No.

IN THE

Supreme Court of the United States

THE DOE RUN RESOURCES CORPORATION ET AL.,
Petitioners,

v.

SR. KATE REID ET AL.,
Respondents.

APPLICATION FOR A 30-DAY EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Application to the Honorable Brett M. Kavanaugh,
as Circuit Justice for the Eighth Circuit

Pursuant to Supreme Court Rule 13.5, Applicants The Doe Run Resources Corporation, a New York Corporation; D. R. Acquisition Corp., a Missouri Corporation; Marvin K. Kaiser; Albert Bruce Neil; Jeffrey L. Zelms; The Renco Group, Inc., a New York Corporation; Ira L. Rennert; and Doe Run Cayman Holdings LLC, a Missouri limited liability company, hereby request a 30-day extension of time, to and including November 29, 2024, within which to file a petition for a writ of certiorari.

1. The decision below is *Sr. Kate Reid v. The Doe Run Resources Corp.*, No. 23-1625 (8th Cir. 2024). The Eighth Circuit issued its opinion on August 1, 2024. *See* App. A. Unless extended, Applicants' time to seek certiorari in this Court

expires October 30, 2024. Applicants are filing this application at least ten days before that date. *See* S. Ct. R. 13.5. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1). Respondents do not object to this extension request.

2. This case concerns whether international comity permits this lawsuit—claiming injuries in Peru to Peruvian citizens from emissions in Peru at an industrial facility owned and operated by the Peruvian subsidiary of a U.S. parent corporation—to proceed in Missouri federal court.

At the center of this case is a smelting facility in La Oroya, Peru. In the late 1990s, the Peruvian government sought to recruit a private company to take ownership of the then-state-owned facility and invest in necessary improvements to redress mounting environmental contamination. Eventually, Applicants formed a Peruvian subsidiary, Doe Run Peru (DRP), which assumed ownership of the La Oroya facility in 1997. DRP began to implement the "Environmental Remediation and Management Plan" set by the Peruvian government (known by its Spanish acronym, "PAMA"), making specified improvements in a particular sequence on a prescribed 10-year timeline dictated by the Peruvian government.

Starting in 2007, U.S. lawyers began filing suit on behalf of Peruvian citizens, alleging injury from environmental contamination in La Oroya. They did not sue DRP, but instead its U.S. corporate affiliates and officers. Almost immediately, the Peruvian government objected to this litigation proceeding in the United States. Among other things, the Peruvian government asserted that these claims regarding environmental standards in Peru belonged in Peru, and that adjudicating this case

in the United States violated the text and the spirit of the United States-Peru Trade Promotion Agreement (TPA).

In 2018, Applicants moved to dismiss this action on international comity grounds, also citing other transnational doctrines. The district court denied the motion. At summary judgment, Applicants again moved to dismiss the case on international comity grounds. The district court again denied the motion, but recognizing that reasonable jurists could disagree on the complex and controlling issues of law presented, the district court *sua sponte* certified the case for interlocutory appeal pursuant to 28 U.S.C. § 1292(b).

The Eighth Circuit granted leave to appeal from the district court's order and issued its decision affirming the district court on August 1, 2024. App. A. It held first that "the plain language" of the TPA affirmatively authorized Plaintiffs to bring suit in the United States over environmental injuries suffered in Peru. App. A at 6. It held second that Peru and the United States had not expressed their sovereign interests clearly enough for this case to constitute one of the "rare (indeed often calamitous) cases in which powerful diplomatic interests of the United States and foreign sovereigns aligned in supporting dismissal" on comity grounds, aligning with the more restrictive side of a circuit split on international comity. App. A at 7 (quoting *GDG Acquisitions, LLC v. Government of Belize*, 749 F.3d 1024, 1034 (11th Cir. 2014)). It held third that this case was distinguishable from *Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021) and thus presented no extraterritoriality concerns. App. A at 7-8.

3. Good cause exists for a 30-day extension.

a. This is an enormously complex case. It has been pending in federal court for 13 years, it involves over 1000 individual plaintiffs—with another 1000+ plaintiffs involved in a parallel case against Defendants arising out of the same events also proceeding in the Eastern District of Missouri, *see J.Y.C.C. v. The Doe Run Resources Corp.*, No. 15-cv-1704 (E.D. Mo.)—and it raises thorny issues of treaty interpretation, international comity, and foreign relations. First, this case raises a question of first impression regarding the proper interpretation of a provision of the TPA, the critical trade agreement between the United States and Peru. That same provision is common in other U.S. trade agreements, including the successor to NAFTA (the U.S.-Mexico-Canada-Agreement). *See* USMCA, art. 24.6.[1] Further, as the Eighth Circuit has recognized, "there is no consistent rule for how to evaluate the international comity doctrine prospectively," with the circuits divided on at least three different dimensions, all implicated here. App. A at 7. In sum, this transnational litigation presents issues of enormous legal and geopolitical significance, justifying a modest extension of time to thoroughly develop the arguments for this Court.

b. An extension of time is further justified by counsel's press of business on other pending matters. Counsel of record has a merits reply due brief

[1] *See also* U.S.-Australia Free Trade Agreement, art. 19.3; U.S.-Bahrain Free Trade Agreement, art. 16.3; U.S.-Chile Free Trade Agreement, art. 19.8; U.S.-Colombia Trade Promotion Agreement, art. 18.4; U.S.-Korea Free Trade Agreement, art. 20.4; U.S.-Morocco Free Trade Agreement, art. 17.4; U.S.-Oman Free Trade Agreement, art. 17.3; U.S.-Panama Trade Promotion Agreement, art. 17.4. The text of these agreements is available at the website of the Office of the U.S. Trade Representative. *See* USTR, Free Trade Agreements, https://tinyurl.com/5yhrmczp.

on October 3 in *Gilead Tenofovir Cases*, No. S283862 (Cal.); post-trial motions due October 14 in *Morris v. Stan's Harley-Davidson, Inc. et al.*, No. 000354/2021 (N.Y. Sup. Ct. Livingston Cnty.); a brief in opposition due October 21 in *Appian Corp. v. Pegasystems Inc.*, No. 240736 (Va.); a brief in opposition due October 21 in *Sony Music Entertainment v. Cox Communications, Inc.*, No. 24-181 (S. Ct.), and a reply in support of a petition for certiorari due November 4 in *Cox Communications, Inc., v. Sony Music Entertainment*, No. 24-171 (S. Ct.).

4. The requested 30-day extension would cause no prejudice to Respondents, who have advised that they have no objection to the extension. Indeed, proceedings in the district court have resumed and will continue apace notwithstanding any extension of the briefing schedule on Applicants' petition.

5. For the foregoing reasons, Applicants hereby request that an extension of time be granted, up to and including November 29, 2024, within which to file a petition for certiorari.

Respectfully submitted,

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