ORAL ARGUMENT NOT YET SCHEDULED

No. 16-7051

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BUDHA ISMAIL JAM, ET AL.,

Plaintiffs-Appellants,

v.

INTERNATIONAL FINANCE CORPORATION,

Defendant-Appellee.

On Appeal from the United States District Court
for the District of Columbia, Case No. 1:15-cv-00612
(The Honorable John D. Bates)

BRIEF OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, ET AL., AS AMICI CURIAE IN SUPPORT OF AFFIRMANCE AND DEFENDANT-APPELLEE

Jeffrey T. Green
Sena Munasifi
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711
jgreen@sidley.com
smunasifi@sidley.com

CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Pursuant to Rules 26.1 and 28(a)(1) of the Circuit Rules of the United States Court of Appeals for the District of Columbia Circuit, the undersigned counsel for amici curiae certify the following:

(A) Parties and Amici.

Except for the following, all parties, intervenors, and amici appearing before the District Court and in this Court are listed in the Brief for Plaintiffs-Appellants and the Brief for Defendant-Appellee:

Amici Curiae:

African Development Bank Group, Asian Development Bank, Black Sea Trade and Development Bank, Caribbean Development Bank, Council of Europe Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, Inter-American Investment Corporation, International Bank for Reconstruction and Development, International Monetary Fund, Multilateral Investment Guarantee Agency, Nordic Investment Bank, West African Development Bank, Professor David P. Stewart, and Professor Don Wallace.

The undersigned counsel certifies, to the best of their knowledge and belief, that amici are not corporations, have no parent companies, and that no publically

owned company has a 10% or greater ownership interest in any of the aforementioned entities.

(B) Ruling Under Review.

References to the rulings at issue appear in the Brief for Defendant-Appellee the International Finance Corporation.

(C) Related Cases.

Amici are not aware of any related cases.

IDENTITY AND INTERESTS OF THE AMICI CURIAE

Amici are international organizations whose missions are focused variously on transition, development, and the improvement of the quality of life for populations around the globe, along with professors who are specialists in international law.[1] Amici have come together in this filing because Appellants' attack on the International Finance Corporation's long established immunities is antithetical to the nature and mission of treaty-based international organizations. The various forms of immunities guaranteed under the organizations' founding treaties are vital to their ability to carry out their missions across diverse sovereign borders. Those immunities allow international organizations to maintain their independence from government interference in their operations and decision-making processes.

The signatory amici engage in different functions, but all feel compelled to inform the Court that a decision upholding this Circuit's long-standing interpretation of the International Organizations Immunities Act ("IOIA"), 22 U.S.C. § 288 *et seq*., will confirm the independence that international organizations require to carry out their missions, support the immunities granted to international

[1] Both Appellants and Appellee consented to the filing of this brief. No counsel for a party authored this brief in whole or part, and no party, party's counsel, or person other than the amici curiae made any monetary contribution to fund the preparation or submission of this brief.

organizations by treaties, and positively influence foreign judicial decisions on international immunities. In contrast, a decision limiting the immunity currently granted by the IOIA could contradict and undermine long-standing international treaties and the respective missions of international organizations.

The following provides more detailed background on the identity of the amici:

The African Development Bank Group, composed of the African Development Bank and the African Development Fund and constituted by 80 member countries, aims to contribute to the sustainable economic development and social progress of its regional members. It achieves its mission by mobilizing and allocating resources for investments and providing policy advice and technical assistance. It is designated as an international organization under the IOIA. Exec. Order No. 12403, 48 Fed. Reg. 6087 (Feb. 8, 1983).

The Asian Development Bank, constituted by 67 member countries, aims to promote economic growth and cooperation in Asia and the Pacific by providing loans, technical assistance, grants and equity investments. It is designated as an international organization under the IOIA. Exec. Order No. 11334, 32 Fed. Reg. 3933 (Mar. 7, 1967).

The Black Sea Trade and Development Bank, constituted by 11 member countries, supports economic development and regional cooperation through trade,

project finance lending, guarantees, and equity participation in private enterprises and public entities in member countries.

The Caribbean Development Bank, constituted by 28 member countries, seeks to reduce poverty in the Caribbean through social and economic development. It promotes public and private investment, provides technical assistance, and helps members optimize the use of their resources to develop their economies and expand production and trade.

The Council of Europe Development Bank, constituted by 41 member countries, promotes social cohesion and strengthens social integration in Europe through financing and technical expertise for projects with a high social impact in its member states. It also responds to emergency situations, and works to improve the living conditions of disadvantaged population groups.

The European Bank for Reconstruction and Development is constituted by 65 member states, the European Union, and the European Investment Bank; its purpose is to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiative in its recipient member countries committed to and applying the principles of multiparty democracy, pluralism and market economics. It is designated as an international organization under the IOIA. Exec. Order No. 12766, 56 Fed. Reg. 28463 (June 18, 1991).

The Inter-American Development Bank, whose shareholders are 48 member countries, has the purpose of contributing to the acceleration of the process of economic and social development of its regional developing member countries in Latin America and the Caribbean, individually and collectively. It makes loans and guarantees to the governments, as well as governmental entities, enterprises, and development institutions of its borrowing member countries to help meet their development needs. It also provides technical assistance to its member countries that focuses on transferring knowledge and supports project preparation, feasibility studies, regional programs and training. It is designated as an international organization under the IOIA. Exec. Order No. 10873, 25 Fed. Reg. 3097 (Apr. 8, 1960) (as amended in Exec. Order No. 11019, 27 Fed. Reg. 4145 (Apr. 27, 1982)).

The Inter-American Investment Corporation is a multilateral development bank established to promote the economic development of its regional developing member countries by encouraging the establishment, expansion, and modernization of private enterprises (including those that are small and medium-scale), and partially and wholly owned state enterprises (excluding operations with sub-sovereign governments) that are aligned with certain priority business areas, to supplement the activities of the Inter-American Development Bank. It is designated as an international organization under the IOIA. Exec. Order No. 12567, 51 Fed. Reg. 35495 (Oct. 2, 1986)

The International Bank for Reconstruction and Development, often referred to as the World Bank and constituted by 189 member countries, helps developing countries reduce poverty, promote economic growth, and build prosperity. It provides financial resources, knowledge and technical services, and strategic advice to developing countries, including middle income and credit-worthy lower income countries. It is designated as an international organization under the IOIA. Exec. Order No. 9751, 11 Fed. Reg. 7713 (July 11, 1946).

