IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Titan Consortium 1, LLC,

Petitioner,

v.

The Argentine Republic,

Respondent.

Civil Action No. 1:21-cv-02250 (JMC)

Petitioner's Opposition to Respondent's Motion to Dismiss

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INTRODUCTION

Petitioner Titan Consortium 1, LLC ("Titan") holds a more than $300 million arbitral award (the "Award," ECF No. 1-1, Ex. A) against the Republic of Argentina ("Argentina"), resulting from arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "ICSID Convention," ECF No. 1-2). The ICSID Convention is a treaty signed by the United States, Argentina, and most nations of the world that provides a comprehensive framework for resolving investment disputes between its signatory nations and the private investors of other signatory nations. Countries that join the Convention are required by the treaty to pay all awards entered against them. But Argentina has not paid the Award here, forcing Titan to seek enforcement in nations such as the United States where Argentina may hold assets.

The Convention and its implementing legislation in the United States provide for streamlined enforcement procedures against signatory nations. Unlike ordinary commercial arbitration awards, ICSID awards are treated as "binding," "final judgment[s]" that are not "subject to any appeal or to any other remedy except those provided for in th[e] Convention." ICSID Convention, arts. 53(1), 54(1). In the United States, Congress has mandated that ICSID awards are entitled to the same "full faith and credit" as the judgments of a state court, and they are not subject to defenses to enforcement that ordinarily are available under the Federal Arbitration Act ("FAA"). 22 U.S.C. § 1650a(a). U.S. courts uniformly agree that ICSID awards are to be enforced by converting them into a federal money judgment through the same cause of action that applies when enforcing a state court judgment in federal court: an action on the judgment as a debt.

The U.S. District Court for the Southern District of New York—the only court to confront the issue raised by Argentina here, in a case in which Argentina was, as here, the debtor under an ICSID award that it refused to pay—has correctly held that the statute of limitations in an action

to enforce an ICSID award is to be drawn from the statute of limitations applicable when enforcing a state court judgment. *Blue Ridge Invs., LLC v. Republic of Argentina*, 902 F. Supp. 2d 367, 388 (S.D.N.Y. 2012). That statute of limitations must be drawn from the local law of the forum state, *id.*—or here, equivalently, the District of Columbia, which provides a twelve-year period for enforcing a money judgment. This action therefore is timely because it was brought less than five years after the Award was issued.

Argentina nonetheless moves to dismiss this action on statute of limitations grounds, arguing that this Court should instead borrow the three-year statute of limitations applicable to enforcement of a foreign commercial arbitration award under Chapter 2 of the FAA, 9 U.S.C. § 207, which implements the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). Argentina claims that the enforcement of an ICSID award is more closely analogous to confirmation of a commercial arbitration award under the New York Convention than to enforcement of a final judgment. Yet it fails to mention that in the sole federal decision on the subject, *Blue Ridge*, it made and lost a similar argument: While conceding that state law should control, Argentina argued that New York's statute of limitations for confirmation of an arbitration awards should apply, but the court rejected that analogy.

Here, Argentina makes no attempt to wrestle with Congress's explicit instruction in Section 1650a, consistent with the ICSID Convention, to treat ICSID awards as final judgments and enforce them through the same cause of action used to enforce state court judgments. Argentina also ignores the strong presumption, based on Congress's awareness of longstanding judicial practice, in favor of borrowing a statute of limitations from state law, not federal law, as Argentina conceded in *Blue Ridge*. And Argentina's principal justification for resorting to federal law—based on a supposed federal interest in nationwide uniformity—makes no sense here, because

under the applicable venue statute, 28 U.S.C. § 1391(f), this Court is the *only* proper venue for the enforcement of ICSID awards. Argentina forfeited its venue objection in *Blue Ridge*, but a foreign state defendant can generally ensure uniformity by insisting on venue in this Court.

There accordingly is no basis to apply the New York Convention's three-year limitations period. Instead, this Court should follow *Blue Ridge* and Congress's clear instructions by applying D.C.'s twelve-year limitations period for enforcement of a money judgment. Under that standard, the action is timely, and Argentina's motion to dismiss should be denied.

BACKGROUND

I. Argentina Expropriates Claimants' Investments In Two Argentinian Airlines

This case arises from a more than decade-long effort to obtain relief for Argentina's expropriation of foreign investments in two Argentinian airlines, Aerolíneas Argentinas S.A. and Austral-Cielos (collectively, the "Airlines"). Three Spanish companies—Teinver S.A., Transportes de Cercanías S.A., and Autobuses Urbanos del Sur S.A. (collectively, "Claimants")—invested in the Airlines in 2001 by acquiring the Airlines' Spanish parent company. Award ¶¶ 176, 179, 370-72, 376, 481.

Claimants' investment in the Airlines was protected by a bilateral investment treaty between Argentina and Spain—the Agreement between the Argentine Republic and the Kingdom of Spain on the Promotion and Protection of Investments (the "Argentina-Spain Treaty," ECF No. 1-3). In that treaty, Argentina committed to provide "fair and equitable treatment" to the investments of Spanish companies within Argentina's territory and to refrain from "obstruct[ing]" the "management, maintenance, use," or "sale" of those investments or "expropriat[ing]" them without "appropriate compensation." *Id.*, arts. III(1), IV(1), V.

In 2008, Argentina flagrantly violated these commitments by unlawfully expropriating the Airlines. The Government of Argentina initially entered into a contract to purchase Claimants'

indirectly owned shares of the Airlines at a price to be determined in accordance with a defined mechanism. Award ¶ 850. But Argentina abandoned that purchase contract several months later and instead acquired the Airlines "by way of expropriation without notice to . . . Claimants" or any compensation except a "symbolic" payment of 1 Argentine peso. *Id.* ¶¶ 166, 855.

