No. 15-830

In the Supreme Court of the United States

GOVERNMENT OF BELIZE, PETITIONER

v.

BELIZE SOCIAL DEVELOPMENT LIMITED

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

IAN HEATH GERSHENGORN
Acting Solicitor General
Counsel of Record
BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
NICOLE A. SAHARSKY
Assistant to the Solicitor General
SHARON SWINGLE
DANIEL AGUILAR
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

BRIAN J. EGAN
Legal Adviser
Department of State
Washington, D.C. 20520

QUESTIONS PRESENTED

1. Whether a district court may decline to confirm an arbitral award on *forum non conveniens* grounds under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3, when the party seeking confirmation seeks to attach the assets of a foreign state that are located in the United States.

2. Whether the public policy exception to confirmation of an arbitral award in Article V(2)(b) of the New York Convention, 21 U.S.T. 2520, 330 U.N.T.S. 42, applies in this case.

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This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

1. The Foreign Sovereign Immunities Act of 1976, 28 U.S.C. 1330, 1441(d), 1602 *et seq.* (FSIA), generally provides that a foreign state is immune from suit in courts of the United States, subject to certain enumerated exceptions. See 28 U.S.C. 1604-1607. Under one such exception, a plaintiff may bring an action against a foreign state "to confirm an award made pursuant to * * * an agreement to arbitrate," where that agreement or award is "governed by a treaty * * * in force for the United States calling

for the recognition and enforcement of arbitral awards." 28 U.S.C. 1605(a)(6).

One such treaty is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3, commonly known as the New York Convention. The New York Convention's principal purposes are "to encourage the recognition and enforcement of commercial arbitration agreements in international contracts" and "to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries." *Scherk* v. *Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974). Under the Convention, each Contracting State "shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in" the Convention. Art. III, 21 U.S.T. 2519, 330 U.N.T.S. 40. The Convention permits a Contracting State to refuse recognition and enforcement only on certain limited grounds, Art. V, 21 U.S.T. 2520, 330 U.N.T.S. 40, 42, such as when doing so "would be contrary to the public policy of that country," Art. V(2)(B), 21 U.S.T. 2520, 330 U.N.T.S. 42.

Chapter 2 of the Federal Arbitration Act (FAA), 9 U.S.C. 201 *et seq.*, implements the Convention domestically. The FAA provides that "any party to the arbitration" may apply to a court with jurisdiction "for an order confirming the award as against any other party to the arbitration," and the court "shall confirm the award" unless one of the Convention's exceptions applies. 9 U.S.C. 207.

2. This case arises out of petitioner's breach of a 2005 agreement between petitioner and Belize Tele-

communications Limited (Belize Telecom), the largest private telecommunications provider in Belize. Pet. App. 2, 16. Said Musa, former Prime Minister of Belize, entered into that agreement on behalf of petitioner. *Id.* at 2. In the agreement, Belize Telecom agreed to purchase properties from petitioner for 19.2 million Belize dollars; in return, Belize Telecom was to receive an exclusive license to provide telecommunication voice services in Belize, a guaranteed 15% rate of return on investments, and preferential tax treatment. *Id.* at 2-3, 16. The agreement contained an arbitration clause, which specified that "[a]ny dispute arising out of or in connection with this Agreement including any question regarding its existence, validity or termination * * * shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) Rules." *Id.* at 3-4 (quoting Section 15.2 of the agreement).

In 2008, a new Prime Minister, Dean Barrow, refused to honor the agreement. Pet. App. 4, 17. He asserted that the contract had been kept secret, was "repugnant to the laws of Belize," and was invalid because Prime Minister Musa "lacked authority to bind Belize." *Id.* at 4, 7.

Belize Telecom's successor, Belize Telemedia Limited (Belize Telemedia), initiated arbitration in the LCIA to enforce the agreement. Pet. App. 4, 6, 16 n.2. Petitioner was aware of the arbitration proceeding but declined to participate on the ground that the underlying agreement was invalid. *Id.* at 7. The LCIA selected a three-person tribunal for the case, *id.* at 18, and the tribunal held a three-day evidentiary hearing, *ibid.*; see C.A. J.A. 60-63.

