No. 24-_____

IN THE

Supreme Court of the United States

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.; IRA L. RENNERT; DOE RUN CAYMAN HOLDINGS LLC, A MISSOURI LIMITED LIABILITY COMPANY,

Petitioners,

v.

SR. KATE REID; MEGAN HEENEY, AS NEXT FRIENDS OF; A. O. A.; MEYLITH A. CASO ARROYO; Y. C. A.; A. C. C.; D. R. G.; J. R. G.; S. A. L.; JEAN P. QUISPE MORALES; B. Q. M.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Over two thousand Peruvians allege harm from emissions of a metallurgical complex located in Peru, operated by a Peruvian corporation, and regulated by a Peruvian environmental program. But these Peruvians sued in Missouri, seeking to impose a Missouri duty of care on this Peruvian complex.

The Peruvian government repeatedly protested that a Missouri court adjudicating a case about emissions levels allowed in Peru would be an affront to Peruvian sovereignty, including Peru's right to regulate and control activities within its territory. That sovereignty is protected by the U.S.-Peru Trade Promotion Agreement (TPA), which "[r]ecogniz[es] the sovereign right of each Party to establish its own levels of domestic environmental protection." The TPA thus requires each Party to "provide … access to remedies for violations of *that Party's* environmental laws."

The questions presented are:

1. Did the Eighth Circuit err in denying dismissal based on international comity, where allowing a U.S. court to dictate Peruvian environmental standards is a grave affront to Peruvian sovereignty, and where allowing such a claim would threaten to open the doors of U.S. courts to foreign tort claims lacking any meaningful nexus to the United States?

2. Did the Eighth Circuit err in holding that the TPA's language (found in many similar trade agreements) affirmatively requires U.S. courts to adjudicate foreign environmental tort claims?

CORPORATE DISCLOSURE STATEMENT

Petitioner The Renco Group, Inc. does not have a parent corporation. No publicly held corporations own 10% or more of the stock of The Renco Group, Inc.

Petitioner DR Acquisition Corp. is a wholly owned subsidiary of The Renco Group, Inc. No publicly held corporations own 10% or more of the stock of the DR Acquisition Corp.

Petitioner The Doe Run Resources Corporation is a wholly owned subsidiary of DR Acquisition Corporation, which is in turn owned by The Renco Group, Inc. No publicly held corporations own 10% or more of the stock of The Doe Run Resources Corporation.

Petitioner Doe Run Cayman Holdings LLC is a wholly owned subsidiary of The Renco Group, Inc. No publicly held corporations own 10% or more of the stock of Doe Run Cayman Holdings LLC.

RELATED PROCEEDINGS

Sr. Kate Reid et al. v. The Doe Run Resources Corp. et al, No. 23-1625 (8th Cir. judgment entered Aug. 1, 2024).

A.O.A. et al. v. The Doe Run Resources Corp. et al., No. 4:11-cv-00044 (E.D. Mo. memorandum and order entered Dec. 17, 2021).

Sister Kate Reid et al. v. The Doe Run Resource Corp. et al., No. 18-3552 (8th Cir. judgment entered June 4, 2019).

In re Doe Run Resources et al., No. 19-1056 (8th Cir. judgment entered June 4, 2019).

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INTRODUCTION

In multiple cases, culminating in *Nestlé USA, Inc. v. Doe,* 593 U.S. 628 (2021), this Court has strictly limited foreign plaintiffs' access to U.S. courts for tort claims arising in foreign countries. All that effort is for naught—and foreign torts will come flooding back to U.S. courts—if this Court lets the decision below stand.

The Eighth Circuit held that U.S. courts are required to entertain claims by more than two thousand Peruvian nationals claiming to have been harmed by emissions from a metallurgical complex in Peru operated by a Peruvian corporation and regulated by a site-specific Peruvian environmental program. The sole U.S. nexus alleged is that some decisions about the complex's operations were made by corporate parents in Missouri. *Nestlé* would decisively block claims with such an attenuated connection to the United States as impermissibly extraterritorial had Plaintiffs brought them under a federal statute. But because Plaintiffs packaged these foreign torts as state-law claims, the Eighth Circuit refused to dismiss them. That means any foreign plaintiff can end run *Nestlé* and sue U.S. parent companies by simply recasting impermissibly extraterritorial federal claims as violations of state-law standards of care. This is a particularly appealing option for foreign plaintiffs looking to sue in the United States because state tort law sweeps far more broadly than the limited federal remedies available to foreign plaintiffs, like the Alien Tort Statute, 28 U.S.C. § 1350.

Whether framed under federal law or dressed as a state-law claim, such extraterritorial claims do not belong in U.S. courts. All the more so where, as here, the foreign government has lodged formal diplomatic protests that the litigation is an affront to its sovereignty. The doctrine of international comity, an abstention doctrine grounded in the same extraterritoriality considerations expressed in *Nestlé*, compels dismissal. That would be the result in most circuits.

The Eighth Circuit reached the opposite result only by adopting the most cramped view of that doctrine in the country. It deepened a longstanding circuit split on the effect of a foreign plaintiff's decision to bypass his home forum to file suit in the United States. It also created two new splits, on the deference owed to a foreign government's diplomatic protests of U.S. litigation and the U.S. State Department's silence, respectively. The result is that the same fact pattern comes out differently in different circuits. A strikingly similar Fifth Circuit case—also involving Peruvian plaintiffs claiming injury from emissions in Peru—was dismissed on international comity grounds, while this case in the Eighth Circuit was allowed to continue.

The Eighth Circuit compounded these mistakes with an egregious misinterpretation of a trade agreement between the United States and Peru (and identical trade agreements with 17 other countries). The agreement emphasizes each country's sovereign right to set and enforce its own environmental standards in its own country. But the Eighth Circuit turned that protection on its head and read the agreement as

affirmatively authorizing Peruvians to sue in the United States over injuries suffered abroad—and vice versa.

This Court should grant review to resolve circuit splits, correct the Eighth Circuit's legal errors, and require these claims to be litigated where they belong: in Peru.

OPINIONS AND ORDERS BELOW

The Eighth Circuit's opinion is reported at 110 F.4th 1049 and reproduced at Pet. App. 1a-11a. The district court's decision denying Defendants' motion to dismiss and certifying its order for interlocutory appeal is unreported and reproduced at Pet. App. 12a-98a.

JURISDICTION

The district court had jurisdiction over this matter under 9 U.S.C. § 205 and 28 U.S.C. § 1331, *see Reid v. Doe Run Res. Corp.*, 701 F.3d 840, 843-44 (8th Cir. 2012), and certified its order denying Defendants' motion to dismiss for interlocutory appeal under 28 U.S.C. § 1292(b). The Eighth Circuit granted the § 1292(b) application and entered judgment on August 1, 2024. On October 9, 2024, this Court extended the time to petition for a writ of certiorari to November 29, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

TRADE AGREEMENT PROVISIONS INVOLVED

The relevant provisions of the United States-Peru Trade Promotion Agreement are reproduced at Pet. App. 99a-123a.

