No. 23-1625

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SR. KATE REID, ET AL.,
Plaintiffs-Appellees,

v.

DOE RUN RESOURCES CORPORATION, ET AL.,
Defendants-Appellants

On Appeal from the United States District Court
for the Eastern District of Missouri,
No. 4:11-cv-00044-CDP, Hon. Catherine D. Perry

AMICUS CURIAE BRIEF OF FORMER U.S. DIPLOMATS AND GOVERNMENT OFFICIALS IN SUPPORT OF PLAINTIFFS-APPELLEES

MICHELLE C. HARRISON
MARCO B. SIMONS
CHRISTOPHER M. EWELL
EARTHRIGHTS INTERNATIONAL
1612 K Street NW, Suite 800
Washington, DC 20006
Tel: 202-466-5188
michelle@earthrights.org

Counsel for *Amici Curiae*

RULE 26.1 DISCLOSURE STATEMENT

Under Federal Rules of Appellate Procedure 26.1, amici state as follows:

Amici are all individuals; no amici have a parent corporation nor stock held by any publicly held corporation.

TABLE OF CONTENTS

RULE 26.1 DISCLOSURE STATEMENT i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENTS PURSUANT TO RULE 29 1

STATEMENT OF INTEREST OF AMICI CURIAE 1

INTRODUCTION AND SUMMARY OF ARGUMENT 2

ARGUMENT 4

I. THE ABSENCE OF A STATEMENT OF INTEREST FROM THE U.S. GOVERNMENT WEIGHS AGAINST DISMISSAL. 4

II. CIVIL LITIGATION IN U.S. COURTS TO HOLD U.S. CORPORATIONS ACCOUNTABLE FOR MISCONDUCT THAT HARMS INDIVIDUALS ABROAD COMPORTS WITH THE U.S. GOVERNMENT'S BROAD INTEREST OF PROMOTING RESPONSIBLE CORPORATE CONDUCT 6

A. The U.S. government has a longstanding commitment to promoting and ensuring responsible business conduct by U.S. corporate actors. 7

B. U.S. courts play a critical role in ensuring the accountability for U.S. corporate misconduct that is central to U.S. foreign policy interests. 13

CONCLUSION 16

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

CASES

Carijano v. Occidental Petroleum Corp.,
643 F.3d 1216 (9th Cir. 2011) 14

Doe I v. Cisco Sys., Inc.,
73 F.4th 700 (9th Cir. 2023) 5

Dorman v. Emerson Elec. Co.,
789 F. Supp. 296 (E.D. Mo. 1992) 14

Dow Chem. Co. v. Castro Alfaro,
786 S.W.2d 674 (Tex. 1990) 15

GDG Acquisitions, LLC v. Gov't of Belize,
749 F.3d 1024 (11th Cir. 2014) 5, 6

Gross v. German Found. Indus. Initiative,
456 F.3d 363 (3d. Cir. 2006) 5

Mujica v. AirScan Inc.,
771 F.3d 580 (9th Cir. 2014) 5, 6

Reid-Walen v. Hansen,
933 F.2d 1390 (8th Cir. 1991) 14

Ungaro-Benages v. Dresdner Bank AG,
379 F.3d 1227 (11th Cir. 2004) 5

OTHER AUTHORITIES

Blinken, Sec. of State, 10th Anniversary of the UN Guiding Principles on Business and Human Rights, U.S. Dep't of State (Jun. 16, 2021) 10

Bureau of Democracy, Human Rights & Labor, U.S. Dep't of State, U.S. Government Approach on Business and Human Rights (2013). 9

Colin Powell, Sec'y of State, U.S. Dep't of State, Remarks at Awards for Corporate Excellence (Oct. 1, 2002) 8

E. Anthony Wayne, Assistant Sec'y of State for Econ. & Bus. Affairs, U.S. Dep't of State, Announcement of "Voluntary Principles on Security and Human Rights" (Dec. 20, 2000) 7, 9