The International Monetary Fund, constituted by 189 member countries, promotes international financial stability and monetary cooperation. It also seeks to facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world. It is designated as an international organization under the IOIA. Exec. Order No. 9751, 11 Fed. Reg. 7713 (July 11, 1946).

The Multilateral Investment Guarantee Agency, constituted by 181 member countries, promotes foreign direct investment in developing countries in order to support economic growth and reduce poverty. It focuses on attracting investors and private insurers into impoverished or conflict-affected countries. It is designated as an international organization under the IOIA. Exec. Order No. 12647, 53 Fed. Reg. 29323 (Aug. 2, 1988).

The Nordic Investment Bank, constituted by eight member countries, envisions a prosperous and environmentally sustainable Nordic-Baltic region. It achieves its vision by financing projects both within and outside its membership that improve competitiveness and the environment, and by offering long-term loans and guarantees to ensure sustainable growth.

The West African Development Bank, constituted by eight West African countries and the Central Bank of West African States, promotes balanced development of member countries and fosters economic integration within West Africa. It focuses in particular on facilitating development in member countries, disadvantaged by natural conditions and contributing to the integration of the economies of the West African Monetary Union.

Professor David Stewart is Professor of Practice at Georgetown University Law Center and the Co-Head of Georgetown's Global Law Scholars Program. Previously, he was Assistant Legal Adviser for Private International Law at the United States Department of State. He teaches courses in international law, and co-edited the multi-volume Digest of U.S. Practice in International Law for the years 1990-2003.

Professor Don Wallace, Jr. is the Chairman of the International Law Institute and Professor of Law at Georgetown University. He has published extensively in

the area of international business, and is currently a member of the Secretary of State's Advisory Committee on Private International Law.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

INTERNATIONAL CASES

FOUNDING DOCUMENTS

STATUTES

OTHER AUTHORITIES

** Authorities upon which we chiefly rely are marked with an asterisk.*

GLOSSARY

FSIA:	Foreign Sovereign Immunities Act of 1976
IOIA:	International Organizations Immunities Act of 1945
INTERPOL:	International Criminal Police Organization

SUMMARY OF ARGUMENT

The D.C. Circuit's long history of jurisprudence in the area of international organization immunity protects the ability of international organizations to fulfill their unique purposes around the world. Appellants now ask this Circuit to cast away its prior decisions, treat international organizations like foreign sovereigns, and apply either a commercial activities exception to the immunities of international organizations, or all of the Foreign Sovereign Immunities Act ("FSIA"). 28 U.S.C. § 1602, *et seq*.

But the International Organizations Immunities Act ("IOIA") does not limit the immunities of international organizations in such a manner. 22 U.S.C. § 288 *et seq*. The IOIA supports the immunities of international organizations that stem from their founding treaties. Alongside implementing legislation, Executive Orders—not the IOIA, and certainly not the FSIA—outline the contours of the immunities for each respective international organization. In these Executive Orders, the President exercises discretion, but usually grants international organizations the full extent of immunities embodied in their founding treaties and implementing legislation.

The immunity of international organizations is undermined by being forced to engage in litigation in domestic courts when they have not waived their immunity. Responding to the issues raised in this litigation alone, which this

Circuit already resolved in *Atkinson* and reaffirmed in *Nyambal*, diverts financial and managerial resources. *Atkinson v. Inter-Am. Dev. Bank*, 156 F.3d 1335, 1340-42 (D.C. Cir. 1998); *Nyambal v. Int'l Monetary Fund*, 772 F.3d 277, 281 (D.C. Cir. 2014) *cert. denied*, —— U.S. ——, 135 S. Ct. 2857 (2015).

Breaking with precedent and applying a FSIA-type commercial activities exception would erode the immunities of international organizations, particularly international finance organizations who use financial tools like bonds, loans and grants to achieve their missions. The member states that established international organizations did not foresee or intend to apply the FSIA's commercial activities exception, along with its other sovereign immunity exceptions, to international organizations. Furthermore, creating such exceptions could expose international organizations to new kinds of lawsuits and plaintiffs—such as tort suits brought by foreign plaintiffs based on events that occurred abroad. The broad ruling that Appellants seek is an impermissible, extraterritorial derogation of the IOIA that will conflict with foreign laws and with international treaties that the United States has enacted, and negatively affect the operations of the 85 international organizations designated as such under the IOIA.

ARGUMENT

I. CURRENT LAW APPROPRIATELY PROTECTS THE UNIQUE GOALS AND FUNCTIONS OF INTERNATIONAL ORGANIZATIONS.

A. International Organizations Represent a Commitment by the International Community to Address Global and Regional Challenges.

International organizations are not nation states. Instead, they embody the international community's commitment to addressing global and regional challenges around the world in a uniquely multilateral way. Founded by member states and sometimes by other international organizations, there are numerous international organizations functioning around the world, including 13 of the Amici here, that focus on issues ranging from promoting global health and health care to contributing to international peace through scientific, educational and cultural collaboration. Constitution of the World Health Organization, July 22, 1948 (as amended effective Sept. 15 2005), http://www.who.int/governance/eb/who_constitution_en.pdf; Constitution of the United Nations Educational, Scientific and Cultural Organization, art. 1, Nov. 16, 1945 (as amended by the General Conference at its 31st session: Paris, 15 Oct. to 3 Nov. 2001), http://portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html. Many international organizations are development institutions that promote economic development in different regions

of the world. *See*, *e.g.*, Agreement Establishing the African Development Bank, art. 1, Aug. 4, 1963 (as amended in 2016 edition), http://www.afdb.org/fileadmin/uploads/afdb/Documents/Legal-Documents/Agreement_establishing_the_African_development_bank_-_2016_edition.pdf (declaring that the African Development Bank aims to promote sustainable economic development in its African member nations); Agreement Establishing the European Bank for Reconstruction and Development, art. 1, May 29, 1990 (as amended in Sept. 2013), http://www.ebrd.com/documents/comms-and-bis/pdf-basic-documents-of-ebrd-2013-agreement.pdf (declaring that the purpose of the European Bank for Reconstruction and Development is to foster the transition towards open market economies, and promote private and entrepreneurial initiative in its recipient member countries committed to democracy, pluralism, and market economies).