STATEMENT OF THE CASE

The United States And Peru Sign A Trade Agreement Promising Mutual Respect For Environmental Sovereignty

This case arises against the legal backdrop of the United States-Peru Trade Promotion Agreement (TPA), which the two countries signed in 2006. *See* Office of the United States Trade Representative, Executive Office of the President, *Peru TPA: Final Text,* https://tinyurl.com/3w6mvcaw.

Article 18 of the TPA, devoted to environmental matters, "[r]ecogniz[es] the sovereign right of each Party to establish its own levels of domestic environmental protection and environmental development priorities." Art. 18.1. It requires both the United States and Peru to provide "appropriate and effective access" to a forum for adjudicating "violations of [their respective] environmental laws," Art. 18.4(4), and ensure the availability of "appropriate and effective sanctions" for such violations, Art. 18.4(5). Notably, the TPA emphasizes that it does *not* "empower [either country's] authorities to undertake environmental law enforcement activities in the territory of" the other. Art. 18.3(5).

Peru Seeks Foreign Investment To Modernize A Metallurgical Complex That Wreaked Environmental Havoc For Decades

The La Oroya Metallurgical Complex, nestled high in the Andes mountains, began operations in 1922. Pet. App. 3a. For its first half century, the complex was owned by a private company not a defendant here. *Id*. That company polluted La Oroya and the surrounding area with abandon. *See, e.g.*, Dkt. 1233-17 at 69-70.[1]

In 1974, the Peruvian government nationalized the complex, citing the prior owner's rampant pollution. Pet. App. 3a; Dkt. 1233-19 at 2-4. The government made some environmental upgrades, but pollution remained a serious problem. An environmentalist who visited the town in 1994 described it as "a vision from hell." Dkt. 1233-1 at 3. The mayor of La Oroya publicly despaired: "Who is going to clean this up?" *Id*.

By the mid-1990s, the government confronted an intractable dilemma. The contamination in La Oroya was dire, but the government could not shut it down even temporarily. The metallurgical complex was the biggest employer and primary economic engine in the region and shutting it down would have inflicted incalculable economic harm. Dkt. 1233-20 at 9-10. The

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[1] Cites to "Dkt." refer to the district court docket, 11-cv-44 (E.D. Mo.). Record citation numbering reflects the docket entry, and cited page numbers correspond to ECF-stamped pagination. For simplicity, we use "Defendants" and "Plaintiffs" to refer to Petitioners and Respondents, respectively.

only hope was to attract a foreign company to take ownership and invest in necessary environmental improvements while continuing to operate the facility. *See generally* Dkt. 1233-14; Dkt. 1233-35.

The government conducted an auction. But it failed, largely because potential buyers feared inheriting liability for decades of environmental neglect. Dkt. 1233-35 at 2-3. To overcome those concerns, Peru assured prospective owners they would enjoy immunity as long as they implemented a government-mandated modernization program specific to that complex. Dkt. 1233-39 at 7-10. This "Environmental Remediation and Management Plan," known by the Spanish acronym "PAMA," required the new owner to make specified improvements in a particular sequence over a 10-year timeline. Pet. App. 3a; Dkt. 1233-20, at 16-25. Under Article 1971 of Peru's Civil Code, compliance with the PAMA plan would then immunize the owner from environmental liability. Pet. App. 5a, 36a-41a.

Relying on this promise of immunity, Defendants—Petitioners here—The Renco Group, Inc. (Renco) and its subsidiary The Doe Run Resources Corporation (Doe Run U.S.) expressed interest in buying the La Oroya complex. Pet. App. 3a. To retain local authority, however, the Peruvian government insisted on selling the complex to a Peruvian corporation. *Id*. So Doe Run U.S. incorporated a new affiliate, Doe Run Peru, as an indirect subsidiary. *Id*. In 1997, Peru transferred ownership of the complex to Doe Run Peru. *See generally* Dkt. 1233-39.

After discovery, it was undisputed that "[n]o one from the United States, whether at Doe Run [U.S.] or Renco, had any role in the daily operational management of Doe Run Peru or the La Oroya Complex." Dkt. 1233-7 at 3. Doe Run Peru personnel operated the La Oroya Complex, submitting periodic reports to its corporate parents. Pet. App. 75a.

Doe Run Peru implemented an ambitious program to reduce emissions by modernizing the La Oroya complex following the terms and timelines the PAMA prescribed. Dkt. 1233-56. It spent over $300 million on environmental upgrades and modernization. Dkt. 1233-10, at 58. That investment had tremendous impact. *See generally* Dkt. 1233-58. In less than 10 years, Doe Run Peru reduced main stack arsenic emissions by 93% and main stack lead emissions by 68%. *Id*. at 8. And by 2007, for the first time, the local rivers were "not … negatively affected by the [complex's] operations." *Id*. at 59.

Thousands of Peruvians Sue In Missouri And Peru Formally Protests

Despite this progress, U.S. and Peruvian lawyers recruited Peruvian citizens to file U.S. lawsuits claiming harm from Doe Run Peru's operations in La Oroya. Plaintiffs filed this suit more than 15 years ago against Renco, Doe Run U.S., and other corporate affiliates and officers—but not Doe Run Peru. Dkt. 1-5; Dkt. 1-6. More than 40 lawsuits involving over 1400 total plaintiffs are currently consolidated in this action ("*Reid*"). Pet. App. 2a. Another case in the same district, *J.Y.C.C. v. The Doe Run Resources Corp.,* No.

15-cv-1704 (E.D. Mo.) ("*Collins*"), involves over a thousand additional plaintiffs. Pet. App. 18a n.1.

In 2007, the President of the Peruvian Council of Ministers—the authorized spokesperson for the Peruvian government—sent a letter to the U.S. Ambassador conveying Peru's official view that "the state or federal courts of the United States [should] refuse to review the case" and "Peruvian authorities should hear … this case" instead. Dkt. 545-13 at 2. The letter expressed Peru's "deepest concerns" about these suits and declared that Peruvian "*sovereignty*" was at stake—specifically, "the right of the Republic of Peru to regulate and control … activities conducted within its territory" as well as its right to "legislate and to apply its laws over the people … in its territory." *Id.* at 2-3. The letter protested that "the jurisdiction of the case pertains solely to the authorities and courts in Peru." *Id*. at 2.