G7, Lead as a Major Threat to Human Health and the Environment – An Integrated Approach to Strengthening Cooperation Towards Solutions, Report to G7 Ministers on Key Workshop Outcomes (Nov. 9-10, 2022) 13

John Kerry, Sec'y of State, U.S. Dep't of State, Remarks at the 15th Annual Awards for Corporate Excellence (Jan. 29, 2014) 14

José W. Fernandez, The Role of the State Department in Responsible Business, Meridian International Center (Dec. 1, 2021) 11

Lorne W. Craner, Assistant Sec'y of State for Democracy, Human Rights and Labor, U.S. Dep't of State, Promoting Corporate Social Responsibility Abroad: The Human Rights and Democracy Perspective, Remarks at the 2002 Surrey Memorial Lecture (June 18, 2002) 8

Madeleine K. Albright, Sec'y of State, U.S. Dep't of State, Remarks at Presenting Inaugural Corporate Excellence Awards (Dec. 21, 1999) 8

OECD, OECD Guidelines for Multinational Enterprises on Responsible Business Conduct 14 (2023) 10

The White House, Fact Sheet: President Biden Signs Executive Order to Revitalize Our Nation's Commitment to Environmental Justice for All (Apr. 21, 2023) 13

The White House, Joint Declaration on The Americas Partnership for Economic Prosperity (Jan. 27, 2023) 15

The White House, Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest (Jun. 3, 2021) 11

U.N. General Assembly, The Human Right to a Clean, Healthy, and Sustainable Environment A/76/L.75 2 [New York] (Jul. 26, 2022) 12

U.N. Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011) 9

U.S. Dep't of State, A Guide to the U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises (Jun. 2016). 10

U.S. Dep't of State, Responsible Business Conduct: Bureau of Economic and Business Affairs..... 12

U.S. Dep't of State, National Action Plan on Responsible Business Conduct..... 11

U.S. Mission to the U.N., Explanation of Position on the Right to a Clean, Healthy, and Sustainable Environment Resolution (Jul. 28, 2022) 12

STATEMENTS PURSUANT TO RULE 29

All parties have consented to the filing of this brief.

No party or counsel thereof authored this brief in whole or part; no person other than *amici* or their counsel contributed money that was intended to fund preparing or submitting this brief.

STATEMENT OF INTEREST OF AMICI CURIAE

Amici curiae are former U.S. diplomats and government officials who have worked in the national security, foreign policy, and international commerce sectors. Amici have worked on these matters at the most senior levels of the U.S. government, and in presidential administrations of both major political parties. They have devoted their careers to promoting the United States' commitments to moral leadership and the rule of law. Amici take no position on the factual allegations in this case. They write only to offer the Court their perspective on the implications of this case for those core U.S. foreign policy values.

Amici consist of the following individuals:

Daniel Baer served as Deputy Assistant Secretary of State for Democracy, Human Rights, and Labor from 2009 to 2013, and as U.S. Ambassador to the Organization for Security and Cooperation in Europe from 2013 to 2017.

Susan Coppedge served as Senior Advisor to the Secretary of State and U.S. Ambassador at Large to Monitor and Combat Trafficking in Persons from 2015 to

2017. Previously, she served as Assistant U.S. Attorney in the U.S. Attorney's Office for the Northern District of Georgia from 1999 to 2015 and was the Human Trafficking Coordinator from 2010 to 2015.

Cameron F. Kerry served as General Counsel of the U.S. Department of Commerce from 2009 to 2013. In 2013, he served as Acting Secretary of the Department of Commerce.

Thomas R. Pickering, a career Ambassador, served as U.S. Ambassador to El Salvador from 1983 to 1985, as U.S. Permanent Representative to the United Nations from 1989 to 1992, and as Under Secretary of State for Political Affairs from 1997 to 2000.

Michael H. Posner served as Assistant Secretary of State for Democracy, Human Rights, and Labor from 2009 to 2013.