II. An ICSID Tribunal Awards Claimants More Than $300 Million

To resolve investment disputes like the dispute here, the Argentina-Spain Treaty provides for arbitration under the ICSID Convention. Award ¶ 7. The Convention is a treaty among 155 contracting nations—including Argentina, Spain, and the United States[1]—that provides a comprehensive framework for resolving investment disputes between contracting states and private investors of other contracting nations. ICSID Convention, pmbl. Investment disputes under the ICSID Convention are arbitrated before a tribunal chosen by the parties and constituted by the International Centre for Settlement of Investment Disputes ("ICSID") under the auspices of the World Bank. *Id.* arts. 1, 37.

To protect the effectiveness of international investment treaties and ensure that investors have meaningful remedies for violations, the ICSID Convention provides for streamlined enforcement against contracting nations. The ICSID Convention thus provides for only a limited review of arbitral awards and assigns that power to an *ad hoc* annulment committee constituted by ICSID. ICSID Convention, art. 52. Under Article 52 of the ICSID Convention, that committee—not the courts of any contracting nation—decides whether an award should be set aside on the narrow grounds specified in the Convention. *Id.*, art. 52(1). Further, each contracting nation agrees to "recognize" any award issued under the ICSID Convention "as binding" and "enforce" it "as if it were a final judgment of a court in that State," without allowing "any appeal or … any

[1] *See* ICSID, List of Member States-ICSID/3 (June 9, 2020), https://icsid.worldbank.org/en/Pages/icsiddocs/List-of-Member-States.aspx.

other remedy except those provided for in th[e] Convention." *Id.*, arts. 53(1), 54(1). The ICSID Convention thus differs from other regimes like the New York Convention, in which an enforcing court must determine if the award is subject to challenge before any arbitration award can be converted into a binding final judgment.

Claimants filed a request with ICSID for arbitration under the ICSID Convention in December 2008, within a month of Argentina's unlawful expropriation. Award ¶¶ 6-7. After years of arbitration before the ICSID arbitral tribunal ("Tribunal"), including 16 days of hearings, *id.* ¶¶ 35, 92, 134, the Tribunal issued its 398-page Award on July 21, 2017. The Tribunal found that Argentina had breached its obligations under the Argentina-Spain Treaty by: (1) failing to provide fair and equitable treatment to the Claimants' investments within Argentina's territory; (2) hindering the management, maintenance, use, and sale of Claimants' investments without justification; and (3) unlawfully expropriating the Airlines by taking them not in accordance with the law and failing to pay adequate compensation. *Id.* ¶¶ 865, 925, 1040, 1068, 1147(a)-(c). The Tribunal thus ordered Argentina to pay more than $300 million in compensation, plus legal fees, interests, and costs. *Id.* ¶ 1147(d)-(f).

III. Nearly Two Years Later, An ICSID Annulment Committee Denies Argentina's Application To Annul The Award And Awards Additional Fees And Costs

In November 2017, Argentina filed an application seeking annulment of the Award. ECF No. 1-1, Ex. B ("Annulment Decision") ¶ 8. Though an ICSID *ad hoc* Committee (the "Committee") was constituted in December 2017, *id.* ¶ 10, a Hearing on Annulment was not held under February 2019, *id.* ¶ 41, and a decision on Argentina's application for annulment was not issued until May 29, 2019, *id.* ¶ 258(1), nearly two years after the Award was issued, and more than ten years after the original breach and unlawful expropriation had occurred. The Committee

denied Argentina's request for annulment and ordered Argentina to pay Claimants over $1 million in representation costs and expenses. *Id.* ¶ 258(1), (2).

In November 2020, Claimants closed on a transaction to assign full title to the Award to Titan. ECF No. 1 ("Pet.") ¶ 24. After securing all necessary court approvals for that transaction, Titan promptly filed this enforcement action on August 24, 2021.

ARGUMENT

Titan's enforcement petition is timely because the applicable statute of limitations is twelve years, and Titan filed the petition less than five years after the Award was issued. The statute governing enforcement of ICSID awards, 22 U.S.C. § 1650a, does not specify the applicable limitations period. But Congress made the appropriate statute of limitations clear by directing federal courts to treat ICSID awards as "final" state-court "judgment[s]." *Id.* ICSID awards are thus enforced in the same manner as state-court judgments, *Micula v. Government of Romania*, 104 F. Supp. 3d 42, 49 (D.D.C. 2015), subject to the same statute of limitations, *Blue Ridge Invs., LLC v. Republic of Argentina*, 902 F. Supp. 2d 367, 388 (S.D.N.Y. 2012). As the only court to address the issue has recognized, that limitations period is drawn from state laws governing enforcement of a money judgment. *Id.* And here, the local statute of limitations for enforcing a money judgment is twelve years, D.C. Code § 15-101(a).

Argentina's proposed alternative—the three-year federal limitations period for *confirming* commercial arbitration awards under Chapter 2 of the FAA—flouts the strong presumption against borrowing from federal law, and ignores that Titan is seeking enforcement, not confirmation, because it already has the equivalent of a final judgment. A three-year limitations period—shorter than *any* state or federal court applies to *any* state or federal judgment, and too short in many cases to await the outcome of annulment proceedings before filing suit—is unworkable and would undermine and violate the ICSID Convention and its implementing legislation. Argentina's main

rationale for borrowing from federal law—to ensure geographical uniformity—is unavailing because ICSID enforcement is already limited in practice to a single district court, this Court. *See* 28 U.S.C. § 1391(f). There is thus no basis to deviate from Congress's clear instructions.