The arbitral tribunal concluded that the agreement is valid and enforceable against petitioner. C.A. J.A. 18-126. The tribunal found that Prime Minister Musa "had authority to contract on behalf of [petitioner]"; that petitioner "had actual authority to enter into the Accommodation Agreement" at the time it was executed; and that "it was lawful for [petitioner] to agree to the provisions that are now in dispute." *Id.* at 68, 75.

Although petitioner "chose not to take part in the[] proceedings," the arbitral tribunal "consider[ed] on its own initiative" petitioner's arguments as to why the agreement was unenforceable. C.A. J.A. 63. The tribunal rejected the allegation that the contract had been kept secret, finding that the negotiations were "widely covered by the press" and that the agreement's terms were known and executed by "numerous representatives of the previous administration," including officials who continued to work in the new administration. *Id.* at 64; see *id.* at 64-66. The tribunal also noted that no "allegation of corruption [has] been made." *Id.* at 66.

The tribunal awarded Belize Telemedia declaratory relief and over 34 million Belize dollars in damages. C.A. J.A. 122-125. Belize Telemedia assigned the monetary award to respondent. Pet. App. 4.

Petitioner sued respondent and Belize Telemedia in the Belize Supreme Court (a trial court), seeking a declaration that the agreement was void and the arbitral award unenforceable. Pet. 7. That court issued a preliminary injunction that prohibited respondent and Belize Telemedia "from commencing or continuing in the UK and in any other jurisdiction, proceedings for enforcement of the [arbitral] award" until its proceed-

ings concluded. C.A. J.A. 335; see *id.* at 334-336. Petitioner then nationalized Belize Telemedia, Pet. App. 20; Pet. 8, and dismissed the action against respondent, C.A. J.A. 591, thus concluding the proceedings in the trial court in Belize.

3. Respondent began the present case by filing a petition to confirm the arbitration award in the District Court for the District of Columbia. Pet. App. 4. The court initially stayed the case pending the outcome of the Belizean litigation to invalidate the agreement. *Id.* at 4-5, 20-21. The court of appeals issued a writ of mandamus instructing the district court to lift the stay, *id.* at 50-66, and this Court denied a petition for a writ of certiorari seeking review of that decision, 133 S. Ct. 274 (2012) (No. 12-2).

The district court then confirmed the arbitral award. Pet. App. 15-49. As relevant here, the court declined to dismiss the case on grounds of *forum non conveniens* or international comity. *Id.* at 26-28. The court explained that whether to dismiss a case on *forum non conveniens* grounds depends on whether there is "an adequate alternative forum for the dispute," and if there is, whether "a balancing of private and public interest factors strongly favors dismissal." *Id.* at 26 (citation omitted). Here, the court concluded, "there is no adequate alternative forum" because respondent seeks to attach petitioner's assets in the United States, and "only a court of the United States (or of one of them) may attach the commercial property of a foreign nation located in the United States." *Ibid.* (quoting *TMR Energy Ltd.* v. *State Prop. Fund of Ukr.*, 411 F.3d 296, 303 (D.C. Cir. 2005)).

The district court also rejected petitioner's argument that it should dismiss the case based on interna-

tional comity. Pet. App. 27-28. The court noted that the court of appeals had directed it to proceed with the confirmation action despite parallel proceedings in Belize, *id.* at 28 & n.11, and it explained that comity concerns favored respecting the decision of the arbitral tribunal, which was "located in England, a fellow signatory to the New York Convention," *id.* at 29 n.11.

Finally, the district court concluded that the Convention's public policy exception did not preclude confirmation of the award. Pet. App. 46-47. Petitioner had argued that confirmation would be contrary to the United States' public policy against corruption. *Id.* at 46. The district court recognized that "the United States has a strong policy against foreign corruption," but also noted that there is a "countervailing policy" in favor of "arbitral dispute resolution." *Id.* at 46-47 (citations omitted). The court concluded that petitioner had failed to demonstrate that the arbitral award would "offend the United States' most basic notions of morality and justice." *Ibid.* (internal quotation marks omitted).