John Shattuck served as Assistant Secretary of State for Democracy, Human Rights and Labor from 1993 to 1998, and as U.S. Ambassador to the Czech Republic from 1998 to 2000.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici understand that this case concerns allegations that Defendants-Appellants, several interrelated American companies and their executives, acting from Missouri and New York, authorized and directed the La Oroya Complex, a metallurgical smelting and refining complex in Peru, to emit excessive levels of toxic substances into

the environment. Plaintiffs-Appellees allege that Defendants-Appellants' tortious conduct, carried out from the United States, exposed them as children to lead and other toxic substances and caused them serious medical and developmental injuries.

The district court below declined, for the second time, to abstain from exercising its jurisdiction on international comity grounds. A key part of this analysis involves assessing whether there is a U.S. sovereign interest in having the case heard in a foreign forum rather than in the United States. Amici, as former U.S. government officials with extensive foreign policy expertise, agree with the district court's conclusion that the U.S. sovereign interests in this case weigh against abstention and urge the Court to affirm the decision below.

In amici's view, far from conflicting with U.S. foreign policy interests, U.S. adjudication of cases such as this one to hold U.S. corporations accountable for tortious conduct that causes harm outside the United States is consistent with longstanding U.S. foreign policy priorities. The United States has long been regarded as a world leader in its commitment to responsible business conduct and respect for the rule of law. This is one of our greatest assets in our diplomatic relations. Our commitment to the rule of law and to accountability for of those who engage in unlawful conduct has been a hallmark of our foreign policy. Cases such as this one comport with U.S. foreign policy that U.S. businesses should model responsible business conduct and should be held accountable when they are responsible for injuries to human health.

In arguing the district court was *required* to abstain from jurisdiction in this case, despite the lack of any official statement by either the United States or Peru demonstrating that either sovereign has a clear interest in dismissal of the case, Defendants-Appellants seek a novel application of international comity. Dismissing cases against U.S. corporations that commit malfeasance from the United States does not further, and would in fact directly conflict with, longstanding U.S. foreign policy interests in ensuring responsible conduct of U.S. corporations wherever they operate.

ARGUMENT

I. The absence of a statement of interest from the U.S. government weighs against dismissal.

The district court recognized that because international comity is rooted in preserving foreign relations, the sovereign interests of the United States and Peru are "the most important aspect of a comity analysis." Add. 55.[1] The district court twice conducted a comity analysis and both times concluded that abstention on comity grounds was not warranted. *Id.* at 52-62. This Court should affirm this reasonable exercise of discretion.

As former U.S. government officials, amici agree with the district court's conclusion that U.S. sovereign interests do not support abstention in this case. When the United States "does not have a significant interest in the foreign adjudication of

[1] "Add." references cite Defendants-Appellants' Addendum.

[the] matter," this "weighs against dismissal" on international comity grounds. *GDG Acquisitions, LLC v. Gov't of Belize*, 749 F.3d 1024, 1032 (11th Cir. 2014). In cases where the U.S. Government *does* have a significant interest in foreign adjudication of a particular case, the State Department typically makes that interest known by filing a statement of interest urging dismissal on foreign policy grounds. *See, e.g. Mujica v. AirScan Inc.,* 771 F.3d 580, 609-610 (9th Cir. 2014) (noting the State Department specifically "asked for the case to be dismissed" and "articulat[ed] several reasons why" U.S. adjudication would "have an adverse impact on the foreign policy interests of the United States"); *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1231 n.6 (11th Cir. 2004) (noting that the State Department filed multiple Statements of Interest explaining "it is in the foreign policy interests of the United States for the case to be dismissed"). By contrast, courts have regularly held that the absence of such a statement from the U.S. Government weighs against abstention. *See, e.g. GDG Acquisitions,* 749 F.3d at 1032 (abstention was improper where there was "[n]o statement of foreign policy interest from the United States"); *Gross v. German Found. Indus. Initiative*, 456 F.3d 363, 389-90, 394 (3d. Cir. 2006) (declining to abstain on political questions and international comity grounds where the U.S. "has taken no position on the merits" and "not expressed its interest in the dispute"); *cf. Doe I v. Cisco Sys., Inc.*, 73 F.4th 700, 722 (9th Cir. 2023) (concluding the "government's silence" indicates "a lack of concern" regarding foreign-policy implications of a lawsuit).