Peru renewed its protest in 2017—this time in a letter from its Ministry of Economy and Finance to the U.S. Department of State. Peru incorporated in full its prior objection and reiterated that Peru "maintains the importance of its sovereign rights" in environmental enforcement. Dkt. 545-3 at 4, 7. The 2017 letter declared that "States have … the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies," "which includes" not only "enabling relevant judicial and administrative proceedings," but also "adjudicating liability and compensation for the victims of pollution." Dkt. 545-3 at 5-6. The letter also emphasized Peru's rights under the TPA. *Id.* at 4-5. Allowing this suit to proceed in U.S. courts, Peru protested, was

"inconsistent with the text and spirit" of the TPA's guarantee of Peruvian sovereignty over environmental matters. *Id.* at 7. In particular, Peru explained, this suit "might require a court of the United States to pass judgment on the official acts and policies of the Peruvian State, rule on arguments relating to compliance with the laws and regulations of Peru, [and] interpret specific regulatory statements, policies, decisions and actions of Peru," *id.*—all affronts to Peruvian sovereignty.

Citing the TPA and Peru's objections, Defendants moved to dismiss the action on international comity grounds, Dkt. 545, and in the alternative sought application of Peruvian law, Dkt. 843. The district court denied both motions, concluding that "the interest of Missouri in regulating the conduct of its own citizens, both at home and abroad, outweighs the interest of Peru" in regulating the environment and industry within its own borders. Dkt. 949 at 61.

As the case progressed, Plaintiffs (Respondents here) cast their claims as a direct attack on Peru's sovereign regulatory judgment—as Peru's 2017 protest predicted. This was most evident in the testimony of Plaintiffs' standard-of-care expert. He denigrated Peru's "environmental enforcement practices" as "weak and ineffective." Dkt. 1231-3 at 17. He explicitly stated that he "disagree[d]" with the PAMA, that its priorities were not what they "should have been," and if he had been in charge, the PAMA "would have looked different." *Id.* at 11-13; Dkt. 1225-2 at 51. In essence, he proposed replacing Peru's judgment on environmental policy with a different "standard of care"—Missouri law. Dkt. 1231-3 at 9-10, 17-18. As he

explained, Doe Run Peru "could satisfy Peruvian environmental standards … and yet not satisfy the standard of care" under Missouri law. Dkt. 1231-3 at 9. In sum, Plaintiffs tried to prove their case by establishing that Peruvian environmental standards were deficient.

Based in part on this framing, Defendants renewed their motion to dismiss the case on international comity grounds. Dkt. 1231. The district court again denied the motion but sua sponte certified the case for interlocutory appeal pursuant to 28 U.S.C. § 1292(b), recognizing that its order decided a controlling question of law on which there is substantial ground for difference of opinion. Pet. App. 92a-98a.

The Eighth Circuit Affirms The District Court's Order Denying Dismissal

The Eighth Circuit granted the § 1292(b) petition. On appeal, Defendants explained that dismissal on comity grounds was required because the United States and Peru through the TPA expressed their intent that Peruvian environmental claims be litigated in Peru, because Peru's interests in the case vastly outweigh those of Missouri, and because Plaintiffs' allegations were materially identical to those deemed impermissibly extraterritorial in *Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021).

The Eighth Circuit rejected these arguments and affirmed the district court. Pet. App. 1a-11a. It held first that "the plain language" of the TPA affirmatively encompassed Plaintiffs' claims in the United States over environmental injuries suffered in Peru.

Pet. App. 7a. In other words, the court read the TPA to mean that the United States had agreed to open its courts to hear such claims, as if the TPA (and the 11 other treaties containing the same language) contained an ATS-like provision—but with unlimited extraterritorial application. This conclusion was based on Chapter 18.4(4) of the TPA, which requires each Party to the Agreement to "provide … appropriate and effective access to remedies for violations *of that … Party's law* relating to the environment or environmental conditions affecting human health." Pet. App. 103 (emphasis added). In concluding that this provision encompasses Plaintiffs' claims about the operation of the La Oroya complex, the Eighth Circuit necessarily concluded that Missouri's tort law standard of care was "law relating to the environment" under Art. 18.4(4)—and that this Missouri standard of care applies extraterritorially to govern the operation of that complex.

The Eighth Circuit held next that the "traditional comity factors" precluded dismissal on comity grounds. Pet. App. 9a-10a. It acknowledged first that "there is no consistent rule for how to evaluate the international comity doctrine prospectively." Pet. App. 9a. It then went on to deepen one circuit split on the comity analysis and create two more. First, it held that, if there are no "parallel foreign proceedings" because foreign litigants have skipped over their domestic courts to file suit in the United States, dismissal on comity grounds is extremely limited, available in only "rare (indeed often calamitous) cases." Pet. App. 9a-10a (quoting *GDG Acquisitions, LLC v. Gov't of Belize*, 749 F.3d 1024, 1034 (11th Cir. 2014)). Second, the Eighth Circuit determined no important U.S.

interests were at stake in this litigation, because the State Department had not filed a statement of interest. Pet. App. 10a. Third, the court discounted the Peruvian government's repeated formal diplomatic protests to the U.S. government illustrating Peru's strong sovereign interest in Plaintiffs' claims, because Peru did not express its objections "directly" to the court by "submit[ing] a declaration." *Id.*[2]

Finally, the Eighth Circuit held that this case presented no extraterritoriality concerns because it was distinguishable from *Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021). Pet. App. 10a-11a. On this score, the court noted first that *Nestlé* "involved … application of a federal statute," while this case involved "application of state common law," which in the court's view could properly be applied abroad in order to address the proper emission standards in Peru. Pet. App. 11a. It asserted next, without explanation and in stark contrast to the record in that case, that *Nestlé* involved allegations of extraterritorial conduct, while this case involved allegations of domestic conduct. Pet. App. 11a.

[2] The Eighth Circuit also claimed "letters from Peruvian officials suggest[] there does not appear to be an adequate forum or remedy available to the plaintiffs under Peruvian law." Pet. App. 10a. The district court made no such finding, and the referenced letters from two Peruvian congressmen say no such thing. *See* Dkts. 545-13 at 2; 545-03 at 6-7.

REASONS FOR GRANTING THE WRIT

I. The Eighth Circuit Ruling On Adjudicatory International Comity Warrants Review.

International comity embodies "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation." *Hilton v. Guyot*, 159 U.S. 113, 164 (1895). At issue here is "adjudicatory" comity, which recognizes that "in some private international disputes the prudent and just action for a federal court is to abstain from the exercise of jurisdiction." *Turner Entm't Co. v. Degeto Film*, 25 F.3d 1512, 1518 (11th Cir. 1994).

International comity generally requires a court to balance "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 v. Dresdner Bank AG*, 379 F.3d 1227, 1238 (11th Cir. 2004). While these factors are easily recited at a high level of generality, the Eighth Circuit acknowledged that "there is no consistent rule for how to evaluate the international comity doctrine prospectively" in practice. Pet. App. 9a. International law scholars concur, having observed "confusion and uncertainty in the lower courts regarding how to apply international comity considerations." Brief of Professors Samuel Estreicher and Thomas H. Lee as Amici Curiae In Support Of Neither Party, *Republic of Hungary v. Simon*, No. 18-1447, 2020 WL 5549461, at *5 (U.S. Sept. 11, 2020); *see also* Samuel Estreicher & Thomas H. Lee, *In Defense of International Comity*, 93 S. Cal. L. Rev. 169, 175 (2020) ("[T]he lower courts have lacked a 'clear analytical

framework' for how best to implement international comity."). The Eighth Circuit's decision exemplifies and deepens the existing confusion, conflicting with both the decisions of other circuits and decisions of this Court. This Court should grant certiorari to resolve this conflict, bring clarity and consistency to this critical area of the law with significant impact on foreign relations, and ratify a meaningful comity inquiry that prevents flooding U.S. courts with foreign tort claims.

