ORAL ARGUMENT NOT YET SCHEDULED

No. 23-7031

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

NEXTERA ENERGY GLOBAL HOLDINGS B.V., ET AL.,
Petitioners-Appellees,

v.

KINGDOM OF SPAIN,
Respondent-Appellant.

On Appeal from the United States District Court for the District of Columbia, No. 1:19-cv-01618-TSC, Hon. Tanya S. Chutkan, *United States District Judge*

BRIEF IN SUPPORT OF APPELLANT THE KINGDOM OF SPAIN FOR VACATUR OF THE PRELIMINARY INJUNCTION BY *AMICUS CURIAE* THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

Dated: June 6, 2023

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DISCLOSURE STATEMENT

As a sovereign government, the Government of Kingdom of the Netherlands ("the Netherlands") is not subject to the disclosure statement requirements set forth in Fed. R. App. P. 26.1 or D.C. Circuit Rule 26.1.

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), *amicus curiae* the Netherlands submits this certificate as to parties, rulings, and related cases.

I. PARTIES AND AMICI

The Netherlands seeks leave to appear as *amicus curiae* before this Court. The Netherlands understands the European Commission intends to participate as *amicus curiae*. As both amici will speak on separate issues, separate briefs are necessary. To the knowledge of the undersigned, all other parties, intervenors, and amici appearing before the district court and in this Court are listed in the Brief for Appellant the Kingdom of Spain ("Spain").

II. RULINGS UNDER REVIEW

Reference to the rulings at issue in No. 23-7031 appear in the Brief for Appellant Spain.

III. RELATED CASES

The Netherlands seeks leave to participate as an *amicus curiae* in case No. 23-7031. No. 23-7031 was previously before the district court as *NextEra*

Energy Global Holdings B.V. v. Kingdom of Spain, No. 19-cv-01618. No. 23-7032 is a related case and was previously before the district court as *9Ren Holding S.A.R.L. v. Kingdom of Spain*, No. 19-cv-01871. Neither case has previously been before this Court.

To the knowledge of the undersigned, Spain has identified additional cases that present similar issues and involve the Kingdom of Spain in its Appellant Brief.

/s/ *W. Todd Miller*
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*Authorities upon which *amicus curiae* chiefly relies are marked with an asterisk.

GLOSSARY OF ABBREVIATIONS

CJEU	Court of Justice of the European Union
ECT	Energy Charter Treaty
EU	European Union
NextEra	Appellees NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V.

QUESTION PRESENTED

Whether the district court failed to give serious consideration to international law and the doctrine of international comity when it granted an anti-suit injunction enjoining the Kingdom of Spain from pursuing certain claims for relief against a Dutch subject before the courts of the Kingdom of the Netherlands on questions of foreign law.

INTEREST OF THE *AMICUS CURIAE* THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS[1]

The Government of the Kingdom of the Netherlands ("the Netherlands") is committed to the proper application of international law and to the appropriate use of the doctrine of international comity.

In prior *amicus* briefs in U.S. courts, the Netherlands has regularly criticized broad assertions of extraterritorial jurisdiction that were inconsistent with international law.[2] These prior briefs have been submitted when plaintiffs were seeking to have a United States-based court assert jurisdiction over alien parties concerning foreign conduct involving little or no connection to the United States.

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[1] Statement of Authorship and Financial Contributions: Pursuant to D.C. Cir. Rule 29(a)(4)(E), no person, party, or party's counsel, outside the amicus curiae or its counsel, authored any part of this brief or contributed money that was intended to fund preparing or submitting this brief.