Because this action was filed within the applicable twelve-year limitations period, the action is timely, and Argentina's motion should be denied.

I. The District Of Columbia's Twelve-Year Statute Of Limitations For Enforcement Of Money Judgments Governs This Action

Where Congress fails to supply an express statute of limitations for a federal cause of action, courts look to principles of "statutory construction" to fill the gap. *Wilson v. Garcia*, 471 U.S. 261, 268 (1985), *superseded by statute on other grounds*, *as stated in Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 378 (2004). Although "the language of the statute" is paramount, *id.* at 278, courts "'have generally concluded that Congress intended that the courts apply the most closely analogous statute of limitations under state law,'" *Reed v. United Transp. Union*, 488 U.S. 319, 323 (1989). "[C]ongressional awareness" of this "longstanding practice" reinforces this inference about what "Congress intends by its silence." *Agency Holding Corp. v. Malley–Duff & Assocs., Inc.,* 483 U.S. 143, 147 (1987). Accordingly, while courts sometimes may borrow a limitations period from "federal law'" in "unusual" circumstances, *Reed*, 488 U.S. at 324, state law remains "the lender of first resort," *N. Star Steel Co. v. Thomas*, 515 U.S. 29, 34 (1995).

Here, Congress's intent is clear that the limitations period for enforcing an ICSID award should be drawn from enforcement of money judgments. Both state and federal courts ultimately draw that period from local state law, so local state law—or its equivalent in D.C.—provides the only possible source for an appropriate statute of limitations in ICSID cases. D.C.'s twelve-year statute of limitations for enforcing money judgment thus controls in this case.

A. ICSID Awards Are Treated As Final Judgments And Are Subject To The Relevant Statute Of Limitations For Enforcement Of A Money Judgment

The statutory scheme governing enforcement of ICSID awards points directly to the law of judgment enforcement. Section 1650a implements the ICSID Convention, including the treaty obligations of the United States, as a contracting party, to ensure that U.S. courts treat an ICSID award "as if it were a final judgment." ICSID Convention, art. 54(1). The statute thus provides, in relevant part, that "[t]he pecuniary obligations imposed by [an ICSID] award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States." 22 U.S.C. § 1650a(a). Enforcement is commenced by "fil[ing] a plenary action under section 1650a" to "convert [the] award into an enforceable judgment" in federal court, using "the same method by which a state court judgment [may] be enforced in federal court": "'a suit on the judgment as a debt.'" *Micula*, 104 F. Supp. 3d at 49-51; *see also Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela*, 863 F.3d 96, 100, 117-20 (2d Cir. 2017); *Cont'l Cas. Co. v. Argentine Republic*, 893 F. Supp. 2d 747, 754 (E.D. Va. 2012).

In determining the applicable statute of limitations, the "closest analog[ue]" to this enforcement regime, *Agency Holding*, 483 U.S. at 150, is the one specified by Congress in Section 1650a: enforcement of "a final judgment" of a state court, 22 U.S.C. § 1650a(a). Indeed, enforcing an ICSID award "*as if* [it] were a final judgment" *necessarily requires* applying the same statute of limitations that would apply "*if* the award were a final judgment." *Id*. (emphases added). The cause of action under the ICSID statute is not just analogous to "'a suit on the judgment as a debt,'" *Micula*, 104 F. Supp. 3d at 49, but identical, so the limitations period must be the same as well. As the Southern District of New York recognized in *Blue Ridge*—the only case to address these issues to date—"ICSID awards are to be treated as final judgments of a state court—rather than as

arbitration awards," so "the most analogous state statute of limitations is that which governs the enforcement of a final money judgment[.]" 902 F. Supp. 2d at 388.

B. D.C. Law Defines The Statute Of Limitations For The Enforcement Of Money Judgments In This Court

To identify the statute of limitations applicable to the enforcement of money judgments, federal courts look to the law of the forum state as the "first resort," *N. Star*, 515 U.S. at 34, or here, the law of the District of Columbia.

"[T]here is no specific federal statute of limitations on how long [a] judgment is effective," so federal courts look to state law. *In re Hunt*, 323 B.R. 665, 666-67 (Bankr. W.D. Tenn. 2005); *accord In re Fifarek*, 370 B.R. 754, 758 (Bankr. W.D. Mich. 2007) (same). Although federal actions to enforce a state judgment are rare—and those raising statute of limitations issues rarer still—federal courts uniformly borrow state statutes of limitations in such actions.[2]