A. The Eighth Circuit deepened splits on adjudicatory comity.

The Eighth Circuit has aligned itself with the view of adjudicatory comity that the Third and Eleventh Circuits have adopted. *See Gross v. German Found. Indus. Initiative*, 456 F.3d 363 (3d Cir. 2006); *GDG Acquisitions*, 749 F.3d at 1034. In so doing, the Eighth Circuit has deepened one split and created two more across three critical dimensions: (1) the treatment of parallel foreign proceedings; (2) the treatment of the views of the relevant foreign sovereign; and (3) the treatment of the views of the U.S. government.

Parallel foreign proceedings. The circuits are divided in how to treat the presence or absence of parallel litigation in the relevant foreign forum. The Eighth Circuit, like the Third and Eleventh Circuits, holds that the absence of parallel foreign proceedings triggers a heightened—indeed, almost insurmountable—standard for comity dismissal. According to these courts, parallel foreign proceedings deserve significant "deference." Pet. App. 9a; *GDG Acquisitions*,

749 F.3d at 1030 (similar). But if foreign litigants, as here, purposefully and strategically skip over their domestic forum and file suit only in the United States, deference to the foreign sovereign evaporates and dismissal is warranted in only "rare (indeed often calamitous) cases." Pet. App. 10a (quoting *GDG Acquisitions*, 749 F.3d at 1034); *see Gross*, 456 F.3d at 393.

In sharp contrast, other circuits treat the absence of foreign proceedings as a non-factor. *See, e.g., Mujica v. AirScan Inc.*, 771 F.3d 580, 603, 607 (9th Cir. 2014); *Torres v. S. Peru Copper Corp.*, 113 F.3d 540, 541-42, 544 (5th Cir. 1997); *Torres v. S. Peru Copper Corp.*, 965 F. Supp. 899, 909 (S.D. Tex. 1995). *Mujica* is particularly instructive. Judge Bybee, writing for the Ninth Circuit, comprehensively detailed the relevant factors to be considered with respect to U.S. and foreign interests in the adjudicatory comity analysis. 771 F.3d at 604, 607. The Ninth Circuit did not even list the absence of parallel foreign litigation as a factor bearing on the strength of the foreign forum's interest. Nor did the court address the presence or absence of foreign parallel litigation when applying its articulated test to assess Colombia's interests in the case. *See id.* at 611-12. The omission is notable because there was no parallel litigation in Colombia against the U.S. defendants, *id.* at 585-86, and because the dissent in *Mujica* expressly advocated for the Third and Eleventh Circuit's approach to this factor. *See id.* at 621 n.11 (Zilly, D.J., concurring in part and dissenting in part). In sum, the Ninth Circuit in *Mujica* considered—and rejected—the Eighth Circuit's approach here.

Still other circuits treat the *existence* of parallel foreign proceedings as a relevant factor in the comity analysis. *See Royal & Sun All. Ins. Co. of Canada v. Century Int'l Arms, Inc.*, 466 F.3d 88, 92-94 (2d Cir. 2006); *AAR Int'l, Inc. v. Nimelias Enters. S.A.*, 250 F.3d 510, 518 (7th Cir. 2001). But those circuits have not adopted the views of the Third, Eighth, and Eleventh Circuit's that the *absence* of such proceedings weighs heavily against the exercise of adjudicatory comity.

The Eighth Circuit's position is wrong and defies common sense. Foreign sovereigns have no control over where a private plaintiff chooses to sue, and the absence of pending parallel proceedings does not diminish a foreign government's sovereign interest in exercising its jurisdiction over matters within its own territory. *See* Estreicher & Lee, *supra,* at 206 (explaining that "the strength of a foreign government's interests in redressing claims with a center of gravity within its borders" does not necessarily turn on whether "proceedings in the alternative forum have been initiated"). To the contrary, in many cases—like here—foreign plaintiffs bypassing their local courts to litigate their claims in U.S. courts is precisely the affront to foreign sovereignty to which a foreign sovereign takes exception. *Supra* at 8-9. Moreover, the Eighth Circuit's rule perversely incentivizes foreign plaintiffs *not* to sue in their home country, to maximize the chances that their claims may be heard in the United States.

The U.S. Solicitor General, setting out the United States' official views on comity abstention, is aligned with the Fifth and Ninth Circuits in giving little-to-

no weight to the absence of parallel foreign litigation. *See* Brief for the United States as Amicus Curiae Supporting Petitioners, *Republic of Hungary v. Simon*, No. 18-1447, 2020 WL 5535982, at *11-17 (U.S. Sept. 11, 2020). A contrary rule placing significant weight on the *absence* of parallel foreign proceedings would work a significant incursion on foreign sovereignty, permitting cases with extremely attenuated connections to the United States to proceed here instead of being heard in the appropriate foreign forum—even, as here, over the strenuous objections of the foreign sovereign.

Views of the foreign sovereign. The Eighth Circuit's decision also created a split on another key dimension of the comity analysis: the respect owed to the views expressed by a foreign government.

As noted above, the Peruvian government twice formally protested the fact that U.S. courts are hearings Plaintiffs' claims. It did so each time through diplomatic channels: In 2007 the President of Peru's Council of Ministers lodged an official protest in a letter to the U.S. Ambassador, and in 2017 Peru's Ministry of Economy and Finance protested via letter to the U.S. Department of State. *Supra* at 8-9. The Eighth Circuit treated those protests as a nullity. In the face of Peru's unmistakable protests, the Eighth Circuit accused Peru of "remain[ing] silent" about this litigation proceeding in the United States, merely because Peru did not "submit[] a declaration of its position *in this case*," or "*directly* assert its sovereignty" to the court. Pet. App. 10a (emphasis added).

That conclusion is wholly out of step with the approaches in other circuits. The Second and Ninth Circuits have recognized that "courts of one nation accord[ing] deference to the official position of a foreign state" is "inherent in the concept of comity," "at least when the position is expressed on matters concerning actions of the foreign state taken within or with respect to its own territory." *Mujica*, 771 F.3d at 611 (quoting *Jota v. Texaco, Inc.*, 157 F.3d 153, 160 (2d Cir. 1998)). Thus, the Ninth Circuit in *Mujica* properly credited diplomatic protests lodged by the Colombian government in two démarches sent to the U.S. Embassy in Bogota but not reiterated in any court filing. 771 F.3d at 611.