In order to protect the ability of international organizations to operate both in the United States and abroad, Congress passed the IOIA in 1945. 22 U.S.C. § 288 *et seq*. The legislation sought "not only [to] protect the official character of public international organizations located in this country," but also to "strengthen the position of international organizations of which the United States is a member when they are located or carry on activities in other countries." H.R. Rep. No. 1203-4489, at 2 (1945); *see Int'l Refugee Org. v. Rep. S.S. Corp.*, 189 F.2d 858,

861 (4th Cir. 1951) (stating that "[t]he broad purpose of the [IOIA] was to vitalize the status of international organizations of which the United States is a member and to facilitate their activities."). Cognizant of the privileges and immunities foreign governments were providing to international organizations, Congress passed legislation to provide international organizations with specific and broad protections in the United States, and to encourage the establishment of the newly forming United Nations in the United States. S. Rep. No. 861-4489, at 3 (1945); H.R. Rep. No. 1203-4489, at 3 (1945); 91 Cong. Rec. 10866 (1945).

Accordingly, the IOIA provides that:

> International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.

22 U.S.C. § 288a(b). Congress granted the President the authority, via Executive Order, to designate organizations as international organizations and extend to them the protections of the IOIA, to place conditions on their privileges and immunities, and to revoke their immunities. 22 U.S.C. § 288.[2]

[2] As discussed in further detail in section I.B., the President has provided currently existing international organizations with limited immunities in only two, specific instances.

B. International Organizations Derive Their Privileges and Immunities from Their Founding Treaties.

Appellants argue that the International Finance Corporation is not immune from the instant suit because the IOIA's grant to international organizations of "the same immunity from suit . . . as is enjoyed by foreign governments" means either (a) that international organizations do not have absolute immunity because foreign sovereigns never had absolute immunity, or (b) that the IOIA has been effectively re-written to incorporate the FSIA's immunity exceptions. Appellants' Br. at 21-22; 27-32; 37-41; 22 U.S.C. § 228a. The logic of that argument, however, implies that the IOIA could somehow abrogate the many treaties establishing international organizations, their corresponding implementing legislation and corresponding Executive Orders in the United States.[3] But the IOIA does not alone imbue international organizations with their immunities. Rather, the IOIA provides international organizations with "dual protections" alongside their founding treaties. *Nyambal*, 772 F.3d at 281 (noting also that the "sweep of the [International Monetary] Fund's immunity is broader than the protection afforded by the IOIA's aegis alone.").

The founding treaties of many international organizations set forth robust privileges and immunities, which were agreed upon, executed and ratified by all of

[3] Currently, 85 international organizations are designated as such under the IOIA.

their respective member states, not just the United States. *See Int'l Bank for Reconstruction and Dev. v. Dist. of Columbia*, 171 F.3d 687, 690 (D.C. Cir. 1999) (noting that the International Bank for Reconstruction and Development's immunity depends on the terms of "the treaty—on the terms, that is, of the [Bank's] Articles of Agreement"); see also Articles of Agreement of the International Monetary Fund, Dec. 28, 1945 (as amended on Jan. 26, 2016), https://www.imf.org/external/pubs/ft/aa/pdf/aa.pdf; Articles of Agreement of the International Bank for Reconstruction and Development, Dec. 27, 1945 (as amended effective June 27, 2012), http://siteresources.worldbank.org/EXTABOUTUS/Resources/IBRDArticlesOfAgreement_links.pdf. These founding treaties oblige each member state to protect, respect and uphold the immunity of international organizations.

In countries around the world, the founding treaties of international organizations, alongside any supplementary treaties, headquarters agreements between the international organizations and host countries, and implementing legislation, form the legal basis for the immunities of international organizations.[4] *See, e.g.*, World Bank Group v. Wallace, 2016 SCC 15, para. 46 (Can.) (hereinafter

[4] Some courts have declared that the immunities of international organizations are also part of customary international law. HR 20 Dec. 1985, NJ 1986, 438, para. 3.3.4 m.nt. PJIM de Waart (Spaans/Iran-United States Claims Tribunal), reprinted in translation in 18 NYIL 357, 360 (1987), (Neth.) (hereinafter "*Iran-United States Claims Tribunal*").

"*Wallace*") (assessing the International Bank for Reconstruction and Development's Articles of Agreement and the implementing Canadian legislation in finding it immune from judicial process); HR 13 Nov. 2007, NJ 2008, 147, para. 28, m.nt. van N. Keijzer (Greenpeace Nederland/Euratom) reprinted in translation in 136 ILR 429, 448 (2007), (Neth.) (hereinafter "*Euratom*") (assessing the immunities of the European Atomic Energy Community based on its founding treaty and the Protocol on the Privileges and Immunities of the European Communities in finding the European Atomic Energy Community immune from a suit regarding the breach of environmental licenses).

In the United States, implementing legislation incorporates these treaty provisions into domestic law. For example, after its founding members established the African Development Bank via treaty, Congress passed the African Development Bank Act authorizing the President to accept membership into the African Development Bank, and providing that the treaty's formative articles, including its broad immunity provisions that do not contain exceptions for commercial activities, "shall have full force and effect in the United States." *See* Agreement Establishing the African Development Bank, Aug. 4, 1963, (as amended in 2016 edition), http://www.afdb.org/fileadmin/uploads/afdb/Documents/Legal-Documents/Agreement_establishing_the_African_development_bank_-_2016_edition.pdf (establishing the African Development Bank and outlining its

privileges and immunities); 22 U.S.C. 290i (authorizing the President to accept U.S. membership in the African Development Bank); 22 U.S.C. 290i-8 (providing that, upon acceptance by the President, the provisions of the Agreement Establishing the African Development Bank, including its immunity provisions, would have full force and effect in the United States).