4. The court of appeals affirmed. Pet. App. 1-14. Petitioner's primary argument on appeal was that the action must be dismissed because it did not come within the FSIA's exception to sovereign immunity for recognition and enforcement of arbitral awards in 28 U.S.C. 1605(a)(6). See Pet. C.A. Br. 17-29; Pet. C.A. Reply Br. 2-13. The court rejected that argument. Pet. App. 5-14. The court then noted that petitioner "raise[d] several other arguments for why we should dismiss this action, including *forum non conveniens*, international comity, and lack of personal jurisdiction, as well as specific defenses under the Convention." *Id.* at 14. The court concluded that "[t]hese arguments

were adequately discussed and rejected by the district court" and "none warrant further exposition by this Court." *Ibid.*

The court of appeals denied petitioner's petition for rehearing en banc. Pet. App. 69-70.

5. In addition to the agreement at issue in this case, Prime Minister Musa signed other, similar agreements for preferential tax treatment that have been the subject of arbitration and litigation. Petitioner refused to recognize one such agreement with BCB Holdings Limited and The Belize Bank Limited (collectively, BCB Holdings). BCB Holdings submitted the dispute to arbitration and obtained an award. Pet. App. 88-89, 91-92. BCB Holdings filed an application to enforce the award in Belize; the Belize Supreme Court enforced the award; the Belize Court of Appeals reversed; and the Caribbean Court of Justice (CCJ) affirmed the decision not to enforce the award. *Id.* at 89, 94-97. As relevant here, the CCJ concluded that Prime Minister Musa lacked authority to enter into the agreement because "only Parliament should impose, alter, repeal, regulate or remit taxes." *Id.* at 114. The CCJ also determined that enforcement of the award would violate the public policy of Belize because the agreement violated Belize's separation of powers. *Id.* at 123-125.[1]

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[1] BCB Holdings also sought to confirm its arbitral award in the United States. The district court confirmed the award, the court of appeals affirmed, and petitioner has filed a certiorari petition. See *BCB Holdings Ltd.* v. *Government of Belize*, 110 F. Supp. 3d 233, 251 (D.D.C. 2015), aff'd, 650 Fed. Appx. 17 (D.C. Cir. 2016), petition for cert. pending, No. 16-136 (filed July 26, 2016).

There is also a third agreement that was submitted to arbitration and is now before this Court. The prevailing party in that arbitra-

DISCUSSION

1. Petitioner first contends (Pet. 16-22) that this Court should grant certiorari to decide whether a court may decline to confirm an arbitral award on *forum non conveniens* grounds when the party petitioning for confirmation seeks to attach the assets of a foreign state that are located in the United States. This case would be a poor vehicle for considering that question for two reasons. First, the *forum non conveniens* argument was not the focus of the briefing below, and the court of appeals addressed it only in summary fashion. Second, resolution of that question would not matter in this case, because there is another reason why there is no adequate alternative forum abroad: in light of the Caribbean Court of Justice's decision, the arbitral award cannot be enforced in Belize. Further review is therefore unwarranted.

a. A *forum non conveniens* analysis consists of two questions: whether there is an alternative forum abroad, and if so, whether a balancing of private and public interest factors favors dismissal so the case may be heard in the alternative forum. See *Sinochem Int'l Co.* v. *Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 429 (2007) (*Sinochem*); *American Dredging Co.* v. *Miller*, 510 U.S. 443, 447-449 & n.2 (1994); see also Pet. App. 26. Where the alternative forum abroad is inadequate, however, the case may not be dismissed on *forum non conveniens* grounds. See *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235, 254-255 & n.22 (1981). An alternative

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tion sought confirmation of the award in district court. The district court confirmed the award, and the court of appeals affirmed. See *Newco Ltd.* v. *Government of Belize*, 156 F. Supp. 3d 79, 83 (D.D.C. 2015), aff'd, 650 Fed. Appx. 14 (D.C. Cir. 2016), petition for cert. pending, No. 16-135 (filed July 26, 2016).

forum is not inadequate merely because its substantive law would be "less favorable to the plaintiffs than that of the present forum." *Id.* at 247. Rather, the forum may be considered inadequate when "the remedy provided by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all." *Id.* at 254; see *id.* at 254 n.22. The defendant has the burden of establishing that there is another adequate forum to hear the case. See *Sinochem*, 549 U.S. at 430; 14D Charles Alan Wright et al., *Federal Practice and Procedure* § 3828.2 & n.1 (4th ed. 2013 & Supp. 2016) ("Federal courts unanimously conclude that the defendant bears the burden of persuasion on all elements of the forum non conveniens analysis.").

b. In this case, the D.C. Circuit affirmed the district court's ruling declining to dismiss this case on *forum non conveniens* grounds, which relied on *TMR Energy Ltd.* v. *State Property Fund of Ukraine*, 411 F.3d 296 (2005) (*TMR*). See Pet. App. 14, 26-27. In *TMR*, the D.C. Circuit held that, because the party petitioning to enforce the arbitration award sought to attach assets of a foreign state in the United States, no other adequate forum existed because "only a court of the United States (or of one of them) may attach the commercial property of a foreign nation located in the United States." 411 F.3d at 303 (citing 28 U.S.C. 1609, 1610).

