the issue arises.

1. The Court long has limited its exercise of certiorari jurisdiction to "final judgments," *American Constr. Co. v. Jacksonville, T. & K.W. Ry. Co.*, 148 U.S. 372, 378 (1893), and denied petitions where more "remains to be done" "in the inferior court," *Life & Fire Ins. Co. of New York v. Adams*, 34 U.S. (9 Pet.) 573, 602 (1835). The ongoing district court proceedings render the petition "not yet ripe for review." *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R. Co.*, 389 U.S. 327, 328 (1967) (per curiam). Those ongoing proceedings are a "sufficient ground" to deny the petition. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916).

Interlocutory review here would conflict with principles of "good judicial administration," *Radio Station WOW v. Johnson*, 326 U.S. 120, 124 (1945), by unduly delaying resolution of this case. Respondents – most of whom were children when this case began and now are adults – have pursued their claims for more than 17 years, devoting significant resources to advance their claims through discovery. On remand, the district court will next resolve petitioners' motion for summary judgment under Missouri law and "prepare

for hybrid jury and non-jury trials." App. 95a. Petitioners' premature petition risks significant disruption to those ongoing proceedings. *See Radio Station WOW*, 326 U.S. at 124 (identifying "delayed justice" as a key reason to avoid interlocutory appeals).

2. On top of being splitless and meritless, the questions presented seldom arise. In the last 30 years, there have been only four appellate cases to abstain on international-comity grounds without a parallel foreign proceeding. *See supra* p. 11. A question that recurs so infrequently does not warrant this Court's attention.

One reason international-comity abstention seldom arises is that courts have established tools for dismissing claims that belong elsewhere, including forum non conveniens, the act-of-state doctrine, and conflict preemption. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981) (forum non conveniens); *W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp., Int'l*, 493 U.S. 400, 409 (1990) (act-of-state doctrine); *Garamendi*, 539 U.S. at 419-20 (preemption). For example, if respondents' claims were truly a "direct attack" on Peru's regulatory choices as petitioners claim (at 9), the act-of-state doctrine could well bar the attack. *See W.S. Kirkpatrick*, 493 U.S. at 404-05. Or if this case truly belonged "in [an] alternative forum," *Piper*, 454 U.S. at 255, petitioners could have pursued their forum-non-conveniens defense. But they forfeited those defenses. The Eighth Circuit correctly rejected petitioners' attempt to morph international comity into a malleable doctrine that far exceeds the legal scope of the defenses petitioners abandoned.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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