The Eighth Circuit stands alone in pretending a foreign sovereign has been "silent" because it protested litigation through formal diplomatic channels rather than by submitting a court filing.

The Eighth Circuit's approach to foreign diplomatic protests is misguided. The court provided no justification for its view that the *form* of a foreign sovereign's formal protest is more significant than its content. And there is none. A foreign sovereign does not need to master U.S. litigation procedure, hire U.S. attorneys, or formally appear in a particular lawsuit to make its position clear, as Peru's formal protests here and Colombia's démarches in *Mujica* demonstrate. And refusing to honor clear statements of protest made through diplomatic channels withholds the respect due to a foreign sovereign's stated views for no valid reason—an offense that could negatively impact foreign relations.

Views of the U.S. government. The Eighth Circuit also broke from other circuits in its assessment of the fact that the U.S. Department of State did not file a Statement of Interest in this litigation.

In weighing the interests of the United States in this case, the Eighth Circuit asserted that the U.S. State Department "has remained silent" and did not file a statement of interest in this case. Pet. App. 10a. From that fact, the Eighth Circuit inferred that U.S. interests must weigh against dismissal on comity grounds.

In drawing such an inference, the Eighth Circuit ignored guidance from this Court and State Department officials. As this Court has recognized, the State Department generally "does not take positions regarding … litigation between private parties, unless required to do so by applicable law." *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Ct.*, 482 U.S. 522, 554 n.5 (1987) (Blackmun, J., concurring in part and dissenting in part). Even Plaintiffs have acknowledged that "it is 'unusual' for the State Department to weigh in without invitation." CA8 Appellees' Br. 34. Thus, State Department officials have expressly cautioned that "*no inference* should be drawn from [the State Department's] decision not to participate in the case." Harold H. Koh, *Foreign Official Immunity After* Samantar*: A United States Government Perspective*, 44 Vand. J. Transnat'l L. 1141, 1160 (2011) (emphasis added).

Unsurprisingly, other circuits heed the guidance from this Court and the State Department: When they consider the State Department's position on the

U.S. interests at stake to be relevant, they *invite* the United States to submit an amicus brief or statement of interest. *See, e.g., Cooper v. Tokyo Elec. Power Co. Holdings, Inc.*, 960 F.3d 549, 567 (9th Cir. 2020); *Mujica*, 771 F.3d at 586; *Torres*, 113 F.3d at 544. They do not just infer that there are no interests to protect.

The Eighth Circuit's contrary approach is not just doctrinally problematic; it also has negative real-world implications. Of particular note, the Eighth Circuit's decision here may require the State Department to dramatically change its policy of awaiting an invitation to become involved in litigation touching on foreign affairs, to instead filing unsolicited amicus briefs addressing the foreign affairs interests of the U.S. on a routine basis lest those interests be wrongly construed from the Department's silence.

* * *

These differences in approach yield diametrically opposite results. To see how, just compare the opinion below with the Fifth Circuit's *Torres* case, involving nearly identical facts. In *Torres*, hundreds of Peruvian nationals sued owners of a Peruvian smelting and refining facility in U.S. court, claiming injury from industrial emissions in Peru. 113 F.3d at 541. The district court reasoned that "the challenged conduct is regulated by … Peru and [the] exercise of jurisdiction by [a U.S. court] would interfere with Peru's sovereign right to control its own environment and resources." 965 F. Supp. at 909. The Fifth Circuit agreed. 113 F.3d at 544. Here, on virtually identical facts—Peruvian nationals suing owners of a Peruvian smelting facility claiming injury from industrial

emissions in Peru—there is a different result. There could be no clearer example of a circuit split than two different circuits reaching different results on virtually identical facts.

B. The Eighth Circuit's decision conflicts with this Court's rationale in *Nestlé* and opens a backdoor for foreign plaintiffs to sue in the United States.

The Eighth Circuit's adjudicatory comity analysis is not just wrong along all these dimensions. It also flouts this Court's reasoning in *Nestlé* in a way that invites foreign plaintiffs to easily blow through the guardrails this Court imposed and burden our courts with foreign cases that do not belong here.

As this Court has recognized, "the presumption against extraterritoriality … reflects concerns of international comity." *Yegiazaryan v. Smagin*, 599 U.S. 533, 541 (2023). Thus, the "guiding principle[s]" from this Court's extraterritoriality cases apply with equal force "in the context of adjudicatory comity." *Mujica*, 771 F.3d at 605. In both contexts, "the weaker the nexus between the challenged conduct and U.S. territory or … parties, the weaker the justification for adjudicating the matter in U.S. courts." *Id.* at 605-06. Put another way, if conduct would be considered extraterritorial, comity principles dictate that the United States should not serve as a litigation forum for claims about that conduct.

Under *Nestlé*'s logic, Plaintiffs' claims do not belong in U.S. courts. In *Nestlé,* the plaintiffs sued U.S. companies under the federal Alien Tort Statute

(ATS), alleging the defendant companies were aiding and abetting child slavery. 593 U.S. at 630-31. The Ninth Circuit had allowed the case to proceed in the United States, finding a sufficient U.S. nexus on the basis that "[e]very major operational decision" underlying the plaintiffs' complaint was "made in or approved in the United States." *Doe v. Nestle, S.A.*, 906 F.3d 1120, 1123 (9th Cir. 2018). This Court held that this was not enough "to support domestic application of the ATS." 593 U.S. at 634. It explained that "general corporate activity"—and specifically U.S. corporate "decisionmaking"—did not warrant domestic application of the ATS when the primary violation of international law occurred and caused injury abroad. *Id*. The Court's holding reflected that "the normal relationship between parent and subsidiary" corporations involves decisionmaking by the parent. *United States v. Bestfoods*, 524 U.S. 51, 71 (1998). If U.S.-based "decisionmaking" opened the doors to U.S. courts, then decisionmaking as part of corporate oversight would make the United States a forum for virtually any litigation against a foreign subsidiary with a U.S. parent. The Court found that prospect untenable.

This case presents all the same concerns as *Nestlé*. The crux of Plaintiffs' claim is that "decisionmaking by [U.S. parent company] executives in the United States" affected operations of the La Oroya complex in Peru and caused their injuries. Pet. App. 4a. Discovery has proven these allegations to be false, CA8 Appellants' Br. 59-64, but even if they were true, they place this case on all fours with *Nestlé*, and this case has no more business being in U.S. courts.