This is not a case where the "forcefully expressed views of the State Department" show that U.S. adjudication would have "adverse impact[s]" on U.S. foreign policy interests. *Mujica*, 771 F.3d at 611, 609. To the contrary, despite having well over a decade to voice any foreign policy concerns, the State Department has "remained silent in this case." Add. 66. There are no "exceptional diplomatic circumstances" that make this case the kind of "calamitous" case that would warrant abstention. *GDG Acquisitions, LLC,* 749 F.3d at 1026, 1034. The district court was correct to conclude that, where there is "no parallel proceeding affronted by [its] exercise of jurisdiction," and "no true conflict between the laws of the United States and a foreign sovereign," the absence of any statement by the United States showing "that it is interested in dismissal" weighs against the court "surrender[ing]" its obligation "to exercise jurisdiction." Add. 66.

II. Civil litigation in U.S. courts to hold U.S. corporations accountable for misconduct that harms individuals abroad comports with the U.S. government's broad interest of promoting responsible corporate conduct.

As former U.S. government officials with extensive foreign policy experience, amici believe that the United States not only lacks an interest in having this case heard in Peru but in fact has a strong interest in ensuring suits like this one are heard in the United States. Adjudication in U.S. courts of claims that a U.S. entity engaged in tortious conduct in Missouri that caused serious harms to human health in Peru is consistent with U.S. foreign policy interests in ensuring responsible corporate conduct by U.S.

corporate entities and with longstanding U.S. foreign policy priorities.

When U.S. companies take actions in the United States that have consequences overseas, their actions reflect upon the United States as a whole. U.S. foreign policy has consistently sought to ensure that U.S. corporations cannot profit from unlawful conduct causing harms abroad and the U.S. has a strong interest in ensuring such accountability in U.S. courts. Our global reputation would be diminished if, in the name of U.S. foreign policy interests, our courts refuse on international comity grounds to hear cases alleging U.S. corporations have committed tortious acts in the United States that have impacts elsewhere, especially when the U.S. government has not articulated any interests against hearing the case in U.S. courts.

A. The U.S. government has a longstanding commitment to promoting and ensuring responsible business conduct by U.S. corporate actors.

Ensuring that U.S. courts can hear suits seeking to hold U.S. entities accountable for malfeasance that causes harm abroad supports the U.S. government's longstanding interest in promoting responsible corporate conduct. During a 2000 press briefing, for example, the State Department emphasized that "U.S. companies are models overseas for the kind of business practices that we encourage others to adopt." E. Anthony Wayne, Assistant Sec'y of State for Econ. & Bus. Affairs, U.S. Dep't of State, Announcement of "Voluntary Principles on Security and Human Rights" (Dec. 20, 2000). In a 2002 speech, the George W. Bush Administration's Assistant Secretary of

State for Democracy, Human Rights and Labor emphasized that the State Department "support[s] corporate responsibility for several reasons" including "to promote strong corporate values[,] . . . [and] legal and ethical behavior . . . . . U.S. corporations abroad are among our best ambassadors. They play an important role in changing global perceptions about the U.S." Lorne W. Craner, Assistant Sec'y of State for Democracy, Human Rights and Labor, U.S. Dep't of State, Promoting Corporate Social Responsibility Abroad: The Human Rights and Democracy Perspective, Remarks at the 2002 Surrey Memorial Lecture (June 18, 2002); *see also* Madeleine K. Albright, Sec'y of State, U.S. Dep't of State, Remarks at Presenting Inaugural Corporate Excellence Awards (Dec. 21, 1999) (lauding U.S. companies for "demonstrat[ing] also that we can set a standard of corporate excellence to which all your peers may aspire").

