No. 07-618

In the Supreme Court of the United States

GOSS INTERNATIONAL CORP.,

Petitioner,

v.

TOKYO KIKAI SEISAKUSHO, LTD. and TKS (USA), INC.,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Respondents, a large Japanese manufacturer and its U.S. subsidiary, seek to nullify the $31 million federal judgment against them by filing suit in Japan under a Japanese law that declares the U. S. judgment "invalid." The Japanese clawback law allows respondents to recover the full amount of the judgment, plus interest and attorneys' fees. The district court enjoined the Japanese clawback suit, finding it "a direct attack on [the] court's judgment" and "a frontal assault on the jurisdiction of [the] court and the federal judiciary as a whole." The Eighth Circuit reversed. Although "profoundly aware" that the clawback would "nullify" the district court's judgment, the court of appeals held that the federal courts lost jurisdiction to enter an antisuit injunction once respondents paid the judgment, and that such an injunction was "contrary to principles of comity." That holding is in direct conflict with the Second Circuit's subsequent decision in *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara,* 2007 WL 2537466 at *15 (2d Cir. Sept. 7, 2007). Moreover, it adds to the pervasive conflict among nine circuits concerning the role comity should play in determining the propriety of international antisuit injunctions.

The questions presented are:

1. Whether the Eighth Circuit erred by holding that once a defendant pays a money judgment, the federal courts lose jurisdiction to maintain an injunction precluding the defendant from pursuing litigation in a foreign court to nullify the U.S. judgment.

2. Whether the Eighth Circuit erred by giving dispositive weight to concerns about international comity at the expense of the courts' traditional duty to enforce U.S. law on U.S. soil and protect final judgments from relitigation.

RULES 14.1 AND 29.6 STATEMENT

The petitioner is Goss International Corporation, the only U.S. manufacturer of large newspaper printing presses.

Heidelberger Druckmaschinen AG, a publicly held corporation, owns 10 percent or more of Goss International Corporation's stock. No other publicly held corporations own 10 percent or more of Goss International Corporation's stock.

Respondents are Tokyo Kikai Seisakusho, Ltd. and its U.S. subsidiary, TKS (USA), Inc.

In addition to respondents, MAN Roland Druckmaschinen Aktiengesellschaft, Man Roland, Inc., Koenig & Bauer Aktiengesellschaft, KBA North America Inc., Mitsubishi Heavy Industries, Ltd., and MLP U.S.A. Inc. were defendants before the district court, but are not parties to this appeal.

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PETITION FOR WRIT OF CERTIORARI

Goss International Corporation ("Goss") respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

This case concerns whether respondents, Tokyo Kikai Seisakusho, Ltd., a large Japanese printing press manufacturer, and TKS (USA), Inc., its U.S. subsidiary, (collectively, "TKS") may be enjoined from nullifying the final judgment of a federal court awarding Goss $31 million in damages on a jury verdict. The district court entered the final judgment in Goss' favor on December 4, 2003. The Eighth Circuit's decision affirming that judgment is reported at 434 F.3d 1081 (App., *infra*, 86a). This Court denied TKS' petition for a writ of certiorari, which is reported at 126 S. Ct. 2363 (*id.* 85a). The same day, TKS gave notice of its intention to nullify the judgment through a "clawback" suit in Japan.

The district court then entered an antisuit injunction barring TKS from pursuing the foreign clawback action. The opinion of the district court is reported at 435 F. Supp. 2d 919 (App., *infra,* 61a). The court of appeals reversed. The amended opinion of the court of appeals is reported at 491 F.3d 355 (*id.* 1a).

JURISDICTION

The judgment of the court of appeals in the current proceeding was entered on June 18, 2007. (App., *infra*, 32a.) Goss timely filed a petition for rehearing *en banc* on June 29, 2007. The court of appeals denied Goss' rehearing petition on July 24, 2007 (*id.* 31a) and issued its amended opinion on July 31, 2007 (*id.* 1a). The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The All Writs Act, 28 U.S.C. § 1651(a), states:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

The relevant portion of the supplemental jurisdiction statute, 28 U.S.C. § 1367(a), states:

> Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

The full text of the supplemental jurisdiction statute, 28 U.S.C. § 1367, is reproduced at App., *infra*, 129a-130a.