Petitioner contends (Pet. 17-21) that review is warranted because the Second Circuit disagrees with the D.C. Circuit about whether a court may dismiss a petition to confirm an arbitral award on *forum non conveniens* grounds when the party petitioning for enforcement seeks to attach assets of a foreign state in the United States. Petitioner relies on *Figueiredo*

Ferraz e Engenharia de Projeto Ltda. v. *Republic of Peru*, 665 F.3d 384 (2d Cir. 2011) (*Figueiredo*). In that case, Peru sought dismissal on *forum non conveniens* grounds of an action to enforce an arbitration award against it under the Inter-American Convention on International Commercial Arbitration (Panama Convention), Jan. 30, 1975, 1438 U.N.T.S. 245, arguing that enforcement in U.S. courts could undermine a Peruvian statute that placed an annual cap on payment of adverse judgments. 665 F.3d at 391-392.

Invoking *TMR*, the plaintiffs in *Figueiredo* argued that dismissal on *forum non conveniens* grounds was inappropriate because they sought to attach Peruvian assets in the United States. The Second Circuit rejected that argument, explaining that, in an action to enforce an arbitral award where the plaintiff seeks "to obtain a judg[]ment and ultimately execution on a defendant's assets," "the adequacy of the alternate forum depends on whether there are some assets of the defendant in the alternate forum, not whether the precise asset located here can be executed upon there." *Figueiredo*, 665 F.3d at 391. The Second Circuit stated that, to the extent that the D.C. Circuit established a categorical rule that "a foreign forum [is] inadequate because the foreign defendant's precise asset in this country can be attached only here," it disagreed with that rule. *Ibid.* The Second Circuit then ordered dismissal of the action on *forum non conveniens* grounds.

In its amicus brief in *Figueiredo* (at 21-27), the United States argued that the district court properly declined to dismiss the action on *forum non conveniens* grounds. The United States did not, however, specifically address whether an enforcement proceeding

in Peru would furnish an adequate alternative forum. It instead assumed the availability of another adequate forum (*id.* at 23), but argued that the balance of public policy and private interests weighed against dismissal. Specifically, the United States pointed to the policy embodied in the Panama Convention of enforcing arbitral awards and the presence of assets of Peru in the United States as strong reasons not to dismiss (*id.* at 23-25).

c. It is not clear whether the D.C. Circuit in *TMR* intended to establish a categorical rule that a foreign forum is always inadequate when the plaintiff seeks to attach assets in the United States, although the district court in this case read *TMR* to do so, and the court of appeals affirmed for the reasons stated by the district court. Pet. App. 14, 26-27. But the D.C. Circuit in *TMR* and this case was not faced with the sort of public policy factor (such as the state-imposed cap on annual payments of judgments) that the Second Circuit in *Figueiredo* found to weigh in favor of dismissal notwithstanding the presence of assets of Peru in the United States. 665 F.3d at 391-392.

Moreover, because the D.C. Circuit in *TMR* held that there was no adequate forum abroad, it expressly did not consider the further argument, rejected by the Second Circuit in *In re Arbitration Between Monegasque de Reassurances S.A.M.* v. *NAK Naftogaz of Ukraine*, 311 F.3d 488 (2002), that *forum non conveniens* is altogether unavailable as a basis for dismissal in an action to confirm an arbitral award under the New York Convention. See *TMR*, 411 F.3d at 304 n.*.[2]

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[2] As noted above, the Second Circuit subsequently relied on *forum non conveniens* to dismiss enforcement of the arbitral award in *Figueiredo* under the materially identical Panama Con-