[2] *See* Brief of the Government of the Kingdom of the Netherlands as Amicus Curiae in Support of the Petitioners in its petition for a writ of Certiorari, *OBB Personenverkehr AG v. Sachs*, 136 S. Ct. 390 (2015) (No. 13-1067), 2014 U.S. S. Ct. Briefs LEXIS 1441; Brief of the Governments of the Kingdom of the Netherlands and the Swiss Confederation as Amici Curiae in Support of the Petitioner, *OBB Personenverkehr AG v. Sachs*, 136 S. Ct. 390 (2015) (No. 13-1067), 2015 U.S. S. Ct. Briefs LEXIS 1655; Brief of the Governments of the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands as Amici Curiae in Support of the Respondents, *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013) (No. 10-1491), 2012 U.S. S. Ct. Briefs LEXIS 519; and Brief of the Governments of the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands as Amici Curiae in Support of Neither Party, *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013) (No. 10-1491), 2012 U.S. S. Ct. Briefs LEXIS 2651.

This brief reflects the same fundamental concern about extraterritorial exercise of U.S. judicial authority over non-U.S. parties and conduct. Here, the U.S. court has directly enjoined a sovereign nation from pursuing relief under foreign law in another foreign sovereign's courts against a private party subject to the jurisdiction of that sovereign, *without* due consideration to the heighted international comity concerns raised. The fact that the injunction at issue denies access to the Dutch courts and seems to create a conflict of law further enhances the Netherlands' legitimate interest in this appeal.

SUMMARY OF ARGUMENT

This case involves significant international comity issues. It involves U.S. judicial interference with the conduct of two foreign sovereigns. The district court enjoined the actions of a sovereign nation in the court of yet a third sovereign, effectively restricting two sovereign nations from managing their respective legal interests.

This appears to be the first time a court of this Circuit has imposed an anti-suit injunction directly on a foreign sovereign, and only the second time *any* U.S. court has attempted to do so. The district court's opinion does not demonstrate recognition of the rarity of imposing this already extraordinary remedy on what is in essence two foreign sovereigns, nor does it demonstrate serious analysis of the heightened considerations of international law and comity raised. There is no mention of the comity implications of the U.S. court's interference in the judicial process of the Netherlands. Such assertions of authority without careful consideration of sovereignty, comity, and international law create a substantial risk of jurisdictional and diplomatic conflict. In this case, Spain's legal proceedings against NextEra, a Dutch subject, brought in the courts of the Netherlands triggered an obligation for the Dutch courts to apply EU law *proprio motu* under its EU treaty obligations.

The Netherlands respectfully urges this Court to require a particularly thorough analysis of issues of sovereignty and comity before a district court can enjoin a foreign sovereign from pursuing relief in a foreign court under foreign law.

ARGUMENT

I. SOVEREIGNTY AND COMITY ARE FUNDAMENTAL CONCEPTS FOR U.S. AND INTERNATIONAL LAW.

A foundational principle of international law is that each sovereign nation is equal, and no other nation may impose its rule upon another. *The Antelope*, 23 U.S. (10 Wheat.) 66, 122 (1825). As Chief Justice Marshall held in *The Schooner Exchange v. McFaddon*, a sovereign's jurisdiction within its own territory is exclusive and absolute:

> The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction.

Id., 11 U.S. (7 Cranch) 116, 136 (1812).

U.S. and international law recognize that a sovereign nation, as a co-equal, has the exclusive right to prescribe, adjudicate, and enforce its laws and the claims of persons within the nation's territory. *Restatement (Third) of the Foreign Relations of Law of the United States*, §206(a), cmt. B (Am. Law Inst. 1987) ("As used here,

[sovereignty] implies a state's lawful control over its [own] territory generally to the exclusion of other states, authority to govern in that territory, and authority to apply law there."); *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 921 (D.C. Cir. 1984) ("The prerogative of a nation to control and regulate activities within its boundaries is an essential, definitional element of sovereignty. Every country has a right to dictate laws governing the conduct of its inhabitants.").

The doctrine of comity under U.S. law gives effect to and governs the international law principles of sovereignty and extraterritorial jurisdiction. It is the recognition that the interests of a nation sometimes spill outside its territorial boundaries, and that a nation needs the help of other nations to preserve and pursue those interests. *Laker Airways*, 731 F.2d at 937. Comity is both a fundamental respect for the sovereignty of another nation and, in recognition of interdependence, a degree of deference to the acts of a foreign nation in a nation's domestic realm. *Id.*; *see also Berizzi Bros. Co. v. S.S. Pesaro*, 271 U.S. 562, 575 (1926).