The Eighth Circuit tried to wave away the striking similarities between this case and *Nestlé* in a few ways, all without merit. First, the court noted that *Nestlé* "involved … application of a federal statute," while this case involves "application of state common law." Pet. App. 11a. But that only *aggravates* the extraterritoriality and comity problems. A basic tenet of the presumption against extraterritoriality is that a federal statute like the ATS *could* apply abroad if Congress expressed that intention clearly enough. *See EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) (*Aramco*). But Plaintiffs' claims are based on Missouri tort law. And it is "obvious" that state law "does not apply extraterritorially." *Friedman v. Boucher*, 580 F.3d 847, 854 (9th Cir. 2009); *New York Life Ins. Co. v. Head*, 234 U.S. 149, 161 (1914) (extraterritorial application of state statutory law); *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 115-16 (2013) (applying extraterritoriality principles developed in statutory context to common-law claims). This prohibition "is one of constitutional magnitude," "reflect[ing] core principles of constitutional structure." *Carolina Trucks & Equip., Inc. v. Volvo Trucks of N. Am., Inc.*, 492 F.3d 484, 489-90 (4th Cir. 2007). Indeed, that state law does not apply extraterritorially "is so obviously the necessary result of the Constitution that it has rarely been called in question." *Head*, 234 U.S. at 161.

Moreover, this case clearly involves an extraterritorial, not domestic, application of Missouri law—even if it were true that Defendants directly operated that La Oroya complex (which it is not, *see* CA8 Appellants' Br. 58-65). Every decision Plaintiffs impute to personnel in the United States is, according to

Plaintiffs, a decision about how to operate a facility in Peru. The environmental regulations and emissions standards governing Peruvian industrial facilities do not depend on the citizenship of their corporate owners or where particular decisions were made. *See Aramco*, 499 U.S. at 246-48; *Keoseian v. Von Kaulbach*, 763 F. Supp. 1253, 1258 (S.D.N.Y. 1991) ("There is no authority for the proposition that a state's laws follow … its citizens whenever they transact business elsewhere."). Stated otherwise, Peru's sovereign right to regulate industry within its borders is not diminished depending on whether a foreigner owns an industrial facility or where an owner or manager makes decisions affecting its operations. To hold otherwise would be a staggering impingement on foreign sovereignty.

The Eighth Circuit next attempted to distinguish *Nestlé* on the ground that there, "nearly all the alleged conduct occurred overseas," while in this case Plaintiffs "allege conduct that occurred within the United States as the basis for liability." Pet. App. 11a. That is not a distinction at all. In *Nestlé*, the Ninth Circuit characterized the plaintiffs' allegations as "paint[ing] a picture of overseas [wrongdoing] that defendants perpetuated from [U.S.] headquarters." 906 F.3d at 1126. In particular, the Ninth Circuit emphasized that "every major operational decision," including those underlying the plaintiffs' allegations, was "made in or approved in the United States." *Id*. at 1123. Again, that is the crux of Plaintiffs' claim here, too. *Supra* at 22; Pet. App. 4a.

C. This Court's review is necessary to prevent U.S. courts from serving as a universal tort forum in an end run around this Court's extraterritoriality jurisprudence.

The Eighth Circuit's decision now provides an easy end run around *Nestlé* and this Court's other extraterritoriality precedents: Plaintiffs can recast any extraterritorial claim—including but not limited to those barred by *Nestlé* itself—as a state-law tort claim to sue in the United States. Bear in mind that here, all the facilities, activity, environmental impact, and injuries were in Peru, and all the Plaintiffs are Peruvian, yet this lawsuit is in the United States only because Plaintiffs maintain that corporate decisions relating to the emissions in Peru violated *Missouri* standards of care—as though a Missouri standard of care could ever apply to a facility's operations *in Peru*. And on that basis, this litigation has been maintained in the United States for 15 years. If state-law torts are not subject to *Nestlé*'s admonition that U.S.-based "general corporate activity" like "decisionmaking" alone is not a sufficient nexus to adjudicate the matter in a U.S. court, 593 U.S. at 634, then U.S. corporate parents will face U.S. suits for the conduct of foreign subsidiaries based on the flimsiest allegations of U.S.-based "decisionmaking"—exactly what *Nestlé* prohibits. *Id.*

That is especially troubling because the approach the Eighth, Third, and Eleventh Circuits take to international comity invites naked forum shopping to select plaintiff-friendly U.S. fora that regularly award high punitive damages to hear foreign tort claims.

"Without the restraint of international comity, the choice to sue in U.S. courts may be driven more by tactical litigation advantages such as the availability of a civil jury trial (rarely found anywhere else) or broad discovery to pressure defendants into settlement, rather than any sense that U.S. courts are the best forums from an overall perspective, giving due weight to all affected interests." Estreicher & Lee, *supra,* at 202. And inviting such foreign tort action into our courts provides the U.S. plaintiffs' bar significant financial incentives to search out foreign claims to litigate in the United States. As this case illustrates, exporting those substantial financial incentives around the globe can have negative externalities, motivating bad actors to engage in unscrupulous behavior in the foreign country to facilitate the tort action in the United States, further roiling international tensions.[3]

Finally, this Court's intervention is necessary to bring clarity and uniformity to an important area of the law with a significant impact on foreign relations. The split of authority on international comity is producing radically different results in different jurisdictions, even on uncannily similar facts—as *Torres* shows. Not only do these divergent outcomes invite forum shopping, but they also underscore the

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[3] Evidence uncovered by Peruvian law enforcement and Defendants revealed that in this case in-person solicitation efforts to recruit plaintiffs in Peru were rife with irregularities and fraud, including forgery, bribery, and coercion, as documented in extensive reports filed in the district court. *See generally* Dkt. 1203-2; Dkt. 1362-3. The indications of fraud in the recruitment process were so strong that Peruvian authorities launched a criminal investigation that remains ongoing. Dkt. 1362-3.

particular need "for uniformity in this country's dealings with foreign nations," *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 413 (2003), given that "disparate treatment of cases involving foreign governments may have adverse foreign relations consequences." *USX Corp. v. Adriatic Ins. Co.*, 345 F.3d 190, 207 (3d Cir. 2003) (quoting H.R. Rep. No. 94-1487, at 13 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 6604, 6611).

II. The Eighth Circuit Incorrectly Interpreted A Key Provision Found In Numerous Trade Agreements As Affirmatively Requiring U.S. Courts To Hear Foreign Plaintiffs' Suits Over Foreign Injuries.

Central to the Eighth Circuit's comity analysis was its interpretation of the TPA to *require* U.S. courts to hear cases involving claimed injuries to Peruvians from environmental torts in Peru in connection with a Peruvian facility governed by Peruvian law. That interpretation necessarily means Peruvian courts are required to hear claims about environmental harms in the U.S. caused by U.S. facilities operating under U.S. law. This is an egregious misinterpretation of the TPA. § II.A. And it will have profound ramifications because it applies to numerous other international agreements containing similar language, spawning environmental tort suits from across the world. § II.B.