The district court and the D.C. Circuit in this case likewise did not consider that issue, and the parties refer to it only in footnotes in their filings in this Court, see Br. in Opp. 11 n.8; Reply Br. 6 n.5, focusing instead on the D.C. Circuit's application of the doctrine in this case. This case therefore presents no occasion to consider the availability of the doctrine of *forum non conveniens* in an action under the New York Convention.[3]

In any event, this case would be a poor vehicle for resolving any conflict between the decisions of the D.C. Circuit and the Second Circuit's decision in *Figueiredo*. First, the *forum non conveniens* issue was not petitioner's primary issue on appeal, and the court of appeals addressed it only in passing. Petitioner's primary argument was that the case must be dismissed on foreign sovereign immunity grounds. See

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vention. In its amicus brief in *Figueiredo*, the United States took the position that the doctrine of *forum non conveniens* is a rule of procedure that may properly be considered as a ground for dismissal in an action under the Panama Convention. See U.S. Amicus Br. at 21-22 (No. 09-3925).

[3] Petitioner also contends (Pet. 4, 21-22) that this Court rejected the D.C. Circuit's view in *Sinochem*. That is mistaken. The question in *Sinochem* was whether a district court is required to establish its own jurisdiction before dismissing a case on *forum non conveniens* grounds; the Court held that it is not. 549 U.S. at 425. The Court upheld the district court's dismissal on *forum non conveniens* grounds, but it did not consider what effect, if any, the plaintiff's conditional request to attach the defendant's assets had on the applicability of *forum non conveniens*. *Id.* at 435-436. (The Court's one-paragraph discussion of the district court's ruling did not even mention attachment. *Ibid.*) Nor did any of the other decisions of this Court cited by petitioner (Pet. 21-22) address that issue. Accordingly, the decision below does not conflict with a decision of this Court.

Pet. C.A. Br. 17-29; Pet. C.A. Reply Br. 2-13. Accordingly, the court of appeals spent most of its opinion addressing petitioner's various arguments in favor of sovereign immunity. See Pet. App. 5-14. With respect to petitioner's *forum non conveniens* argument, the court of appeals simply relied on the district court's analysis and provided no "further exposition." *Id.* at 14.

Second, resolution of the first question presented would not matter to the ultimate outcome of this case, because there is a different reason why no adequate alternative forum exists. In both the Second Circuit and D.C. Circuit, an alternative forum must afford the plaintiff some meaningful possibility of relief to be adequate for purposes of the *forum non conveniens* doctrine. See *Norex Petroleum Ltd.* v. *Access Indus., Inc.*, 416 F.3d 146, 157-159 (2d Cir. 2005), cert. denied, 547 U.S. 1175 (2006); *Nemariam* v. *Federal Democratic Republic of Eth.*, 315 F.3d 390, 394 (D.C. Cir.), cert. denied, 540 U.S. 877 (2003); see also *Piper Aircraft Co.*, 454 U.S. at 254 & n.22 (alternative forum is inadequate when "the remedy provided by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all"). Here, petitioner itself has explained that respondent has no meaningful possibility of enforcing the arbitral award in Belize courts in light of the CCJ's recent decision.

Specifically, as petitioner notes (Pet. 8-12, 24-27, 39), the CCJ has held that enforcement of BCB Holdings' arbitral award against petitioner would violate the public policy of Belize because the arbitral award enforces an agreement for preferential tax treatment that was not approved by Belize's Parliament. See Pet. App. 123-124 (CCJ's analysis). Although that decision concerns a different agreement between different parties,

petitioner represents that the CCJ's holding makes similar contracts conferring preferential tax treatment without Parliament's consent unenforceable in Belize's courts.[4] Petitioner has not identified any claim that respondent could present to the Belizean courts that would not be foreclosed by the CCJ decision. Petitioner therefore has not carried its burden of establishing that the courts in Belize provide an adequate alternative forum for this dispute. Accordingly, even if this Court were to grant review on the first question presented and decide the issue favorably to petitioner, it would not ultimately change the result, because the lack of an adequate alternative forum would make *forum non conveniens* dismissal inappropriate.