As stated by Joseph Story in his *Conflict of Laws*, "[i]t is not comity of the courts, but the comity of the nation which is administered and ascertained in the same way and guided by the same reasoning, by which all other principles of the municipal law are ascertained and guided." Joseph Story, *Commentaries on the Conflict of Laws* §38 (1834). Consequently, U.S. law recognizes that courts must carefully weigh comity implications where these interests arise. *See Munaf v. Geren*,

553 U.S. 674, 689 (2008) ("'[C]ircumspection [is] appropriate when [a] [c]ourt is adjudicating issues inevitably entangled in the conduct of our international relations.'" (quoting *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 383 (1959))); *see also Laker Airways*, 731 F.2d at 937–38.

II. CONCERN ABOUT COMITY IS AT ITS PEAK WHEN THE PARTY ENJOINED IS A FOREIGN SOVEREIGN.

The principles of sovereignty and comity alter the standard calculus of an injunction. *See Republic of the Philippines v. Westinghouse Elec. Corp.*, 43 F.3d 65, 72–73 (3d Cir. 1994) ("[A] district court's power to sanction or exercise other forms of judicial control over a foreign sovereign is not coterminous with its power to regulate or punish other litigants."). As recognized by the Fourth Circuit, the only court of appeals to consider an anti-suit injunction imposed directly on a foreign sovereign, comity concerns are paramount when the party to be enjoined is a foreign sovereign. As the Fourth Circuit stated:

> International comity counsels us to give effect, if possible, to the judgments of foreign courts in order to strengthen international cooperation. Here, these comity concerns are near their peak. . . . Indeed, an anti-suit injunction here would impinge on the sovereignty of the Korean courts (to hear the case) and the Korean government to litigate it.

BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea's Def. Acquisition Program Admin., 884 F.3d 463, 480 (4th Cir. 2018) (internal citations omitted).

Where an injunction is sought against the U.S. government, this Circuit recognizes that the required balancing of various interests should be done differently from a case involving only private parties. *Doe v. Mattis*, 928 F.3d 1, 23 (D.C. Cir. 2019) ("[W]hen a private party seeks injunctive relief against the government, the final two injunction factors – the balance of the equities and the public interest – generally call for weighing the benefits to the private party from obtaining an injunction against the harms to the government and the public from being enjoined."); *see also Pursuing Am.'s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016) ("[T]he [government]'s harm and the public interest are one and the same, because the government's interest *is* the public interest."). The underlying rationale is equally applicable to assess a preliminary injunction that restrains foreign sovereigns, particularly one that impacts both a sovereign as a party and a sovereign as a forum in which relief is sought against that sovereign's subjects.

These heightened comity concerns are apparent in the three decisions that considered the application of anti-suit injunctions against companies owned by foreign states. In the two cases in which the courts affirmed the anti-suit injunctions, each court found a degree of separation between the entity on which the injunction was imposed and its controlling foreign state. *See Allendale Mut. Ins. Co. v. Bull Data Sys., Inc.*, 10 F.3d 425, 428 (7th Cir. 1993) (setting aside the French government's ownership structure because the government played only a passive

investment role and there were no assertions of government involvement); *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 500 F.3d 111, 116 (2d Cir. 2007) (hereafter "*Karaha Bodas II")* (enjoining an oil company owned and controlled by Indonesia from filing post-judgment foreign litigation to offset a U.S. judgment where the company and not the State was liable for payment). In contrast, the Fifth Circuit refused to impose a pre-judgment anti-suit injunction on the same oil company owned and controlled by Indonesia as in the Second Circuit case, in part on comity grounds because the injunction would more directly impact Indonesia's sovereign actions. *See Karaha Bodas Co. v. Negara*, 335 F.3d 357, 372–73 (5th Cir. 2003) (hereafter "*Karaha Bodas I")* (finding that enjoining parallel litigation to annul an arbitration award by Indonesia in its home courts would impinge upon Indonesia's sovereignty "to determine its own jurisdiction and grant kinds of relief it deems appropriate").