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[2] *See*, *e.g.*, *Madonna v. Francisco*, 2014 WL 981568, at *4 (E.D. Pa. Mar. 13, 2014) (applying Pennsylvania statute of limitations for judgment to enforcement in Pennsylvania federal court of Delaware judgment against alter ego); *Bd. of Educ. of Twp. of Cherry Hill v. Hum. Res. Microsystems, Inc.*, 2010 WL 3882498, at *2 (D.N.J. Sept. 28, 2010) (applying California and New Jersey statutes of limitations for judgment enforcement to enforcement in New Jersey federal court of New Jersey state court judgment based on California law); *Wm. Passalacqua Builders, Inc. v. Resnick Devs. S., Inc.*, 608 F. Supp. 1261, 1264 (S.D.N.Y. 1985), *aff'd in relevant part*, 933 F.2d 131 (2d Cir. 1991) (applying New York statute of limitations for judgment enforcement to enforcement in New York federal court of Florida judgment against alter ego). Indeed, federal courts also regularly borrow state statutes of limitations for the enforcement of money judgments to establish the limitations period applicable to registration of a federal court judgment in another federal district court pursuant to 28 U.S.C. § 1963. *See, e.g.*, *Wells Fargo Equip. Fin., Inc. v. Asterbadi*, 841 F.3d 237, 243-44 (4th Cir. 2016) (applying Maryland statute of limitations to enforcement of Virginia federal judgment registered in Maryland federal court); *In re Est. of Ferdinand E. Marcos Hum. Rts. Litig.*, 536 F.3d 980, 988 (9th Cir. 2008) (applying Texas statute of limitations—which in turn borrowed the statute of limitations of the judgment-rendering state, Hawaii—to enforcement of Hawaii federal judgment registered in Texas federal court); *Home Port Rentals, Inc. v. Int'l Yachting Grp., Inc.*, 252 F.3d 399, 406-07 (5th Cir. 2001) (applying Louisiana statute of limitations to enforcement of South Carolina federal judgment registered in Louisiana federal court); *Stanford v. Utley*, 341 F.2d 265, 268 (8th Cir. 1965) (Blackmun, J.) (applying Missouri statute of limitations to enforcement of Mississippi federal judgment registered in Missouri federal court). If state law applies to enforcement of federal court judgments, it must also apply *a fortiori* to enforcement state court judgments.

Here, the most analogous local statute of limitations is D.C. Code § 15-101(a), which provides that D.C. court judgments are "enforceable . . . by execution . . . for the period of twelve years . . . from the date when an execution might first be issued thereon." Applying that limitations period here would comply with Section 1650a because it would treat the Award as if it were a "final judgment" of a D.C. local court.

D.C. also provides a separate statute of limitations for enforcement of judgments from other states. *See* D.C. Code § 12-307. That statute also provides a close analogy to enforcement of an ICSID award, and would be consistent with *Blue Ridge*, which applied the forum state's statute of limitations for "the enforcement of a final money judgment from the court of another state." 902 F. Supp. 2d at 388. But as Argentina recognizes, applying § 12-307 here would be "impossible" because that statute simply borrows the statute of limitations for enforcement of an in-state judgment from the state in which the judgment was rendered. Mot. 8-9. It provides that "[a]n action upon a judgment or decree rendered in a State, territory, commonwealth or possession of the United States or in a foreign country is barred if by the laws of that jurisdiction, the action would there be barred and the judgment or decree would be incapable of being otherwise enforced there." D.C. Code § 12-307. Because the Award was rendered by an ICSID tribunal, not any "State, territory, commonwealth," or "foreign country," it is undisputed that "there is no rendering state's limitations period to which to refer." Mot. 8.

Because Section 12-307 is not a viable option, Section 15-101 is by far the "closest analog[ue]" to enforcement of an ICSID Award, *Agency Holding*, 483 U.S. at 150. The fact that Section 15-101 does not apply to "'*foreign* judgments'" is not, as Argentina suggests (at 8 (emphasis added)), an excuse to abandon state law entirely and adopt a limitations period unrelated to judgment enforcement. "[T]he mere fact that state law fails to provide a *perfect* analogy to the

federal cause of action is *never* itself sufficient to justify the use of a federal statute of limitations." *Agency Holding*, 483 U.S. at 147 (emphases added). "[R]esort to state law remains the norm" even where "there is not . . . an obvious state-law choice for application to a given federal cause of action." *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 171 (1983).

In any event, enforcement of in-state judgments is every bit as good of an analogue as enforcement of out-of-state judgments. D.C. law itself recognizes the analogy because Section 12-307 sets the limitations period for out-of-state judgments by borrowing other states' limitations periods for in-state judgments. *Every* judgment enforcement action in D.C. is thus subject to a statute of limitations drawn from *some* state's (or D.C.'s) limitations period for in-state judgments. And choosing *any* of those limitations periods would at least comply with Congress's mandate to enforce ICSID Awards "as if" they were final state court judgments. 22 U.S.C. § 1650a(a). Given a choice between limitations periods for enforcing domestic judgments in fifty states and D.C., however, D.C.'s statute is the logical choice for a federal court in D.C. If anything, moreover, an ICSID award is more analogous to a D.C. judgment than to the judgment of any state because ICSID itself—the World Bank entity responsible for constituting tribunals under the ICSID Convention—is located in D.C. *See* ICSID Convention, art. 2.

Finally, D.C.'s twelve-year period is well within the norm of other state limitation periods for judgment enforcement. For in-state judgments, those limitations periods typically range from five to twenty years, with a majority of states adopting a period of either ten or twenty years, and no state adopting a limitations period of less than five years. *See Enforcement of Judgments*, *50 State Statutory Surveys: Civil Laws: Civil Procedure*, Thompson-Reuters (2021). Many states also allow judgments to be renewed for additional periods before the initial limitations period expires. *Id.* For out-of-state judgments, states typically apply the same limitations period applicable to

their own in-state judgments, *e.g.*, Ala. Code § 6-2-32; Alaska Stat. § 09.10.040; Ind. Code § 34-11-2-12; Mont. Code § 27-2-201—or, like D.C., borrow those of the state that entered the judgment, *e.g.*, Tex. Civ. Prac. & Rem. Code § 16.066(a)—consistent with principles of full faith and credit that prohibit discrimination against out-of-state judgments, *see infra* at 14-15. The range of limitations periods applied to out-of-state judgments is thus similar to the range for domestic-judgments. D.C.'s twelve-year period falls squarely within this range.