Republican and Democratic administrations alike have long taken the position that U.S. corporate responsibility for harms they cause, even if these harms are felt abroad, "makes good business sense" and is an integral part of the "value proposition" for U.S. firms. Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, U.S. Government Approach on Business and Human Rights 16 (2013); *see also, e.g.,* Colin Powell, Sec'y of State, U.S. Dep't of State, Remarks at Awards for Corporate Excellence (Oct. 1, 2002) ("The best American companies, however, do not measure excellence simply in terms of dollars and cents, simply in terms of profits. They realize that economies flourish only when . . . rights are protected by the rule of law."). As former

government officials, amici share the State Department's view that "it is good not only for American business . . . but also for the global investment climate that U.S. firms be the best corporate citizens possible." E. Anthony Wayne, Assistant Sec'y of State for Econ. & Bus. Affairs, U.S. Dep't of State, Announcement of "Voluntary Principles on Security and Human Rights" (Dec. 20, 2000).

The United States has consistently supported international efforts to foster responsible business conduct and accountability. In 2011, the United States cosponsored the resolution for the United Nations Guiding Principles on Business and Human Rights, which has been endorsed by the U.N. Human Rights Council. S*ee* U.N. Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework iv (2011). The Guiding Principles declare: "The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate." *Id.* at 13. Further, governments should "[e]nforce laws that are aimed at, or have the effect of, requiring business enterprises" to comply with the Guiding Principles. *Id.* at 4. The State Department has made it "incumbent on U.S. companies to encourage broad implementation" of good corporate practices by leading by example and pushing for endorsement of the Guiding Principles. Bureau of Democracy, Human Rights & Labor, U.S. Dep't of State, U.S. Government Approach on Business and Human Rights 16 (2013).

In 2021, Secretary of State Antony Blinken reaffirmed the U.S. commitment to the U.N. Guiding Principles, including its central emphasis on the importance of ensuring that victims of injuries where businesses are involved "should have access to remedy." Antony J. Blinken, Sec. of State, 10th Anniversary of the UN Guiding Principles on Business and Human Rights, U.S. Dep't of State (Jun. 16, 2021).

Since 1976, the United States has also adhered to the Organization for Economic Co-Operation and Development's (OECD) Guidelines for Multinational Enterprises, which aim to "minimize and resolve impacts" that multi-national enterprises cause in foreign jurisdictions. U.S. Dep't of State, A Guide to the U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises (Jun. 2016). Under the Guidelines, Enterprises should "[a]void causing or contributing to adverse impacts" and cooperate "in the remediation of adverse impacts." OECD, OECD Guidelines for Multinational Enterprises on Responsible Business Conduct 14 (2023), https://doi.org/10.1787/81f92357-en. The United States has also promoted the OECD Convention Against Bribery of Public Officials and in 2021 the White House reaffirmed that countering corruption, promoting good governance, and the rule of law are all central to U.S. foreign policy and national security interests. The White House, Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest (Jun. 3, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-

against-corruption-as-a-core-united-states-national-security-interest/.

The current Administration has continued to emphasize the leadership position that U.S. businesses should uphold and the important role that accountability at home plays in ensuring responsible business conduct globally. In 2021, for example, Secretary of State Blinken announced the Biden-Harris Administration's plans to revitalize the U.S. National Action Plan on Responsible Business Conduct, based on the principles encompassed in both the UN Guiding Principles and the OECD Guidelines. U.S. Dep't of State, National Action Plan on Responsible Business Conduct, https://www.state.gov/responsible-business-conduct-national-action-plan/ (last visited Aug. 16, 2023). The State Department has articulated that one of the goals of the Action Plan is to ensure that we "address situations where companies are alleged to have engaged in irresponsible conduct" and has emphasized that many of the "processes that can impact business conduct abroad are domestic in nature." *Id.* The Under Secretary for Economic Growth, Energy, and the Environment at the State Department has called on U.S. companies to "uphold high standards as responsible members of their communities and represent American values in the way they do business abroad." José W. Fernandez, The Role of the State Department in Responsible Business, Meridian International Center (Dec. 1, 2021). The State Department also continues to emphasize the U.S. commitment to shape "global standards to ensure that rights are respected around the world and companies benefit by doing business