Appellants' arguments that the IOIA must be read to incorporate the FSIA's immunity exceptions, and that "Executive policy is in accord with the FSIA," is belied by the way the President has recently given effect to IOIA immunity. *See* Appellants' Br. at 37-40, 29-32. The President, acting through Executive Order, designates international organizations as such under the IOIA. *See, e.g.*, Exec. Order No. 12403, 48 Fed. Reg. 6087 (Feb. 8, 1983) (designating the African Development Bank as an international organization under the IOIA, and noting that "[t]his designation is not intended to abridge in any respect the privileges and immunities which such organization has acquired or may acquire by treaty or Congressional action"); *see also* Exec. Order No. 11334, 32 Fed. Reg. 3993 (Mar. 7, 1967) (for the Asian Development Bank); Exec. Order No. 12766, 56 Fed. Reg. 28463 (June 18, 1991) (for the European Bank for Reconstruction and Development); Exec. Order No. 10873, 25 Fed. Reg. 3097 (Apr. 8, 1960) (as amended in Exec. Order No. 11019, 27 Fed. Reg. 4145 (Apr. 27, 1982) (for the Inter-American Development Bank)); Exec. Order No. 12567, 51 Fed. Reg. 35495

(Oct. 2, 1986) (for the Inter-American Investment Corporation).

The IOIA does not, and by its terms cannot, undermine implementing legislation and the President's grants of immunity, including all of the full and robust grants of immunity that occurred after the FSIA's passage. Nor does it, or could it, undermine the treaties establishing international organizations. The President has the authority to limit the immunities of international organizations under the IOIA. For currently functioning international organizations, he has done so on only two occasions, where international treaties did not exist, in ways that helped these organizations operate in the United States. *See* Exec. Order No. 12425, 48 Fed. Reg. 28069 (June 16, 1983) (granting the International Criminal Police Organization ("INTERPOL") limited immunities under the IOIA); Exec. Order No. 12359, 47 Fed. Reg. 17791 (Apr. 22, 1982) (granting the International Food Policy Research Institute limited immunities under the IOIA). For example, President Ronald Reagan granted INTERPOL limited immunities under the IOIA because it did not have an office in the United States at that time, and did not need the IOIA's other protections. *See* Memorandum Opinion for the Chief, INTERPOL, United States National Central Bureau from Ralph W. Tarr, Deputy Assistant Attorney General Office of Legal Counsel, Jan. 12, 1983, at 4, 6 (noting that "INTERPOL was not set up by treaty, convention, or executive agreement," and that "we believe it would be appropriate in light of INTERPOL's specific and

somewhat limited need for immunity for the President to limit the privileges, exemptions and immunities accorded to INTERPOL"). After INTERPOL established an office in the United States, President Barack Obama extended INTERPOL full immunity under the IOIA. Exec. Order No. 13524, 47 Fed. Reg. 67803 (Dec. 16, 2009).

II. THE IMMUNITIES AFFORDED TO INTERNATIONAL ORGANIZATIONS ALLOW THEM TO ACHIEVE THEIR UNIQUE PURPOSES.

A. The Purpose Behind International Organization Immunities Differs from Sovereign Immunity.

The justifications for international organization immunity are different than those for sovereign immunity. The privileges and immunities of international organizations are essential for their international missions. They allow international organizations "to fulfill the functions with which [they are] entrusted" around the world. Articles of Agreement of the International Bank for Reconstruction and Development, art. 7, §1, Dec. 27, 1945 (as amended effective June 27, 2012), http://siteresources.worldbank.org/EXTABOUTUS/Resources/IBRDArticlesOfAgreement_links.pdf; Articles of Agreement of the International Monetary Fund, art. 9, §1, Dec. 28, 1945 (as amended on Jan. 26, 2016), https://www.imf.org/external/pubs/ft/aa/pdf/aa.pdf; *see also* U.N. Charter, art. 105, https://treaties.un.org/doc/publication/ctc/uncharter.pdf (the United Nations "shall enjoy in the territory of its Members such privileges and immunities as are

necessary for the fulfillment of its purposes"). "The strong foundation in international law for the privileges and immunities accorded to international organizations denotes the fundamental importance of these immunities to the growing efforts to achieve coordinated international action through multinational organizations with specific missions." *Mendaro v. World Bank*, 717 F.2d 610, 615 (D.C. Cir. 1983).

Contrary to the Third Circuit's depiction of international organizations in *OSS Nokalva, Inc., v. European Space Agency*, international organizations are not merely "a group of states acting through an international organization" who only need the same immunity that foreign sovereigns receive today.[5] 617 F.3d 759, 764 (3d Cir. 2010). International organizations have no territory of their own, and are dependent on countries to exercise restraint to ensure their independent operations. They are vulnerable to foreign interference everywhere they operate. *Wallace*, para. 2; Tribunal fédérale [TF] [Federal Supreme Court] Dec. 21, 1992, 118 Arrêts du Tribunal fédéral suisse [ATF] I 562, 565 (Switz.) (hereinafter "*CERN*"). The immunities provided to international organizations "protect international

[5] International organizations are also not exclusively constituted by states. Restatement (Third) of the Foreign Relations Law of the United States, § 221, Comment c. (Am. Law. Inst. 1987). For example, the European Bank for Reconstruction and Development is constituted by 65 countries along with the European Union and the European Investment Bank. *See* Agreement Establishing the European Bank for Reconstruction and Dev., Art. 3, May 29, 1990, http://www.ebrd.com/documents/comms-and-bis/pdf-basic-documents-of-ebrd-2013-agreement.pdf.

organizations from unilateral control by a member nation over the activities of the international organization within its territory." *Mendaro*, 717 F.2d at 615; *see also* Waite v. Germany, 1999-I Eur. Ct. H.R. 393, 409, para. 63 (hereinafter *"Waite"*) (affirming that "the attribution of privileges and immunities to international organizations is an essential means of ensuring the proper functioning of such organizations free from unilateral interference by individual governments"); *accord* Tribunal de grande instance [TGI] [ordinary court of original jurisdiction] Paris, Apr. 8, 2015, 13/07942, 6 (Fr.) [Unpublished] (hereinafter *"Eurotrends"*). They protect international organizations from antagonistic member states who might otherwise act on inter-state conflicts by thwarting the work of international organizations. Without immunity, local courts would have the ability to influence the internal decision-making processes of international organizations. Further, "[d]enial of immunity opens the door to divided decisions of the courts of different member states passing judgment on the rules, regulations and decisions of international bodies." *Mendaro,* 717 F.2d at 616.