This action—filed less than five years after the Award was issued—in turn falls squarely within D.C.'s twelve-year limitations period. Indeed, this action falls within the time period to enforce a judgment—in-state or out-of-state—in *every* U.S. state. ***If the Award were a judgment from any state or federal court, therefore, it would have been enforceable in any state or federal court on the date this petition was filed***.[3] Accordingly, to heed Congress's command to enforce the Award "as if [it] were a final judgment," 22 U.S.C. § 1650a(a), this Court should adopt D.C.'s twelve-year limitations period, hold that this action is timely, and deny Argentina's motion.

II. The New York Convention's Three-Year Statute Of Limitations For Confirmation Of A Commercial Arbitration Award Does Not And Should Not Apply

Argentina argues instead that this Court should borrow the three-year limitations period applicable under the Chapter 2 of the FAA, 9 U.S.C. § 207. Mot. 4. That Chapter codifies the New York Convention, 9 U.S.C. § 201, a separate international treaty governing enforcement of foreign arbitration awards arising from "commercial" disputes, typically between private parties, *id.* § 202; *see* New York Convention, attached as Ex. 1 hereto.

[3] To Titan's knowledge, only one state—Pennsylvania—provides a period (four years) shorter than five years for an action on an out-of-state judgment. 42 Pa. C.S.A. § 5525(a)(5). But that state concurrently provides an alternative means of registering and enforcing such judgments—the Uniform Enforcement of Judgments Act, *id*. § 4306—that is not subject to that four-year statute of limitations. *See Morrissey v. Morrissey*, 713 A.2d 614, 618 (Pa. 1998).

Argentina's invocation of the New York Convention is contrary to precedent, the ICSID statute and Convention, and sound international arbitration policy. Further, Argentina conceded in *Blue Ridge* that the statute of limitations for enforcing an ICSID award should be drawn from state law. 902 F. Supp. 2d at 387. And courts may "decline to borrow a state statute of limitations only" when two rigorous requirements are both met: (1) "'a rule from elsewhere in federal law *clearly* provides a closer analogy than available state statutes'"; and (2) "'the federal policies at stake and the practicalities of litigation make that rule a significantly more appropriate vehicle for interstitial lawmaking.'" *Reed*, 488 U.S. at 324 (emphasis added). Neither of these requirements is satisfied here.

A. Argentina's Position Is Contrary to Precedent

The only court to address this issue—the Southern District of New York in *Blue Ridge*—already expressly rejected Argentina's analogy to confirmation on an arbitration award. Argentina urged that court to borrow New York's "one-year statute of limitations" governing "lawsuits seeking to confirm arbitration awards." 902 F. Supp. 2d at 387. But the court disagreed, explaining that "ICSID awards are to be treated as final judgments of a state court—rather than as arbitration awards." *Id*. at 388. The court thus concluded that "the most analogous state statute of limitations is that *which governs the enforcement of a final money judgment from the court of another state*." *Id*. (emphasis added). Because New York's limitations period for enforcing out-of-state money judgments was twenty years, the court held that the petitioner's action—filed nearly five years after the ICSID tribunal issued a final award—was not time-barred. *Id*. at 370-71, 388.

Argentina's failure to address the only federal decision on the issue—even though it was a party to that decision—is telling. *Blue Ridge*'s sound reasoning forecloses Argentina's analogy to confirmation of an arbitration award.[4]

B. Borrowing From The New York Convention Would Violate The ICSID Convention And Its Implementing Legislation

Borrowing from the New York Convention also would violate both Section 1650a and the ICSID Convention. Section 1650a says expressly that the FAA—where the New York Convention is codified—"shall not apply" to the enforcement of ICSID awards. 22 U.S.C. § 1650a(a). Argentina suggests that this language was added for "reasons having nothing to do with statutes of limitations." Mot. 6. But the statutory language is unqualified. And courts "may not engraft [their] own exceptions onto the statutory text." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019).

Further, borrowing a statute of limitations for arbitration enforcement would be inconsistent with Section 1650a's instruction to "enforc[e]" an ICSID award "as if [it] were a final judgment" and give it "the same full faith and credit" as such a judgment. 22 U.S.C. § 1650a(a); *cf. Watkins v. Conway*, 385 U.S. 188, 189 (1966) (full faith and credit precedent "do[es] not justify

[4] Further, a three-year limitations period would be inconsistent with multiple decisions of this Court that have enforced ICSID awards in actions filed more than three years after those awards were issued. *See TECO Guatemala Holdings, LLC v. Republic of Guatemala*, 414 F. Supp. 3d 94, 96 (D.D.C. 2019) (enforcing December 2013 ICSID award in action filed in January 2017); *Micula v. Government of Romania*, 404 F. Supp. 3d 265, 270, 273, 285 (D.D.C. 2019) (enforcing December 2013 ICSID award in action filed in November 2017); *Miminco, LLC v. Democratic Republic of the Congo*, 79 F. Supp. 3d 213, 215-16 (D.D.C. 2015) (enforcing 2007 ICSID award in action filed in 2014); *Duke Energy Int'l Peru Invs. No. 1 Ltd. v. Republic of Peru*, 904 F. Supp. 2d 131, 134 (D.D.C. 2012) (enforcing August 2008 ICSID award in action filed in September 2011). *Miminco* undercuts Argentina's statement that "in no case has this Court enforced an outstanding monetary award issued by an ICSID tribunal in an action initiated more than *four years* after the award was rendered." Mot. 3 (emphasis added). In any event, Argentina's *four-year* cutoff is arbitrary. Argentina is advocating for a *three-year* limitations period, and no party has offered any basis for a four-year statute of limitations.

the discriminatory application of a statute of limitations" in enforcing out-of-state judgments). Three years is shorter than the statute of limitations that *any* state or federal court applies to *any* state or federal judgment. Applying such a truncated limitations period would unlawfully treat ICSID awards differently—and *worse*—than any state court judgment.[5]