A. The Eighth Circuit egregiously misinterpreted the TPA.

The TPA enshrines the United States and Peru's mutual understanding that, consistent with the

Agreement's fierce protection of sovereignty, each country should adjudicate its own citizens' environmental claims.[4]

1. The TPA devotes an entire section, Article 18, to balancing each nation's interests regarding the "Environment." The Article opens by acknowledging "that each Party has sovereign rights and responsibilities" over environmental regulation and enforcement in their respective countries. Art. 18 (Objectives). It guarantees respect for "the sovereign right of each Party to establish its own levels of domestic environmental protection and environmental development priorities." Art. 18.1. Consistent with those overarching principles, the TPA then proceeds to layer multiple protections of each Party's sovereignty.

Article 18.4 addresses each Party's respective obligation to maintain adequate domestic environmental enforcement procedures. Each sovereign is required to "ensure that interested persons may request the Party's competent authorities to investigate alleged violations of *its* environmental laws." Art. 18.4(1) (emphasis added). The phrase "*its*" laws

[4] Indeed, here, properly construed, the TPA standing alone requires dismissal of this action on comity grounds. When two sovereigns have negotiated a bilateral agreement addressing where cases belong, the "most certain guide" to whether comity compels abstention is the language of that agreement. *Guyot*, 159 U.S. at 163; *see also Ungaro-Benages*, 379 F.3d at 1239 (relevant treaty reflected the U.S. government's considered "determin[ation of how] the interests of American citizens, on the whole, would be best served").

speaks unambiguously to the sovereign's enforcement of "its" own environmental laws in its own country.

The TPA then repeatedly emphasizes the message that each sovereign is responsible for the enforcement of its own environmental standards in its own territory. For example, each Party must make available "judicial, quasi-judicial, or administrative proceedings … to provide sanctions or remedies for violations of *its* environmental laws." Art. 18.4(2) (emphasis added). Each Party must also "provide appropriate and effective sanctions … for violations of that Party's environmental laws." Art. 18.4(5). And each Party is obligated to "provide persons with a legally recognized interest under its law … appropriate and effective access to remedies for violations of *that Party's* environmental laws or for violations of a legal duty under *that Party's law* relating to the environment"; such remedies include the right "to sue another person under that Party's jurisdiction for damages under *that Party's laws*." Art. 18.4(4) (emphasis added).

The message of the plain text from beginning to end is clear: The United States is to enforce and provide remedies for domestic violations of "its" environmental laws and duties, and Peru is to enforce and provide remedies for domestic violations of "its" environmental laws and duties. That means lawsuits regarding environmental harm in Peru must be brought in Peru, not in the United States. And vice versa.

2. The Eighth Circuit flipped the TPA's commitment to sovereignty on its head when it held that the "plain language" of Article 18.4(4) "provide[s] a pathway for" foreign plaintiffs to sue in the United States

over foreign torts "under Missouri law." Pet. App. 8a. On the Eighth Circuit's reading, because Plaintiffs allege violations of "Missouri law relating to environmental conditions affecting human health" in Peru, the TPA affirmatively authorizes thousands of Peruvian residents to sue in the U.S. *See id*; Pet. App. 79a; Art. 18.4(4).

The Eighth Circuit's decision is based on the erroneous premise that Missouri law somehow governs the appropriate levels of emissions from the operation of an industrial facility *in Peru*. But as detailed above, Missouri common law does not apply in Peru or govern the emissions of a facility regulated by Peruvian law. *Supra* at 23. Indeed, to apply Missouri state law to govern emissions in Peru would raise serious constitutional issues. *See Head*, 234 U.S. at 161. In sum, there is no such thing as "Missouri law relating to environmental conditions" *in Peru*. The Eighth Circuit's contrary reading is demonstrably wrong; the TPA cannot reasonably be understood to authorize Peruvian citizens to bring unconstitutional claims in U.S. courts.

In that light, the TPA's requirement that each country enforce *its own* environmental law in *its own* courts is obviously not a license to litigate in Peruvian courts about the permissible levels of environmental emissions in the United States, or vice versa.

Nor can the Eighth Circuit's ruling be squared with another term of the TPA, which provides that "[n]othing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of

another Party." Art. 18.3(5). Civil lawsuits, particularly ones that, like this, seek punitive damages, constitute just such enforcement. *See San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959) ("[t]he obligation to pay compensation … is … a potent method of governing conduct"); Black's Law Dictionary (12th ed. 2024) (defining "Law Enforcement" as "[t]he detection and punishment of violations of the law"). By seeking compensatory and punitive damages in this action, Plaintiffs are attempting to enforce their vision of proper environmental policy in Peru and deter what they think is undesirable conduct. But it is for Peru—not a Missouri jury—to make the policy choice about how to balance competing social interests to serve the welfare of its people.[5]

B. The Eighth Circuit's misinterpretation of the TPA has broad implications.

The Eighth Circuit's misinterpretation of the TPA carries staggering implications, not just for U.S.-Peru relations and investment, but for many other trade agreements with materially identical language.

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[5] Reading the TPA to uphold Peru's sovereign right to adjudicate Plaintiffs' challenge to environmental emissions in Peru is fully consistent with the TPA's Implementing Statute. That statute provides that "[n]o State law, or the application thereof, may be declared invalid … [as] inconsistent with the Agreement." Pub. L. No. 110-138, § 102(b)(1), 121 Stat. 1455, 1457 (2007). Holding that this dispute belongs in Peruvian courts does not invalidate any state law or its application. Pet. App. 8a-9a. Rather, it simply determines that Peru is the appropriate *forum* to adjudicate this case, under whatever law applies. *See Mujica*, 771 F.3d at 598 (contrasting adjudicatory comity with prescriptive comity).

At the outset, the Eighth Circuit's decision would allow the claims of thousands of Peruvian nationals to proceed to trial in Missouri so a Missouri judge or jury can adjudicate environmental emissions standards in Peru. This has the potential to significantly disrupt the United States' relationship with Peru, which has long taken the position that allowing this litigation to proceed in the United States is at odds with Peru's sovereign right "to regulate and control its natural resources and the mining activities conducted within its territory," Dkt. 545-13 at 2-3, and "inconsistent with the text and spirit" of the TPA. Dkt. 545-3 at 7. The State Department describes the TPA as "a cornerstone of the bilateral relationship" between the United States and Peru. U.S. Dep't of State, *U.S. Relations With Peru* (Aug. 8, 2023), https://tinyurl.com/yexx5b8p. Thus, the decision below stands to jeopardize the billions of dollars in increased trade and investment produced by the TPA. *See id*.; *see also* Dkt. 545-13 at 3 (Peru warning in its 2007 diplomatic protest that U.S. courts adjudicating this dispute "might constitute a disturbing precedent for investors of both countries").

The foreign policy implications here, however, extend far beyond U.S.-Peru relations to U.S. foreign relations more broadly, because the language in Article 18.4(4) of the TPA appears in trade agreements with numerous other countries.[6] Eleven of those agreements, covering 17 countries (Canada, Mexico, Australia, Bahrain, Chile, South Korea, Morocco, Oman,

[6] *See* Office of the U.S. Trade Representative, Executive Office of the President, *Free Trade Agreements*, https://tinyurl.com/5yhrmczp.