Beyond their immunities, international organizations are structured to incorporate the resources and input of member states, but remain insulated from potentially disruptive interferences by individual member governments. *See Mendaro*, 717 F.2d at 616 (noting that "the "charters of many international financial institutions contain express provisions designed to guarantee the neutral

operation of the organization despite the political policies of the member nations or the individual backgrounds of the organizations' officers."); *see, e.g.*, Convention Establishing the Multilateral Investment Guarantee Agency, art. 34, Oct. 11, 1985 (as amended effective Nov. 14, 2010), https://www.miga.org/Documents/MIGA%20Convention%20February%202016.pdf; Articles of Agreement of the International Bank for Reconstruction and Development, art. 4, § 10, Dec. 27, 1945 (as amended effective June 27, 2012), http://siteresources.worldbank.org/EXTABOUTUS/Resources/IBRDArticlesOfAgreement_links.pdf; Agreement Establishing the African Development Bank, art. 38, Aug. 4, 1963 (as amended in 2016 edition), http://www.afdb.org/fileadmin/uploads/afdb/Documents/Legal-Documents/Agreement_establishing_the_African_development_bank_-_2016_edition.pdf.

In contrast, sovereign immunity is not guaranteed by international law, but granted as a matter of comity amongst nations. Because sovereigns have their own territory, they do not need immunities in order to function. *See* Restatement (Third) of the Foreign Relations Law of the United States, §§ 201; 206(a) (Am. Law. Inst. 1987) (defining sovereigns as having defined territories and permanent populations under their control). Historically, sovereigns enjoyed immunity because sovereigns co-existed with "perfect equality and absolute independence." *Schooner Exchange v. McFaddon*, 11 U.S. 116, 13 (1812). States waived jurisdiction in cases involving

sovereigns, and afforded them virtually absolute immunity as a "matter of grace and comity." *Samantar v. Yousuf*, 560 U.S. 305, 311 (2010) (quoting *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 486 (1983). As sovereigns participated more frequently in international commercial markets, the State Department saw the need to distinguish between the public and private acts of sovereigns when resolving claims of sovereign immunity. *Alfred Dunhill of London, Inc v. Republic of Cuba*, 425 U.S. 682, 703-04 (1976) (plurality opinion); *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 613-14 (1992) (relying on the plurality's foreign sovereign immunity discussion in *Alfred* when defining the scope of the FSIA's " 'commercial' activit[ies]" exception). The Supreme Court noted in *Alfred* that "subjecting foreign governments to the rule of law in their commercial dealings presents a much smaller risk of affronting their sovereignty than would an attempt to pass on the legality of their governmental acts." 425 U.S. at 704. A required submission of commercial transactions of international organizations to the jurisdiction of sovereign courts, however, would be a severe affront to their legally-protected independence and ability to perform their functions.

B. Being Forced to Defend Against Litigation in National Courts Undermines the Operations of International Organizations.

The instant suit and other litigation against international organizations around the world impedes their ability to function and depletes their budgets. The immunity of international organizations, where justly invoked, is meant to shield organizations "not only from the consequences of litigation's results but also from the burden of defending themselves." *Tuck v. Pan Am. Health Org.*, 668 F.2d 547, 549 (D.C. Cir. 1981) (quoting *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (per curiam)). Immunity "protects the defendant not only from liability upon the merits of the claim against it but also from the burden of standing trial in the first place." *Rendall-Speranza v. Nassim*, 107 F.3d 913, 917-18 (D.C. Cir. 1997) (citing *Foremost-McKesson, Inc. v. Islamic Rep. of Iran*, 905 F.2d 438, 443 (D.C. Cir. 1990)). International organizations have immunity not just from suit, but also from judicial process. *See Garcia v. Sebelius*, 919 F. Supp. 2d 43, 46 (D.C. Cir. 2013) (citing *Swarna v. Al-Awadi*, 622 F.3d 123, 141 (2d Cir. 2010)) (noting that where a defendant is protected by immunity, a court lacks jurisdiction to enter an order of default).

Being subjected to this class-action tort suit and other purported "impact litigation" chips away at the benefits of that immunity. Responding to litigation in order to assert immunities, let alone defending suits on their merits, is costly—it consumes both financial resources and detracts from the time and attention of

management. *See Atkinson*, 156 F.3d at 1339 (musing on the "inconvenience, hazards or expense of extended litigation" in the context of garnishment proceedings). Failing to respond leaves international organizations vulnerable to adverse rulings that could undermine their immunities. *See Garcia*, 919 F. Supp. 2d. at 47 (remarking that although not mandatory, an appearance invoking immunity under the IOIA is advisable to avoid being subject to an entry of default and sanctions in the event a court determines an individual is not immune). International organizations—and ultimately the member states who fund them—bear these costs when they respond to litigation around the world, not just in the United States. *See, e.g., Wallace* (finding the World Bank Groups' Integrity Vice Presidency unit immune from an order requiring it to produce records from its archive and subpoenas ordering its employees to give evidence).