For the same reasons, borrowing the statute of limitations from the New York Convention would conflict with the ICSID Convention's requirement to "enforce" the Award "as if it were a final judgment of a [U.S.] court." ICSID Convention, art. 54(1). This article was adopted to ensure that "[i]f [a final] judgment could be enforced under . . . domestic law . . . , so could the award." Christoph Schreuer, *The ICSID Convention: A Commentary*, at 1142 (2d ed. 2009). Under settled rules of statutory interpretation, Section 1650a must be interpreted "to avoid . . . conflicts" with preexisting treaties. *Owner-Operator Indep. Drivers Ass'n, Inc. v. DOT*, 724 F.3d 230, 233-34 (D.C. Cir. 2013). These principles require a limitations period drawn from the enforcement of money judgments, not confirmation of arbitration awards.

C. The New York Convention Does Not "Clearly Provide A Closer Analogy" Than State Law

Argentina's argument also fails to meet the "closely circumscribed" requirements for borrowing a statute of limitations from federal rather than state law, because the New York

[5] Applying the New York Convention's three-year statute of limitations would also be anachronistic. Section 1650a was enacted in 1966, four years before Congress implemented the New York Convention and adopted the three-year statute of limitations. Congress accordingly could not have intended, when it enacted Section 1650a, to borrow the New York Convention's limitation period. While Argentina cites one statute (the Alien Tort Statute ("ATS")) for which this Court has borrowed a statute of limitations from a later-enacted federal statute (the Torture Victims Protection Act ("TVPA")), *see* Mot. 6, that statute involved distinct considerations because the TVPA was codified as *part* of the ATS, *Enahoro v. Abubakar*, 408 F.3d 877, 884 n.1 (7th Cir. 2005), and thus reflected Congress's intent to alter the ATS's limitations period. *Cf. Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 359 (1991) ("When the statute of origin contains comparable express remedial provisions, the inquiry usually should be at an end."), *superseded by statute on other grounds, as stated in Merck & Co., Inc. v. Reynolds*, 559 U.S. 633, 646-47 (2010).

Convention does not provide a "closer analogy" than D.C. Code § 15-101. *Reed*, 488 U.S. at 324. The New York Convention provides a vehicle for "confirming" an arbitration award in the context of commercial arbitration, transforming a commercial obligation into a judgment for the first time. 9 U.S.C. § 207. Titan, by contrast, is seeking to "enforc[e]" an ICSID award—in the distinct context of investor-state dispute resolution—that federal law already treats as the equivalent of a "final judgment." 22 U.S.C. § 1650a(a).

Confirmation of an award under the New York Convention is an entirely distinct cause of action subject to different requirements and practical considerations. Unlike the FAA, the New York Convention provides limited grounds for "refusal or deferral of recognition" of foreign commercial arbitration awards, 9 U.S.C. § 207, roughly equivalent to those applicable to domestic arbitration awards under Chapter 1 of the FAA. *Compare* 9 U.S.C. §§ 9-10, *with* New York Convention, arts. V-VI. Section 1650a, by contrast, "expressly preclud[es]" these "grounds of attack," demonstrating that "Congress intended to make [them] unavailable to ICSID award-debtors in federal . . . enforcement proceedings." *Mobil Cerro Negro*, 863 F.3d at 120-21.

Section 1650a thus envisions a "perfunctory role . . . for federal district courts," *Tidewater Inv. SRL v. Bolivarian Republic of Venezuela*, 2018 WL 6605633, at *6 (D.D.C. Dec. 17, 2018), in which an award debtor "[is] not . . . permitted to make substantive challenges to the award," *Mobil Cerro Negro*, 863 F.3d at 118. District courts "are . . . not permitted to examine an ICSID award's merits, its compliance with international law, or the ICSID tribunal's jurisdiction to render the award." *Id*. at 102. Instead, courts "may do no more than examine the judgment's authenticity and enforce the obligations imposed by the award." *Id*.

Argentina is incorrect that these fundamental differences between the New York Convention and the ICSID Convention "hav[e] nothing to do with statutes of limitations." Mot. 6.

The central purpose of a statute of limitations—and the reason for borrowing one even where Congress has not supplied one—is that "determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence is lost." *Wilson*, 471 U.S. at 271. These considerations weigh heavily in an action to confirm an arbitration award because the defendant can raise a number of defenses that turn on questions of fact, requiring preservation of evidence and memories. Confirmation may be refused, for example, if the parties to the arbitration agreement "were . . . under some incapacity," New York Convention, art. V(1)(a); if the "agreement is not valid" under the applicable law, *id.*; if the defendant "was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings," *id.*, art. V(1)(b); or if the "composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement," *id.*, art. V(1)(d). *See*, *e.g.*, *China Minmetals Materials Imp. & Exp. Co. v. Chi Mei Corp.*, 334 F.3d 274, 289-90 (3d Cir. 2003) (remanding for district court to consider "dispute of facts" regarding veracity of signatures on underlying contracts). By contrast, enforcement of a final judgment or its equivalent—an ICSID award—raises no possible issue of fact because courts "may do no more than examine the judgment's authenticity." *Mobil Cerro Negro*, 863 F.3d at 102. Statutes of limitations for enforcing judgments thus differ markedly from those for confirming an arbitration awards, and the practical reasons for a truncated limitations period in a confirmation action simply do not apply.