Panama, Singapore, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic) contain materially identical language to Article 18.4(4) of the TPA.[7] Of particular note is the successor to NAFTA, the U.S.-Mexico-Canada Agreement (USMCA), which contains a nearly identical provision guaranteeing that each party will provide domestic remedies for violations of its environmental laws. *See* USMCA, art. 24.6.

This means the Eighth Circuit's misinterpretation of the TPA is equally applicable to these other agreements. If the Eighth Circuit's reasoning is allowed to stand, plaintiffs from all 17 of these countries will be able to bring environmental torts suits in the U.S. state and federal courts, seeking redress under state common law. That is a result that neither the United States nor the other signatory countries contemplated. *See* CA8 NMA Br. at *24 ("Nothing in the negotiating history indicates that the Parties endorsed, or even contemplated, extraterritorial judicial

[7] *See* U.S.-Australia Free Trade Agreement, art. 19.3; U.S.-Bahrain Free Trade Agreement, art. 16.3; U.S.-CAFTA/DR, art. 17.3; 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.-Mexico-Canada Agreement, art. 24.6; 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; U.S.-Singapore, art. 18.3. The text of these agreements is available at the website of the Office of the U.S. Trade Representative. *See* Office of the U.S. Trade Representative, Executive Office of the President, *Free Trade Agreements*, https://tinyurl.com/5yhrmczp. *See also* Nat'l Mining Ass'n Amicus Br., *Reid v. Doe Run Res. Corp*. No. 23-1625, 2023 WL 4549760, at *28 & n.9 (8th Cir. July 6, 2023) (hereinafter "CA8 NMA Br.").

enforcement of environmental standards by private parties.").

Opening U.S. courts to such a flood of foreign environmental tort litigation would unduly consume the limited resources of the state and federal courts. *See* Missouri Amicus Br., *Reid v. Doe Run Res. Corp.*, No. 23-1625, 2023 WL 4647736, at *4 (8th Cir. July 11, 2023) (hereinafter "CA8 Missouri Br.") ("clogging Missouri courts with thousands of claims unrelated to the State delays justice for Missourians"); Chamber of Commerce Amicus Br., *Reid v. Doe Run Res. Corp.*, No. 23-1625, 2023 WL 4550490, at *24 (8th Cir. July 7, 2023) (hereinafter CA8 Chamber Br.) ("federal courts will become a hotbed of litigation on behalf of foreign nationals for injuries occurring overseas—suits properly governed by foreign law and adjudicated by foreign courts"). As in this case, the U.S. plaintiffs' bar will now be incentivized to scour the world for foreign tort claims, seeking a major pay day in U.S. courts.

Moreover, the language in these trade agreements applies equally to both signatories. *See, e.g.*, Art. 18.4(4) (referring to "[e]ach Party"). If Article 18.4(4) requires U.S. courts to entertain state-law claims brought by foreign plaintiffs about industrial emissions abroad, then it equally requires foreign courts to entertain foreign law claims brought by U.S. plaintiffs about U.S. industrial emissions. For example, if Peruvian citizens can file this suit in Missouri to challenge emissions from an industrial facility in Peru, then U.S. citizens—maybe environmental activists—could file suit in Canada or South Korea seeking to hold companies liable for emissions from an

industrial facility in Texas. In sum, under the Eighth Circuit's reading, *any* U.S. company could be sued in other countries for their emissions in the United States—with foreign countries sitting in judgment of U.S. emissions.

This is precisely why Peru warned the United States in its first diplomatic protest about "the reciprocity principle that governs the international relationship between Governments." Dkt. 545-13 at 3. As Peru suggested in its protest, the upshot of the position adopted by the Eighth Circuit is that "a Canadian or Mexican court could assert jurisdiction over a Canadian or Mexican company with facilities in the United States, hold that the facility was obligated to comply with Canadian or Mexican environmental standards, and impose liability for failure to comply with those standards," effectively applying foreign environmental standards in U.S. territory. *See* CA8 NMA Br. at *29. The United States has a clear interest in preventing such "reciprocal action" if this case is allowed to proceed. *See Fed. Republic of Germany v. Philipp*, 592 U.S. 169, 185 (2021); *see also* CA8 Missouri Br. at *6 ("Missouri would certainly object if Peruvian courts exercised jurisdiction to override Missouri's sovereign interests.").

The USMCA is a case study in the potentially sweeping impacts of the Eighth Circuit's decision. In 2022 alone, the USMCA facilitated the trade of U.S. goods and services worth approximately $1.8 *trillion*. *See* Office of the U.S. Trade Representative, Executive Office of the President, *United States-Mexico-Canada Agreement*, https://tinyurl.com/238dda3u. With respect to the USMCA, the Eighth Circuit's

decision—which constitutes controlling precedent for a significant portion of the U.S. border with Canada—could offend our most critical trade partners by infringing their sovereignty over environmental regulation within their own borders, chill foreign and international investment with those trade partners, and under the principle of reciprocity, expose U.S. companies to suit in Canada and Mexico in connection with their activities in the United States.

The Eighth Circuit's ruling also places these important trade agreements in jeopardy. Looking to the Eighth Circuit's decision, foreign trading partners might reasonably conclude that their trade agreements with the U.S. contain "mere empty promises that the United States will not interfere with their environmental standards." CA8 Chamber Br. at *22. U.S. trade partners are unlikely to permit such interference, just as our government would not tolerate a court in, say, Peru's Yauli Province sitting in judgment of the modernization efforts at a U.S. factory. Those nations might withdraw or seek to renegotiate those agreements. Other nations might grow more reluctant to enter into trade agreements with the United States. And regardless of what happens at the trade signatory level, foreign investors will face significant uncertainty about their legal exposure—uncertainty that will chill foreign investment when it is needed most. *Cf.* Dkt. 545-13 at 3 (Peru noting this case's likely adverse impact on foreign investment).

In sum, review here is vitally necessary to prevent the significant adverse legal and geopolitical effects of the Eighth Circuit's atextual reading of the TPA and its corresponding impact on other trade agreements.

This Court has previously granted review in other cases involving questions that impacted multiple treaties. *See, e.g.*, Petition for Writ of Certiorari at 28-29, *Herrera v. Wyoming*, No. 17-532, 2017 WL 4548211 (U.S. Oct. 5, 2017) (other treaties involved "identical" or "materially identical" language); *see also Garamendi*, 539 U.S. at 408 (international agreement at issue had "served as a model for similar agreements with" other countries); *cf.* Petition for Writ of Certiorari at 35-38, *OBB Personenverkehr AG v. Sachs*, No. 13-1067, 2014 WL 890906 (U.S. Mar. 5, 2014) (noting potential foreign policy implications of expanding the availability of U.S. suits against foreign private entities). Review is equally warranted here.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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