2. Petitioner also contends (Pet. 23-33) that review is warranted to address the court of appeals' conclusion that the New York Convention's public policy exception is inapplicable in this case. The court of appeals' holding is correct, and it does not conflict with any decision of another court of appeals or of this Court. Rather, petitioner's argument is simply a disa-

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[4] See Pet. 16 ("The CCJ has held that a parallel LCIA award based on a similar agreement executed between the same Prime Minister and another company of this same individual was unenforceable because it violated the Belizean Constitution."); Pet. 23 ("The CCJ has condemned agreements such as those at issue here as unconstitutional under separation of powers principles, and refused to confirm a parallel award on public policy grounds."); Pet. 32 ("As the CCJ has held, enforcement of awards like this one would improperly 'reward[] corporate citizens for participating in the violation of the fundamental law of Belize and punishing the State for refusing to acquiesce in the violation.'" (quoting Pet. App. 124)); Pet. 39 ("[T]he CCJ (the highest court in Belize) * * * prohibits [Belize] from paying such an award.").

greement with the application of settled law to the facts of this particular case.

a. Under Article V(2)(b) of the New York Convention, a U.S. court may refuse to recognize or enforce an arbitral award if doing so "would be contrary to the public policy of" the United States. 21 U.S.T. 2520, 330 U.N.T.S. 42. The test is not simply "whether the courts of a secondary State would set aside an arbitration award if the award had been made and enforcement had been sought within its jurisdiction"; rather, the party seeking dismissal has a heavy burden to establish that enforcement would "violate the forum state's most basic notions of morality and justice." *TermoRio S.A. E.S.P.* v. *Electranta S.P.*, 487 F.3d 928, 938 (D.C. Cir.) (citation omitted), cert. denied, 552 U.S. 1038 (2007); see Pet. App. 46.

In the courts below, petitioner contended that confirmation of the arbitral award would be contrary to U.S. public policy against foreign corruption, because (in its view) the agreement was the product of corruption. See Pet. C.A. Br. 33-36; Pet. C.A. Reply Br. 27-29. The district court concluded that petitioner failed to demonstrate that the arbitral award would "offend the United States' most basic notions of morality and justice," and therefore declined to refuse enforcement under Article V(2)(b). Pet. App. 47 (internal quotation marks omitted). The court of appeals agreed with that reasoning without "further exposition." *Id.* at 14.

That fact-bound holding does not warrant this Court's review, and this case would be a poor vehicle for addressing it in any event. As with the *forum non conveniens* issue, the public policy defense was not the focus of the briefing in the court of appeals, and the court addressed it only in summary fashion. Re-

view would involve the application of settled law to the facts of this case, yet the court of appeals did not discuss those facts or assess their legal significance in any detail. Indeed, although petitioner invokes three public policies before this Court (combatting corruption, international comity, and respecting separation of powers), petitioner focused its Article V(2)(b) argument below on only one of them (combatting corruption).[5]

Further, the court of appeals' decision is correct. The United States has an "emphatic federal policy in favor of arbitral dispute resolution," which "applies with special force in the field of international commerce." *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985) (citing the New York Convention and the FAA). Based on the record in this case, petitioner has not met its burden of establishing that a public policy of the United States precludes enforcement of the arbitral award.

Petitioner first contends (Pet. 23, 27-28, 32-33) that the district court erred by failing to give sufficient weight to the U.S. policy against public corruption. The United States does have a substantial interest in combatting foreign corruption. The United States is a party to several treaties aimed at preventing and prosecuting corruption. See Inter-American Convention Against Corruption, Mar. 29, 1996, S. Treaty Doc. No. 105-39 (1998) (to which Belize also is a party); see also United Nations Convention Against Corruption,

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[5] Petitioner argued for abstention on international comity grounds, but did not argue that international comity is a public policy justifying dismissal under Article V(2)(b), see Pet. C.A. Br. 36-40; Pet. C.A. Reply Br. 18-20, and it mentioned separation of powers only in passing, see Pet. C.A. Br. 54.

Oct. 31, 2003, 2349 U.N.T.S. 41; Organization for Economic Cooperation and Development: Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 18, 1997, 37 I.L.M. 1. Further, the Foreign Corrupt Practices Act of 1977, 15 U.S.C. 78dd-1 *et seq.*, governs certain corrupt practices abroad that have a nexus to the United States. But the well-established U.S. policy against suborning corruption abroad does not render an arbitral award unenforceable based on a bare allegation of corruption.