Even if some analogy could be drawn to the New York Convention—an analogy that the text of the ICSID statute itself disapproves—that analogy would not be "closer" than the analogy to judgment enforcement specified by Congress, let alone "clearly" enough to warrant deviation

from the "'longstanding practice of borrowing state law.'" *Reed*, 488 U.S. at 323-24. There is thus no basis for borrowing from the New York Convention.[6]

D. Policy Considerations Do Not Make The New York Convention A "Significantly More Appropriate" Choice

Application of the New York Convention's statute of limitations also cannot be justified based on "'the federal policies at stake and the practicalities of litigation.'" *Reed*, 488 U.S. at 324. Those considerations cannot override the decision in the ICSID Convention and its implementing legislation to treat ICSID awards as final judgments. And ultimately policy and pragmatic considerations favor application of D.C. § 15-101, not the New York Convention.

1. Policy Considerations Cannot Override The ICSID Convention Or Congress's Clear Mandate

Policy considerations alone cannot justify choosing a federal statute of limitations when a state statute of limitations provides a "closer analogy." *Reed*, 488 U.S. at 324. Instead, courts "must decline to apply an analogous federal statute of limitations," where "no federal statute . . . 'clearly provides a closer analogy than available state statutes.'" *Spiegler v. District of Columbia*, 866 F.2d 461, 464 (D.C. Cir. 1989) (quoting *DelCostello*, 462 U.S. at 172).

Invoking policy concerns would be particularly inappropriate here because applying the New York Convention's three-year statute of limitations would conflict with the ICSID

[6] Argentina's backup argument—that this Court should borrow a "three-year limitation period" from the "D.C. Arbitration Act," Mot. 8—fails for the same reasons. It also fails because the D.C. Arbitration Act does not have its own statute of limitations. Instead, Argentina's argument is based on the three-year catchall statute of limitations for all "actions 'for which a limitation is not otherwise specially prescribed.'" *Id.* (quoting D.C. Code § 12-301(8)). That statute was not designed for either judgment enforcement or confirmation of an arbitration award. The Supreme Court has repeatedly rejected the use of similar catchall provisions to supply the missing limitations period for federal statutes. *See Wilson*, 471 U.S. at 278 (finding it "unlikely that Congress would have intended to apply . . . catchall periods of limitations" to § 1983 claims); *Agency Holding*, 483 U.S. at 152-53 (citing *Wilson* and rejecting borrowing of state or federal "catchall" limitations periods).

Convention and Section 1650a. *See supra*, at 14-15. Principles of statutory interpretation preclude an interpretation of Section 1650a that conflicts with the ICSID Convention. *Owner-Operator Indep. Drivers Ass'n*, 724 F.3d at 233-34. And Section 1650a's use of "the mandatory 'shall'" in setting these requirements "creates an obligation impervious to judicial discretion." *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998); *see* 22 U.S.C. § 1650a(a) (ICSID award "*shall* be enforced and shall be given the same full faith and credit as if the award were a final judgment . . . ." (emphasis added)). The Convention and the statute thus leave no discretion to adopt an alternative approach based on Argentina's own assessment of the "practicalities of litigation." Mot. 4.

2. A Three-Year Limitations Period Would Undermine The Federal Policies Underlying The ICSID Convention

Even if policy considerations were relevant, they weigh against using the New York Convention's three-year statute of limitations. Section 1650a was designed to make "enforcement . . . as simple as possible," on the premise that "[w]here a monetary award is rendered and the party ordered to pay has funds in the United States, the prevailing party should be able to resort to the U.S. courts to collect the award, if that becomes necessary." *Convention on the Settlement of Investment Disputes: Hearing Before the Subcomm. on Int'l Orgs. & Movements of the H. Comm. on Foreign Affairs*, 89th Cong. 41 (1966) (statement of Andreas F. Lowenfeld, Deputy Legal Adviser, Department of State), ECF No. 12-2, at 9. Given the ordinary operation of the ICSID Convention, however, a three-year limitations period would immensely complicate enforcement.

Most significantly, the New York Convention in no way accounts for the fact that in ICSID cases, approximately 75% of losing parties seek annulment of the awards against them. *Empirical Study: Annulment in ICSID Arbitration*, at 6 (2021), www.biicl.org/documents/10899_annulment-in-icsid-arbitration190821.pdf. Annulment takes approximately two years on average. *ICSID*

Background Paper on Annulment for the Administrative Council of ICSID, ¶ 61 (May 5, 2016), icsid.worldbank.org/sites/default/files/Background%20Paper%20on%20Annulment%20April %202016%20ENG.pdf. But annulment proceedings can often drag on for well over three years. *See, e.g.*, *Highbury International AVV and Ramstein Trading Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/1 (5 years, 7 months); *Flughafen Zürich A.G. y Gestión e Ingeniería IDC S.A. c. República Bolivariana de Venezuela*, ICSID Case No. ARB/10/19 (4 years); *Víctor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No ARB/98/2 (3 years, 5 months); *OI European Group B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/25 (3 years, 4 months). It is implausible that Congress intended to force award holders to rush to the courthouse even while annulment proceedings remain pending, just to preserve a timely claim, when the award could be later annulled or the respondent could voluntarily pay if annulment is denied.[7]

Even after resolution of an annulment application, moreover, there may be valid reasons to delay enforcement in the United States. Like Claimants here, Award ¶¶ 184-87, expropriation of foreign investments—a common basis for ICSID arbitration—often leaves investors insolvent, so award holders may need time to secure funding for enforcement efforts, or to monetize their rights through an assignment to a better-capitalized investor. They may also need time to negotiate with the award debtor to avoid the need for litigation. And the United States may not be the venue of first resort if there are more logical assets to target for enforcement in other jurisdictions.