Along with protecting international organizations from the vast array of different laws and judgments in jurisdictions around the world, *Mendaro*, 717 F.2d at 615, immunities also protect international organizations from policy-oriented litigation. Appellants' amici curiae argue that a waiver to suits such as the instant one would not bring a "flood" of cases because "[t]he floodgate argument assumes not only that there are many other cases in which IFC will violate its own mandatory environmental and social standards, but also that IFC will ignore the recommendations of its own independent accountability mechanism, prompting the

complainants to seek legal recourse." Brief of Amicus Curiae Dr. Erica R. Gould in Support of Pls-Appellants and Reversal at 26, *Jam v. Int'l Fin. Corp.*, No. 16-7051 (D.C. Cir. Aug. 16, 2016), ECF No. 1630696; *see also* Brief of Amicus Curiae Professor Daniel Bradlow in Support of Pls-Appellants at 23-24, *Jam, v. Int'l Fin. Corp.*, No. 16-7051 (D.C. Cir. Aug. 17, 2016), ECF No. 1630772 ("The IFC, of course, is free to . . . preserve its immunity from domestic jurisdiction by ensuring that in the future it offers all its stakeholders access to a mechanism that satisfies the criteria for an effective remedy."). These arguments incorrectly assume that international organizations can avoid litigation "by living a completely virtuous life." *Vila v. Inter Am. Investment Corp.*, 570 F.3d 274, 289 (D.C. Cir. 2009) (Williams, J. dissenting). They also display "naivete of the implied assumption about the filing of lawsuits." *Id*. Valid claims do not underlie all litigation.

Even in the face of clear and controlling law demonstrating that international organizations are immune from suit—for example, in the employment context—individuals still sue international organizations. *See, e.g., Hudes v. Aetna Life Ins. Co.*, 493 F. App'x 107 (D.C. Cir. 2012) (per curiam) (affirming dismissal of wrongful termination claim brought against the World Bank by a former employee); *Sampaio v. Inter-Am. Dev. Bank*, 468 F. App'x 10 (D.C. Cir. 2012) (per curiam) (affirming dismissal of employment discrimination claim brought by

former employee); *Aguado v. Inter-Am. Dev. Bank*, 85 F. App'x 776 (D.C. Cir. 2004) (per curiam) (affirming dismissal of employment discrimination claim brought by former employee); *Dujardin v. Int'l Bank for Reconstruction and Dev.*, 9 F. App'x 19 (D.C. Cir. 2001) (affirming dismissal of defamation claim brought by former employee of a borrower); *Smith v. World Bank Group*, 99 F. Supp. 3d 166 (D.D.C. 2015) (on appeal at the D.C. Circuit, No. 16-7003) (dismissing employment discrimination claim brought by former employee); *Weinstock v. Asian Dev. Bank*, 2005 WL 1902858 (D.D.C. July 13, 2005) (dismissing suit brought by current employee alleging violations of constitutional rights and denial of promotions).

In the instant suit, Appellants rehash arguments that this Circuit refused to consider just two short years ago. Appellants' Br. at 28; *see Nyambal*, 772 F.3d at 281 (declining to revisit the D.C. Circuit's decision in *Atkinson* in light of *OSS Nokalva*, and proclaiming that "*Atkinson* remains vigorous as Circuit law"). In June of 2015, the United States Supreme Court denied Mr. Nyambal's petition for a writ of certiorari based on the same essential question raised in the instant suit—the applicability of the FSIA's commercial activities exception to international organizations. Petition for a Writ of Certiorari, *Nyambal v. Int'l Monetary Fund*, 135 S.Ct. 2857 (2015) (No. 14-1037); Denial of Petition for a Writ of Certiorari, 135 S.Ct. 2857 (June 22, 2015) (No. 14-1037).

Despite the broad protections that treaties, legislation, and the D.C. Circuit's jurisprudence affords international organizations, they are regularly sued and must regularly defend their immunities—oftentimes where their immunities have already been clearly defined by binding precedent. The sweeping exceptions to immunities that Appellants advocate would increase the number of lawsuits, expand the scope of those lawsuits, and increase the attendant costs of defending against those suits on the merits, further undermining the operations of international organizations. *See Vila,* 570 F.3d at 283 ("the cost of litigation is . . . affected by such factors as the number of relevant documents a case is likely to produce, the contentiousness of the parties, and the complexity of particular facts.").

C. Customary International Law Does Not Provide a Basis for the D.C. Circuit's Exercise of Jurisdiction over International Organizations.

A purported customary international law "right of access to an effective remedy" is no basis for the D.C. Circuit to abandon immunity jurisprudence and exercise jurisdiction over the International Finance Corporation. *See* Bradlow Amicus Br. at 11-23. Indeed, any such customary right is precluded by binding case law, an international treaty, domestic legislation, and an Executive Order which all provide the International Finance Corporation with broad immunities.[6]

[6] Whether a vague, "right of access to an effective remedy" actually exists in

See TMR Energy Ltd. v. State Property Fund of Ukraine, 411 F.3d 296, 302 (D.C. Cir. 2005) (quoting *Paquete Habana*, 175 U.S. 677, 700 (1900)) (emphasizing that "customary international law comes into play only where there is no treaty, and no controlling executive or legislative act or judicial decision").

Questioning whether international organizations are immune from suit where they allegedly violate the rights of individuals to access effective remedies—even if such claims were based on domestic law rather than customary international law—"does little more 'than question why immunities in general should exist.' " *Georges v. United Nations*, 834 F.3d 88, 98 (2d Cir. 2016) (citing *Brzak v. United Nations*, 597 F.3d 107 (2d Cir. 2010)). "[L]egislatively and judicially crafted immunities of one sort or another have existed since well before the framing of the Constitution, have been extended and modified over time, and are firmly embedded in American law." *Id*. If courts exercised jurisdiction over individuals and entities based on the undefined right of access to remedies or to

---

customary international law is also questionable. Customary international law forms from "general and consistent practice of states followed by them from a sense of legal obligation." Restatement (Third) of the Foreign Relations Law of the United States, §102. Although there may be an emerging international consensus around the access to justice right, such a right is not absolute and courts around the world, and in the United States, have routinely upheld the immunities of international organizations without regard to whether individuals have other access to remedies, undermining the claim that such a rule has become customary international law.

courts, "judicial immunity, prosecutorial immunity, and legislative immunity, for example, could not exist." *Brzak*, 597 F.3d at 114.[7]

III. APPLYING THE FSIA TO INTERNATIONAL ORGANIZATIONS WOULD EMBROIL THEM IN LITIGATION IN UNITED STATES COURTS FOR THEIR WORK AROUND THE WORLD.