At the very least, petitioner would have to demonstrate that the agreement was procured by corruption, but it has not done so. Petitioner chose not to present this argument in the arbitration proceeding—where it would have been proper to do so—and the arbitral tribunal concluded that the agreement was neither secret nor corrupt. C.A. J.A. 64-66. The CCJ decision also did not address that issue with respect to the similar BCB Holdings agreement: the court concluded that Prime Minister Musa lacked the authority to approve the BCB Holdings agreement without Parliament's consent, but it did not hold that that agreement was obtained by corruption. See generally Pet. App. 88-125. Petitioner's reliance on a general State Department finding that there were "public indications of government corruption" in Prime Minister Musa's administration, Pet. 28 (citation omitted), is insufficient to conclude that the specific contract at issue here was procured by corruption.

Second, invoking considerations of international comity, petitioner contends (Pet. 23, 28, 31, 33), that the district court should have declined to enforce respondent's arbitral award under the public policy excep-

tion because the CCJ declined to enforce the arbitral award that BCB Holdings (not a party here) obtained against petitioner. The CCJ's decision did not require dismissal of this action on public policy grounds. Petitioner was required to demonstrate that enforcement of respondent's arbitral award would violate the United States' "most basic notions of morality and justice," *TermoRio S.A. E.S.P.*, 487 F.3d at 938, and petitioner has not shown that enforcing the arbitral award, which was entered in a valid, agreed-upon foreign tribunal, meets that demanding standard. Indeed, to the extent international comity concerns are relevant here, they favor enforcing the award, because the award was entered by a foreign tribunal and has not been vacated by that tribunal or the courts of the foreign state chosen as the seat of arbitration. See Pet. App. 27-28 & n.11. The courts below found that the arbitration clause was valid, *id.* at 7-8, 37-39, as did the CCJ in its decision regarding the similar agreement with BCB Holdings, *id.* at 121. That arbitration clause memorializes petitioner's consent to arbitrate before the LCIA. Petitioner could have participated in the arbitration or challenged the tribunal's award in the courts of England, but it did neither. Under these circumstances, it would not further respect for foreign judgments and awards for U.S. courts to refuse enforcement of the arbitral award.

Finally, petitioner contends (Pet. 27-28, 31) that the public policy exception applies because the agreement violates the separation of powers under the Constitution of Belize, in that Prime Minister Musa attempted to exercise powers of the Parliament. Although the United States has a public policy interest in enforcing *its own* constitutional strictures, including the separa-

tion of powers among the Branches of the United States Government, there is no comparable public policy of the United States in favor of enforcing the separation of powers in a *foreign state's* government. In particular, the United States does not have an overarching public policy interest in attempting to determine which powers reside in different branches of foreign governments. Moreover, petitioner's argument that the agreement violates the separation of powers under the Constitution of Belize because the Prime Minister attempted to execute the powers of the Parliament is an argument that the agreement was unlawful. As explained above, that is an argument petitioner could have made to the arbitral tribunal if it had participated in those proceedings, and the tribunal in any event concluded that the agreement was valid. See p. 4, *supra*. This consideration, too, counsels against petitioner's public policy argument as a basis for refusing enforcement of the arbitral award.

b. Contrary to petitioner's contention (Pet. 29-31), there is no disagreement in the circuits about the standard for evaluating assertions of the public policy defense under Article V(2)(b) of the New York Convention. The courts of appeals generally agree that the public policy defense should be read narrowly in light of the Convention's general rule requiring enforcement of arbitral awards. See, *e.g.*, *Asignacion* v. *Rickmers Genoa Schiffahrtsgesellschaft mbH & Cie KG*, 783 F.3d 1010, 1016 (5th Cir. 2015), cert. denied, 136 S. Ct. 795 (2016); *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran* v. *Cubic Def. Sys., Inc.*, 665 F.3d 1091, 1096-1097 (9th Cir. 2011); *TermoRio S.A. E.S.P.*, 487 F.3d at 938; *Slaney* v. *International Amateur Athletic Fed'n*, 244

F.3d 580, 593 (7th Cir.), cert. denied, 534 U.S. 828 (2001); *M & C Corp.* v. *Erwin Behr GmbH & Co.*, 87 F.3d 844, 851 n.2 (6th Cir. 1996); *Parsons & Whittemore Overseas Co.* v. *Societe Generale de L'Industrie du Papier (RAKTA)*, 508 F.2d 969, 974 (2d Cir. 1974). That is in accord with this Court's recognition that the Contracting States "should not be permitted to decline enforcement of such agreements on the basis of parochial views of their desirability." *Scherk* v. *Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974).