[7] Moreover, Article 61(2) of the ICSID Convention authorizes the annulment committee to award costs and expenses, like the committee did here by awarding the Claimants $1,017,512, Annulment Decision, ¶¶ 253-57, and directs that the costs "shall form part of the award," ICSID Convention, art. 61(2). Were award holders to initiate enforcement pending annulment, they may be enforcing awards that are not yet complete.

Congress chose a three-year limitations period for the New York Convention "to allow time for . . . initial enforcement efforts outside the United States." *Convention on the Recognition and Enforcement of Foreign Arbitral Awards: Hearing Before the S. Comm. on Foreign Relations* (Feb. 9, 1979) (statement of Richard D. Kearney, Chairman of the Secretary of State's Advisory Committee on Private International Law), ECF No. 12-5, at 8. Three years may be sufficient for that purpose in the commercial arbitration context, where the parties are typically private entities. But given the unique delays involved in enforcing ICSID awards—owing to the annulment process and the challenges of enforcement against a sovereign state—imposing a three-year limitations period in ICSID cases would frustrate the goals of the ICSID Convention and its implementing legislation.

3. Considerations Of Uniformity Do Not Support Borrowing From Federal Law

Argentina's principal policy argument—that borrowing from federal law is necessary to ensure "the uniformity of enforcement proceedings throughout all federal courts in the United States," Mot. 4 (emphasis omitted)—is a red herring. There is no possible uniformity concern here because venue is proper in ICSID enforcement actions only in a single judicial district, this Court.

Under 28 U.S.C. § 1391(f), a "civil action against a foreign state" may be brought in any district meeting one of four criteria: (1) "any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated"; (2) for admiralty claims under 28 U.S.C. § 1605(b), "any judicial district in which the vessel or cargo of a foreign state is situated"; (3) for suits against an "agency or instrumentality of a foreign state," such as a state-owned corporation, "any judicial district in which the agency or instrumentality is licensed to do business or is doing business"; or (4) this Court—"the United States District Court for the District of Columbia."

In practice, though, this Court is generally the only proper venue. ICSID awards arise almost exclusively from claims against a foreign state arising from investments in the territory of that state by foreign investors. They generally do not involve "events or omissions" or "property" in the United States. 28 U.S.C. § 1391(f)(1). Enforcement of an ICSID award is not an "admiralty claim." *Id.* § 1605(b); *see id.* § 1391(f)(2). And the defendant is virtually always a "foreign state," *id.* § 1391(f)(4), not a state "agency or instrumentality," *id.* § 1391(f)(3). As a result, ICSID enforcement actions filed outside of the District of Columbia are consistently transferred to this Court. See *Foresight Luxembourg Solar 1 S.A.R.L. v. Kingdom of Spain*, 2020 WL 1503192, at *5 (S.D.N.Y. Mar. 30, 2020); *Crystallex Int'l Corp. v. PDV Holdings, Inc.*, 2019 WL 6785504, at *9-11 (D. Del. Dec. 12, 2019); *Greentech Energy Sys. A/S v. The Italian Republic*, 1:19-cv-4398 (S.D.N.Y. Nov. 8, 2019), ECF No. 23; *Asemani v. Islamic Republic of Iran*, 2018 WL 3036654, at *3 (N.D. Cal. June 18, 2018); *Cont'l Cas.*, 893 F. Supp. 2d at 754-55. Unless a foreign state declines to challenge venue, as in *Blue Ridge*, an action to enforce an ICSID award generally will be litigated in this Court.[8]

In any event, uniformity is not dispositive. Given the centuries-old practice of "repeatedly" borrowing state statutes to "suppl[y] the periods of limitations for federal causes of action," courts "cannot take the omission [of an express statute of limitations] as a license to judicially devise a

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[8] Prior to 2017, the Southern District of New York allowed parties to register ICSID awards as judgments through *ex parte* proceedings without satisfying the requirements for jurisdiction and venue under the FSIA. *Siag v. Arab Republic of Egypt*, 2009 WL 1834562, at *1 (S.D.N.Y. June 19, 2009). Using that procedure, several ICSID awards were registered in the Southern District of New York without any consideration of venue under Section 1391(f). *E.g.*, *id.* In *Mobil Cerro Negro*, however, the Second Circuit rejected the *ex parte* approach and held that "actions to enforce ICSID awards against foreign sovereigns must comply with the FSIA's . . . venue provisions." 863 F.3d at 118. As a result, several enforcement proceedings that had originally been filed in New York as *ex parte* proceedings were refiled in this Court under Section 1391(f). *See Eiser Infrastructure Ltd. v. Kingdom of Spain*, No. 1:18-cv-01686 (D.D.C. July 19, 2018); *Micula v. Government of Romania*, 1:17-cv-02332 (D.D.C. Nov. 6, 2017).

uniform time limitation[.]" *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. (UAW), AFL-CIO v. Hoosier Cardinal Corp*., 383 U.S. 696, 703-04 (1966). While "the practice of adopting state statutes of limitations for federal causes of action can result in different limitations periods in different States for the same federal action, . . . these are just the costs of the rule itself." *N. Star*, 515 U.S. at 36. In particular, "[t]he need for uniformity … has not been held to warrant the displacement of state statutes" where, as here, "'Congress has provided direction'" to the contrary. *Bd. of Regents of Univ. of State of N.Y. v. Tomanio*, 446 U.S. 478, 489 (1980).

Uniformity thus provides no basis to adopt the New York Convention's three-year statute of limitations. Instead, D.C.'s twelve-year limitations period for enforcing money judgments should apply, and this action is timely under that statute of limitations.

CONCLUSION

For the foregoing reasons, Titan respectfully requests that the Court deny Argentina's Motion to Dismiss.

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Respectfully submitted,

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