A. Foreign Sovereign Immunities Act Exceptions to International Organization Immunity Would Impede the Work of International Organizations.

Appellants argue that even if absolute immunity once applied to international organizations, the Foreign Sovereign Immunities Act now limits the immunities of international organizations. Appellants' Br. at 37-41. As a practical matter, such a broad application of the FSIA would diminish the immunities of international organizations. The FSIA's expansive definition of commercial activities will lead to further litigation about the applicability of that definition to international organizations, many of which provide loans, private grants, and bonds to countries and private parties as core parts of their missions. *See Weltover*, 504 U.S. at 613-615 ("when a foreign government acts, not as a regulator of a market,

[7] Decisions from the European Court of Human Rights should not guide the D.C. Circuit's jurisprudence. *See* Bradlow Amicus Br. at 15-17. The court in those cases evaluated whether German affirmance of the European Space Agency's immunity violated the European Convention on Human Rights, which is binding on states party to that treaty. Further, in *Waite*, the European Court of Human Rights emphasized that the Court's role was "confined to determining whether the effects of [domestic interpretations of law] are compatible with the Convention." *Waite*, para. 54.

but in the manner of a private player within it, the foreign sovereign's actions are 'commercial' within the meaning of the FSIA."); *but see* Articles of Agreement of the International Bank for Reconstruction and Development, art. 1, Dec. 27, 1945 (as amended effective June 27, 2012), http://siteresources.worldbank.org/EXTABOUTUS/Resources/IBRDArticlesOfAgreement_links.pdf (declaring that the Bank assist in reconstruction and development of territories and members by facilitating the investment of capital for productive purposes, and that it promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors.") (emphasis added); *Broadbent v. Org. of Am. States*, 628 F.2d 27, 32 n. 20 (D.C. Cir. 1982) (noting that international organizations "do not regularly engage in commercial activities").

And, although Appellants are focused on the applicability of the commercial activities exception of the FSIA, they ultimately advocate that all of the FSIA's exceptions to immunities should apply to international organizations. Appellants' Br. at 37-40. Such a broad application of the FSIA would expose international organizations to new litigation and its attendant costs. *See Rendall-Speranza*, 107 F.3d at 916-18 (noting that, if the FSIA applied, the International Finance Corporation could be liable for its employee's allegedly tortious conduct under 28 U.S.C. §1605(a)(5)); *Morgan v. Int'l Bank for Reconstruction and Dev.*, 752 F.

Supp. 492, 494-95 (D.D.C. 1990) (considering, pre-*Atkinson*, whether the FSIA's tort exception pierced the IOIA's immunity for claims of libel and slander).

B. This Circuit Should Again Reject the Third Circuit's Decision in *OSS Nokalva.*

Appellants rely on the Third Circuit's Decision in *OSS Nokalva* to urge this Circuit to discard its long history of jurisprudence in the area of international organization immunity. Appellants' Br. at 27; 34; 38-9; *OSS Nokalva, Inc.*, 617 F.3d 759. In contrast to the D.C. Circuit's abundant jurisprudence on this issue, no court at the federal or state level has ever cited *OSS Nokalva* approvingly for its immunity-related holding. One state court has declined to follow *OSS Nokalva* in favor of the D.C. Circuit's immunity jurisprudence. *See Price v. Unisea, Inc.*, 289 P.3d 914, 920 (Alaska 2012) (expressly declining to follow *OSS Nokalva* and following the D.C. Circuit in finding that the International Pacific Halibut Commission did not waive immunity to a negligence suit brought by a former employee). Citations to *OSS Nokalva* are for a different proposition. *See, e.g., Warwas v. City of Plainfield*, 489 F. App'x 585, 588 (3d Cir. 2012) (citing *OSS Noklava* for the proposition that an appellate court can affirm a judgment on any ground apparent from the record).

Further, the Third Circuit in *OSS Nokalva* overlooked the significant difference between a broad commercial activities exception to immunity under the FSIA, and a waiver of immunity for certain, discrete activities. In *OSS Nokalva,*

the European Space Agency ("ESA") contracted with OSS Nokalva, Inc., a software and services company, to provide "software tools and related proprietary software and information to assist ESA in developing its own software." *OSS Nokalva, Inc.*, 617 F.3d at 759. OSS Nokalva sued the European Space Agency, alleging breach of contract and tort claims, including negligence and tortuous interference. *Id*. at 759-60. The Third Circuit ruled that the European Space Agency was not immune from the contract and tort claims because the IOIA "incorporate[s] the exceptions to immunity set forth in the FSIA." *Id* at 765. The Third Circuit found its ruling indistinct from the District Court's decision below. *Id*; s*ee OSS Nokalva Inc. v. European Space Agency*, 2009 WL 2424702, at *7 (D.N.J. Aug. 6, 2009) (finding that the European Space Agency waived its immunity to tort and contract claims because it "enhance[d] ESA's ability to participate in commercial transactions by promoting fair play in the market.") The Third Circuit stated that "the same is true of all commercial transactions," and that "[t]here is no inconsistency between the reasoning adopted by the District Court and the policy underlying the FSIA's withholding of immunity for commercial transactions engaged in by sovereign governments." *OSS Nokalva, Inc.*, 615 F.3d at 765.