The courts of appeals also generally agree that, to justify dismissal under Article V(2)(b), enforcement of the arbitral award must violate the "most basic notions of morality and justice." *Parsons & Whittemore Overseas Co.*, 508 F.2d at 974; see *Asignacion*, 783 F.3d at 1016; *Cubic Def. Sys.*, 665 F.3d at 1097; *TermoRio*, 487 F.3d at 938; *Slaney*, 244 F.3d at 593; *M & C Corp.*, 87 F.3d at 851 n.2.

Petitioner contends (Pet. 29-31) that courts of appeals disagree on how to assess competing public policies under Article V(2)(b). That is incorrect. In each of the cited cases, the court started with the general rules set out above, then applied those rules to assess the policy or policies asserted in the particular case. Any differences in outcome are attributable to the different circumstances, not a difference in legal rules.

For example, in *Asignacion* (cited by petitioner, Pet. 30), the Fifth Circuit applied the approach described above, 783 F.3d at 1016, and then considered whether the United States' public policy of "special solicitude to seamen" provided a basis for invoking the public policy defense, *id.* at 1017 (citation omitted). The court concluded that the asserted policy did not

justify refusing to enforce the foreign arbitral award, because there was no evidence that the award was inadequate to satisfy the seaman's medical needs, and so enforcement would not "violate this nation's most basic notions of morality and justice." *Id.* at 1020 (citations and internal quotation marks omitted). *Chevron Corp.* v. *Ecuador*, 795 F.3d 200 (D.C. Cir. 2015), cert. denied, 136 S. Ct. 2410 (2016) (also cited by petitioner, Pet. 30-31), is similar. There, the court considered the defendant's two asserted public policies (enforceability of forum-selection clauses and respect for foreign sovereignty) and concluded that neither justified refusing to enforce the arbitral award. 795 F.3d at 208-209.

In those two decisions, neither the Fifth Circuit nor the D.C. Circuit purported to set out any special rules for balancing competing policies. In the remaining cases cited by petitioner, the courts also assessed the asserted policy in the context of the particular case, without setting out rules for assessing competing policies. See *Cubic Def. Sys.*, 665 F.3d at 1097-1098; *Banco de Seguros del Estado* v. *Mutual Marine Office, Inc.*, 344 F.3d 255, 264 (2d Cir. 2003); *Saint Mary Home, Inc.* v. *Service Emps. Int'l Union, Dist. 1199*, 116 F.3d 41, 45-47 (2d Cir. 1997); *Parsons & Whittemore Overseas Co.*, 508 F.2d at 973-974.[6]

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[6] Some courts have repeated this Court's statement, made in the context of the public policy exception to enforcement of collective bargaining agreements, that an arbitral award should be enforced unless enforcement "would violate some explicit public policy that is well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests." *United Paperworks Int'l Union, AFL-CIO* v. *Misco, Inc.*, 484 U.S. 29, 43 (1987) (citations and internal quotation marks omitted); see *Asignacion*, 783 F.3d at

There is therefore no conflict among the courts of appeals regarding how to evaluate competing public policies under the New York Convention. And even if there were, adopting petitioner's proposed test—which involves looking for a "dominant public policy" (Pet. 31)—would not change the outcome here, because petitioner has not established that any of the three policies that it invokes is a public policy of the United States that would justify a departure from the Convention's general rule of enforcement. For that reason as well, further review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

IAN HEATH GERSHENGORN
Acting Solicitor General
BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
NICOLE A. SAHARSKY
Assistant to the Solicitor General
BRIAN J. EGAN
Legal Adviser
Department of State
SHARON SWINGLE
DANIEL AGUILAR
Attorneys

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1016; *Banco de Seguros del Estado*, 344 F.3d at 264. The Court's reference to a "dominant" public policy was made in the context of analyzing the strength and clarity of the policy and its grounding in laws and legal precedents, not in determining how to weigh competing policies. *Misco*, 484 U.S. at 43-44. Accordingly, a court of appeals' repetition of that language should not be understood to set out a legal test for weighing competing policies.