responsibly." U.S. Dep't of State, Responsible Business Conduct: Bureau of Economic and Business Affairs, https://www.state.gov/responsible-business-conduct/ (last visited Aug. 15, 2023). A U.S. court declining to hear a case alleging that a U.S. corporation has committed tortious acts in the United States causing harm abroad would abdicate the leadership that has long been a centerpiece of U.S. foreign policy and undermine significant U.S. interests.

Moreover, ensuring accountability for Defendants-Appellants' alleged contributions to Plaintiffs' exposure to toxic chemicals that have resulted in serious long-term health harms aligns directly with U.S. foreign policy interests. In 2022, the United States voted in favor of the United Nations General Assembly Resolution on the right to a clean, healthy, and sustainable environment, which recognized the serious impacts of environmental damage, including "unsound management of chemicals and waste," on human rights and human health. U.N. General Assembly, The Human Right to a Clean, Healthy, and Sustainable Environment A/76/L.75 2 [New York] (Jul. 26, 2022). Explaining its support for the resolution, the U.S. Mission to the U.N. affirmed the longstanding United States position "that a healthy environment supports the well-being and dignity of people around the world," calling on all states to "promote accountability" for violations of this fundamental right. U.S. Mission to the U.N., Explanation of Position on the Right to a Clean, Healthy, and Sustainable Environment Resolution (Jul. 28, 2022).

U.S. foreign policy has also uniformly sought to combat lead exposure in children, the harm the Plaintiffs here are alleged to have suffered, around the world. For example, in 2022, as part of the Group of 7 (G7), the United States reaffirmed its commitment to address "disproportionate lead exposure in vulnerable communities" and to "*enforce legal requirements* aimed at reducing lead exposure." G7, Lead as a Major Threat to Human Health and the Environment – An Integrated Approach to Strengthening Cooperation Towards Solutions, Report to G7 Ministers on Key Workshop Outcomes (Nov. 9-10, 2022) (emphasis added). These foreign policy efforts align with the Administration's domestic declaration that "every person has a right to breathe clean air, drink clean water, and live in a healthy community," and commitment to combat "persistent environmental injustice through toxic pollution." The White House, Fact Sheet: President Biden Signs Executive Order to Revitalize Our Nation's Commitment to Environmental Justice for All (Apr. 21, 2023).

B. U.S. courts play a critical role in ensuring the accountability for U.S. corporate misconduct that is central to U.S. foreign policy interests.

Amici know from personal experience that, acting alone, U.S. government departments and agencies cannot realistically monitor and discourage all potential harms committed by U.S. entities and citizens. This suit and others like it help create a level playing field and ensure that U.S. entities that do not commit tortious acts that harm individuals overseas will not be placed at a relative business disadvantage vis-à-vis

irresponsible corporate entities. In amici's experience, U.S. foreign policy has never condoned a race to the bottom, in which U.S. entities stoop to the level of unscrupulous foreign corporations that may seek to maximize profits by causing harms in their business practices. *See, e.g.* John Kerry, Sec'y of State, U.S. Dep't of State, Remarks at the 15th Annual Awards for Corporate Excellence (Jan. 29, 2014) (criticizing when corporations engage in "the race to the bottom"). Failing to hold U.S. citizens, including U.S. corporate citizens, accountable for malfeasance in the United States that results in citizens of other countries being exposed to dangerous toxic chemicals would contribute to a vicious cycle in which U.S. corporations could repeatedly relocate some of their operations overseas to take advantage of the lowest legal standards for protecting human health.