In doing so, the Third Circuit ignored the differences between the policy underlying the FSIA's commercial activities provisions—providing private

individuals with recourse against foreign governments when they engage in commercial activities—and the policy underlying immunities for international organizations—protecting the ability of international organizations to function around the world. *Alfred*, 425 U.S. at 714; H.R. Rep. No. 94-1487 (1976)); *accord* Charles H. Brower, II, *United States, The Privileges and Immunities of International Organizations in Domestic Courts*, at 321 (August Reinisch, ed., 2013). The Third Circuit also elided the distinction between a waiver of immunity for a commercial transaction conducted between an international organization and a specific party, such as through a contract, and a total absence of immunity to suits from third parties based on commercial activities, such as the instant, class action tort suit. The latter exposes international organizations to a broader category of suits and a wider range of plaintiffs, without any consideration of corresponding benefits to the organization. *See, e.g.*, *Osseiran v. Int'l Fin. Corp.*, 552 F.3d 836, 837, 841 (D.C. Cir. 2009) (holding that the International Finance Corporation waived immunity from promissory estoppel and breach of confidentiality claims brought by a businessman negotiating to purchase one of the International Finance Corporation's investments because waiver under those circumstances would help attract investors); *see also Kirkham v. Société Air France*, 429 F.3d 288 (D.C. Cir. 2005) (holding that France, through Air France, was not immune from a tort suit brought by a passenger who alleged that an employee negligently led her to a

congested area of the airport because the ticket sale in the United States constituted commercial activities, without considering any corresponding benefits to France).

The Third Circuit also failed to consider the FSIA's other provisions—such as its terrorism-related immunity exceptions—or question the relevance of those exceptions to international organizations. *See OSS Nokalva, Inc.*, 617 F.3d at 765 ("we construe the IOIA to incorporate the exceptions to immunity set forth in the FSIA"); *see e.g.*, 28 U.S.C. § 1605A(1) ("[a] foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking"). Moreover, the Third Circuit only incorporated the FSIA's immunity exceptions; it did not consider the fact that the FSIA also provides foreign sovereigns procedural protections. *See e.g.*, *id*. at § 1606 (protecting foreign states from punitive damages); *id*. at § 1608(e) (protecting foreign states from judgments "unless the claimant establishes his right to relief by evidence satisfactory to the court"); Brower, *supra*, at 322 ("the Third Circuit seems to have been unaware that the FSIA involved a delicate tradeoff, in which the United States restricted the immunities of foreign states for commercial activities, but simultaneously granted foreign states a series of procedural concessions designed to avoid the most objectionable aspects of commercial

litigation in US courts.").[8]

C. Appellants Advocate a Vast, Extraterritorial Expansion of the IOIA that Conflicts with Foreign Law.

By arguing that the FSIA applies to international organizations, Appellants also advocate a vast, extraterritorial extension of the IOIA in the face of clear Supreme Court precedent to the contrary. *See, e.g., RJR Nabisco Inc. v. European Cmty.*, 136 S. Ct. 2090, 2100 (2016) ("[a]bsent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application."). Appellants contend that because "the IFC's loan decisions were made in the United States," the loan somehow "meets the [FSIA] immunity exception for commercial activity." Appellants' Br. at 40-41. On this logic, the International Finance Corporation is subject to suit in the United States by foreign plaintiffs for events that occurred outside the United States. And that extraterritorial application of United States law would not be limited to the International Finance Corporation. Every time any international financial organization makes a loan or investment decision at its headquarters or offices in the United States, the international organization would be vulnerable to suit in a United States court, regardless of the location of the project and the identity of the plaintiff.

[8] For a more detailed critique of the Third Circuit's opinion in *OSS Nokalva*, see Brower, *supra*, at 319-23.

That result is anathema to the IOIA, which expressly sought to provide adequate protections for international organizations that operate in the United States. 22 U.S.C. § 288a; S. Rep. No. 861-4489, at 3 (1945); H.R. Rep. No. 1203-4489, at 3 (1945.); 91 Cong. Rec. 10866 (1945). Further, the Supreme Court rejects the judicial involvement in "foreign-cubed" litigation that Appellants now seek. *See Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 250, 265 (2010) (finding that Section 10(b) of the Securities and Exchange Act of 1934 does not provide a cause of action to "foreign plaintiffs suing foreign and American defendants for misconduct in connection with securities traded on foreign exchanges" where there was "no affirmative indication in the Exchange Act that §10(b) applies extraterritorially").

Appellants' proposition would also expose international organizations to litigation in the United States in a way that contradicts treaties and foreign law in other member states. *See Broadbent* 628 F.2d at n. 20 (noting that foreign nations do not apply the concept of restrictive immunity to international organizations); *RJR Nabisco, Inc.*, 136 S. Ct. at 2107 (stressing that where a risk of conflict between an American statute and foreign law is evident, "the need to enforce the presumption [against extraterritoriality] is at its apex"); *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1664 (2013) (quoting *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) (stating that the presumption against

extraterritoriality protects against unintended clashes between American laws and foreign laws which could result in "international discord"); Oberster Gerichtshot [OGH] [Supreme Court] Dec. 1, 2005, 6 Ob 150/05K, para. 2 (Austria), translated and reprinted in Gerhard Hafner & Stephan Wittich, Austrian Practice in International Law (2004/2005), 10 Austrian Rev. Int'l & Eur. L. 197, 199 (2005) (stating that "while states only enjoy immunity for acts carried out in the exercise of sovereign authority (*acta iure imperii)* and not for private or commercial acts (i.e. those carried out as subjects of private law – *acta iure gestionis*), the immunities enjoyed by international organizations are to be regarded as absolute"); *Eurotrends* (emphasizing that the immunity of international organizations should not be confused with sovereign immunity); *accord Iran-United States Claims Tribunal*, 360; *Euratom* para. 28; *CERN*, 565.

CONCLUSION

For the reasons set forth above, the Court should reaffirm the District Court's decision below.

November 14, 2016

Respectfully submitted,

/s/ Jeffrey T. Green
Jeffrey T. Green
Sena Munasifi
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
(202) 736-8711 (fax)
jgreen@sidley.com
smunasifi@sidley.com

Counsel for the Amici Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I certify the following:

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 6,539 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) and Circuit Rule 32(e)(1).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using the 2007 version of Microsoft Word in 14-point Times New Roman font.

/s/ Jeffrey T. Green
Jeffrey T. Green
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711
jgreen@sidley.com

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2016, I filed the foregoing Brief of The International Bank for Reconstruction and Development, et al., as amici curiae in Support of Affirmance and Defendant Appellee with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

/s/ Jeffrey T. Green
Jeffrey T. Green
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711
jgreen@sidley.com