III. FOREIGN ANTI-SUIT INJUNCTIONS ARE A SENSITIVE SUBJECT INTERNATIONALLY BECAUSE THEY INTERFERE WITH A FOREIGN SOVEREIGN'S ABILITY TO EXERCISE ITS OWN JURISDICTION.

All sovereign nations "have a substantial interest in regulating the progress of litigation in [their] own courts." *United States v. Davis*, 767 F.2d 1025, 1038 (2d Cir. 1985). Foreign anti-suit injunctions interfere with this sovereign interest. By their nature, foreign anti-suit injunctions extend U.S. judicial authority extraterritori-

ally thereby implicating questions of sovereignty and comity vis-à-vis any foreign forum that it is being barred from being used. *See id.*; *E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 989 (9th Cir. 2006) (noting that despite a court's power to enjoin the parties before it in a foreign proceeding, "'the power should be used sparingly. The issue is not one of jurisdiction, but one of comity.'" (quoting *Seattle Totems Hockey Club, Inc. v. Nat'l Hockey League*, 652 F.2d 852, 855 (9th Cir. 1981))).

Because of this inherent conflict between the U.S. courts and the courts of another sovereign nation, the *Laker Airways* Court cautioned that courts should use extreme care in imposing anti-suit injunctions impacting non-U.S. fora:

> The mere filing of a suit in one forum does not cut off the preexisting right of an independent forum to regulate matters subject to its prescriptive jurisdiction. For this reason, injunctions restraining litigants from proceeding in courts of independent countries are rarely issued.
>
> A second reason cautioning against exercise of the power is avoiding the impedance of the foreign jurisdiction. Injunctions operate only on the parties within the personal jurisdiction of the courts. However, they effectively restrict the foreign court's ability to exercise its jurisdiction. If the foreign court reacts with a similar injunction, no party may be able to obtain any remedy. *Thus, only in the most compelling circumstances does a court have discretion to issue an anti-suit injunction.*

Id. at 927 (emphasis added); *see also Canadian Filters (Harwich) Ltd. v. Lear-Siegler*, 412 F.2d 577, 578 (1st Cir. 1969) ("[T]he direct effect of the district court's

action on the jurisdiction of a foreign sovereign requires that such action be taken only with care and great restraint.”).

Consequently, the necessity and reach of the injunction must be carefully considered to avoid undue interference. *See Davis*, 767 F.2d at 1038 (“Indeed, because an order enjoining a litigant from continuing a foreign action is facially obstructive, international comity demands that this extraordinary remedy be used only after other means of redressing the injury sought to be avoided have been explored.” (citing *Laker Airways*, 731 F.2d at 933, n.81)); *BAE*, 884 F.3d at 480; *see also Republic of the Philippines*, 43 F.3d at 75 (vacating a preliminary injunction for exceeding the district court’s authority and noting “while it is true that principles of comity cannot compel a domestic court to uphold foreign interests at the expense of the public policies of the forum state, it can — and does — force courts in the United States to tailor their remedies carefully to avoid undue interference with the domestic activities of other sovereign nations.”). *Cf., Hartford Fire Ins. Co., v. California*, 509 U.S. 764, 798 (1993) (finding that international comity should be considered in exercising jurisdiction where “a true conflict between domestic and foreign law” arises); *FTC v. Compagnie de Saint-Gobain-Pont-A-Mousson*, 636 F.2d 1300, 1327 (D.C. Cir. 1980) (“[W]e note simply that where two constructions of a statute are possible, the one less likely to conflict directly with regulations of other nations should be chosen.”).