Access to U.S. courts to pursue accountability is thus consistent with U.S. foreign policy goals and helps reduce overall monitoring costs by allowing individuals to file suits that discourage wayward U.S. actors from engaging in conduct that result in harm elsewhere. As the district court correctly noted, the United States has a "significant interest in providing a forum for those harmed by the actions of its corporate citizens." Add. 47 (citing *Carijano v. Occidental Petroleum Corp.*, 643 F.3d 1216, 1232 (9th Cir. 2011)). *See also Reid-Walen v. Hansen,* 933 F.2d 1390, 1400 (8th Cir. 1991) (finding that a "defendant's home forum always has a strong interest in providing a forum for redress of injuries caused by its citizens."); *Dorman v. Emerson Elec. Co.*, 789 F. Supp. 296, 298

(E.D. Mo. 1992) ("Missouri has a significant interest in the litigation by virtue of the fact that defendant is a corporate citizen of Missouri."); *Dow Chem. Co. v. Castro Alfaro*, 786 S.W.2d 674, 687 (Tex. 1990) (Doggett, J., concurring) ("Comity is not achieved when the United States allows its multinational corporations to adhere to a double standard when operating abroad and subsequently refuses to hold them accountable for those actions."). Suggesting that the United States does not have an interest in ensuring that our courts at home should be the ones to adjudicate claims that U.S. companies have failed to abide by our own laws flies in the face of longstanding U.S. foreign policy priorities.

By surrendering jurisdiction in this case on international comity grounds, a U.S. court would be granting U.S. corporations a "free pass" to commit tortious acts in the United States, just because the harm is felt abroad, and set a precedent that undermines U.S. foreign policy interests. In 2023, in a statement on the Americas Partnership for Economic Prosperity – a coalition that includes the United States and Peru – the White House emphasized the shared commitment to "responsible business conduct" and "adherence to the rule of law, driven by principles of transparency and accountability." The White House, Joint Declaration on The Americas Partnership for Economic Prosperity (Jan. 27, 2023). These principles of responsible conduct and the rule of law would ring hollow without the U.S. commitment that its courts would ensure accountability for business misconduct at home.

Amici are aware that there are doctrines that may apply in transnational cases, regardless of the views of the U.S. State Department or the relevant foreign sovereign. These doctrines, such as *forum non conveniens*, preemption, and the act of state doctrine, may counsel in favor of dismissal in appropriate cases. Our statements here should not be taken to mean that U.S. courts must *always* adjudicate transnational cases, whenever the State Department has taken no position. But with respect to international comity in particular – which affords respect to the sovereignty of other nations, and to the views of the U.S. Government as to foreign policy conflicts – dismissal in the absence of a U.S. statement of interest would be inappropriate.

Civil litigation in the United States incentivizes U.S. corporations to be the best corporate citizens possible and thus comports with U.S. interests.

CONCLUSION

This Court should affirm the district court's reasonable exercise of discretion.

Dated: September 7, 2023

Respectfully submitted,

/s/ Michelle C. Harrison
Michelle C. Harrison
EarthRights International
1612 K Street NW #800
Washington, DC 20006
Tel: 202-466-5188

CERTIFICATE OF COMPLIANCE

This brief complies with Rule 29(a)(5) because it contains 3,730 words, excluding the parts exempted by Rule 32(f). This brief also complies with Rule 32(a)(5)-(6) because it is prepared in a proportionally spaced face using Microsoft Word 2016 in 14-point Garamond font. The electronic version of the brief has been scanned for viruses and is virus-free.

Dated: September 7, 2023 /s/ Michelle C. Harrison

CERTIFICATE OF SERVICE

I filed a true and correct copy of this brief with the Clerk of this Court via the CM/ECF system, which will notify all counsel.

Dated: September 7, 2023 /s/ Michelle C. Harrison