Comity and international law are therefore necessary considerations under the balance of equities and public interest factors of the preliminary injunction and anti-suit injunction tests. *See Karaha Bodas I*, 335 F.3d at 366 ("When a preliminary injunction takes the form of a foreign antisuit injunction, we are required to balance domestic judicial interests against concerns of international comity."). A court cannot decline to weigh comity solely because an important domestic interest has been identified. *See Republic of the Philippines*, 43 F.3d at 77–78 ("Thus, what we recognized in *Compagnie des Bauxites*, like the courts in *Davis* and *Laker Airways*, is that the exercise of a power to prescribe and enforce requires a balancing in each case. The domestic court's purpose in protecting a particular interest must be set against the interests of any other sovereign that might exercise authority over the same conduct."); *BAE*, 884 F.3d at 480 (finding the fact that foreign parallel proceedings may threaten national security interests is not enough alone to impose an anti-suit injunction "because it ignores international comity concerns that must always be considered in determining whether to issue an anti-suit injunction").

IV. THE NETHERLANDS' STRONG INTERESTS AND ITS OBLIGATIONS IN ADJUDICATING THE DUTCH ACTION CANNOT BE REALIZED IN THE U.S. ACTION AND ARE PUT IN CONFLICT BY THE INJUNCTION.

Spain's Appellant Brief sets forth the legal foundations of the European Union ("EU") and the law regarding the underlying arbitration, which the Netherlands will

not repeat.[3] However, the Netherlands suggests that the legal structure of the EU is an important consideration in applying the doctrine of comity, one that the district court failed to consider in issuing its injunction.

Spain's legal proceedings against NextEra, a Dutch subject, brought in the courts of the Netherlands, triggered an independent obligation for the Dutch courts to apply EU law under its EU treaty obligations. Under the treaties establishing and governing the EU, the courts and tribunals of the Netherlands, as a Member State of the EU, must apply EU law as interpreted by the Court of Justice of the European Union ("CJEU"), the judicial branch of the EU, which has exclusive jurisdiction to definitively interpret EU law. *See* Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, June 7, 2016, 2016 O.J. (C 202) 13, 47. The Netherlands and Spain, as Member States, and NextEra, as a Dutch subject and EU citizen, are bound by EU law as interpreted by the CJEU.

Spain's suit against NextEra asked the Dutch courts to determine whether NextEra's enforcement of the Energy Charter Treaty ("ECT") arbitration provision and resulting award was in contravention to or circumventing EU law, including

[3] The Netherlands incorporates by reference Spain's explanation of the EU legal order and law regarding the arbitration provision, as set forth in Spain's Appellant Brief at pp. 6-16, as background information. The Netherlands understands the European Commission intends to submit an *amicus curiae* brief on the EU legal order and EU law, which the Netherlands also incorporates by reference as background information.

whether enforcement of an award in non-EU countries violates EU law. *See NextEra* J.A. __ [Neth.Writ. pp. 27-29]. The Dutch court is the proper court to hear these questions because the defendant is Dutch and the Dutch court is required to exercise its jurisdiction under EU law. Based on consistent jurisprudence of the CJEU, the Netherlands considers that EU investors such as NextEra cannot rely — in case of a dispute with an EU Member State — on Article 26 of the ECT as a valid arbitration agreement. In contrast, the U.S. district court did not, cannot, and will not hear these questions. *See NextEra* J.A. __ [Op. pp. 21-23]. Rather, U.S. jurisdiction is limited to the confirmation of the arbitration award upon meeting the statutory requirements.

Herein lies the conflict: the U.S. court's injunction to protect its jurisdiction to confirm an arbitration award *prevents* the Dutch courts from applying EU law as obligated by the EU treaties *on questions the U.S. court will not hear*. This forces the Dutch courts to either accept this limitation on the Netherlands' sovereignty to adjudicate its laws within its exclusive domain, in contravention to *its* treaty obligations, or refuse to respect the U.S. court's decision. The district court, without due consideration, created a direct conflict between its order directed to the Kingdom of Spain and the law of the Kingdom of the Netherlands and raised potential risks to political, diplomatic, and international relations. U.S. law counsels courts to carefully consider comity to avoid such risks and undue interference in another sovereign's

activities. *See, e.g., BAE*, 884 F.3d at 480; *Karaha Bodas I*, 335 F.3d at 366; *Republic of the Philippines*, 43 F.3d at 77–78; *Cf., Hartford Fire*, 509 U.S. at 798.

V. THE DISTRICT COURT FUNDAMENTALLY ERRED WHEN IT FAILED TO SERIOUSLY CONSIDER INTERNATIONAL COMITY IN THIS SENSITIVE CASE.

This case appears to be only the second time a U.S. court has attempted to impose an anti-suit injunction directly on a foreign sovereign and to be a case of first impression in this Circuit.[4] But the district court's opinion does not reflect how extraordinary the relief is nor give it the level of analysis such a remedy requires.

The district court briefly mentioned principles of comity in its opinion, but it did so without considering or balancing the implications on the sovereignty of Spain or the Netherlands nor the impact of the injunction on the broader principles of

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[4] The only court to have imposed an anti-suit injunction directly on a foreign sovereign was the district court in earlier proceedings in the Fourth Circuit *BAE* case discussed above at p. 7. *See BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea's Def. Acquisition Program Admin.*, 195 F. Supp. 3d 776 (D. Md. 2016). The district court in *BAE* recognized the heightened comity concerns where the enjoined party was a foreign sovereign. The court undertook an extensive analysis and concluded that a limited-in-time anti-suit injunction against Korea proceeding with its breach of contract case in South Korea's courts was appropriate while it resolved pending jurisdictional questions with U.S. national security implications. Korea appealed the preliminary injunction, but the district court entered summary judgment, denied the permanent anti-suit injunction, and lifted the preliminary injunction before the appeal could be heard. Korea's appeal of the preliminary injunction was dismissed as moot. The Fourth Circuit affirmed the denial of the permanent injunction. *BAE*, 884 F.3d at 480.

international law or the doctrine of comity.[5] The district court's decision makes no mention of the Netherlands' domestic interests in adjudicating claims against its subjects before imposing an injunction that restrains the Netherlands' judicial process. *Cf. Laker Airways*, 731 F.2d at 933, 938, and 939–41 (weighing the impact of the anti-suit injunction between private parties on Britain's ability to pursue its national interests in its courts). Nor did the district court consider the conflict of laws created by the injunction or the heightened diplomatic and international relations risk created by an effective prohibition on the Dutch courts from proceeding with an action under EU law against a Dutch subject.

Consequently, the district court erred because it did not give due consideration to the comity concerns owed to Spain or the Netherlands.

CONCLUSION

Anti-suit injunctions are extraordinary remedies and should not be imposed casually. Moreover, such injunctions create tremendous risk of diplomatic tension and conflict, even more so when the party to be enjoined is itself a sovereign nation which has sought judicial relief in a third country's courts against that country's subjects. While the Netherlands does not take any position on whether, after due

[5] Instead, the district court seems to treat Spain as a private litigant, weighing Spain's interest and harm only within the context of pursuing the injunctive relief in the Dutch action. The district court appears to dismiss Spain's assertion, made as a sovereign nation, that an injunction will harm U.S., Spanish, and Dutch interests.

consideration is given to comity concerns, it might be appropriate for an injunction to issue in this case, the district court fundamentally erred when it failed to carefully consider international comity prior to issuing the injunction.

Through this brief, the Netherlands respectfully urges this Court to vacate the injunction and to remand the case for a more appropriate and thorough consideration of international law, comity, and sovereignty, including consideration of the interests of the foreign forum adjudicating a case against its own subjects.

Dated: June 6, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION

Pursuant to Fed. R. App. P. 32(g)(1) and D.C. Cir. R. 29(a)(4)(g), I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and D.C. Cir. R. 32(e)(3) because it contains 3,814 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and D.C. Cir. R. 32(f).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word in 14-point Times New Roman.

Dated: June 6, 2023

/s/ W. Todd Miller
W. Todd Miller

Counsel for Amicus Curiae the Government of the Kingdom of the Netherlands

CERTIFICATE OF SERVICE

I, W. Todd Miller, certify that on June 6, 2023, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. Participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ W. Todd Miller
W. Todd Miller

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