The Japanese "clawback" statute, entitled "The Special Measures Law Concerning the Obligation to Reimburse Benefits, etc. Gained Under the US Antidumping Act of 1916," states, in relevant part:[1]

> **Obligation to reimburse benefits, etc. Article 3** – Parties who have benefited from the final judgment of a foreign court rendered in accordance with the US Antidumping Act of 1916 and, as a result, caused losses to the Japanese corporations, etc. (hereinafter called the "beneficiaries"), shall reimburse such benefits with interest.
>
> 2. In the cases of the previous clause, when the Japanese corporations, etc. suffer damages including attorneys' fees to prepare and follow court procedures in accordance with the US Antidumping Act of 1916, the beneficiaries are responsible to indemnify such losses.
>
> 3. In the cases of the previous two clauses, the parties who are applicable to one of the following items shall undertake obligations jointly with the beneficiaries to reimburse the benefits and indemnify the losses to the Japanese corporations, etc. Provided, however, that the law shall not prevent the parties from executing their right to indemnify against the beneficiaries:

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[1] The full Japanese text of the statute and a complete English translation, together with a translator's affidavit, appear in Goss' appendix in the court of appeals at GA-8-GA-23. TKS offered a separate translation in its appendix in the court of appeals at App. 77. Although the translations vary slightly, the import of both translations is the same.

* * *

A corporation that all the issued shares, etc. are owned by the beneficiaries.

* * *

Validity of final judgment rendered by foreign courts. Article 6 – Any final judgment rendered by foreign courts on a claim filed against a Japanese corporation, etc. under the US Antidumping Act of 1916 shall be invalid.

STATEMENT OF THE CASE

This case presents a direct conflict between the Eighth and Second Circuits over whether a federal court has jurisdiction, after the defendant has satisfied the court's adverse judgment, to enjoin the defendant from pursuing litigation in a foreign court aimed at nullifying the U.S. judgment. The Eighth Circuit held that the district court lost jurisdiction to enter such an injunction once the defendant paid the judgment. The Second Circuit recently addressed the identical issue, expressly considered and rejected the Eighth Circuit's position in this case, and held that the courts have jurisdiction to enjoin litigants from pursuing foreign litigation even after satisfaction of a U.S. judgment.

This case also presents the Court with an opportunity to resolve conflicts among nine circuits concerning the appropriate standard for issuing foreign antisuit injunctions and the proper weight to be given to international comity in making those decisions. The Eighth Circuit joined two other circuits in adopting

the most restrictive version of the so-called "conservative approach," which gives great deference to comity and allows for the issuance of foreign antisuit injunctions only where necessary to preserve U.S. jurisdiction or protect an important U.S. policy. Three other circuits have adopted a "traditional version" of the conservative approach, which also gives great weight to comity, but considers equitable factors in determining whether to issue an injunction. Three other circuits have adopted the so-called "liberal approach," which gives less weight to comity and which the Eighth Circuit expressly rejected.

By allowing comity to trump protection of a final federal judgment, the Eighth Circuit rendered an erroneous decision with serious and wide-ranging implications for the role of the federal judiciary and U.S. law in today's global economy. TKS came to the United States to do business and take advantage of U.S. markets and laws. Over several decades, TKS sold millions of dollars of foreign-produced press equipment here. After years of litigation, a federal jury determined that many of those sales violated U.S. law. The district court entered a final judgment of more than $31 million to compensate Goss for the damage caused by TKS' unlawful activity. Although the Eighth Circuit upheld the judgment on appeal, it later refused to enjoin TKS from clawing back the judgment in Japan. In the appellate court's own words, this ruling will now permit TKS to "effectively nullify" the judgment. (App., *infra*, 25a.)

This ruling strikes at the heart of our judicial system. If, as the Eighth Circuit held, federal courts are powerless to prevent litigants from nullifying

federal judgments in another court, the federal courts' ability to finally resolve conflicts is seriously undermined and the integrity of the judicial function is called into question. The district court's admonition, that respondents' use of the clawback law was a "frontal assault on . . . the federal judiciary as a whole," does not overstate the problem. (App., *infra*, 78a.) This Court should resolve the important question of whether federal courts have the power to protect their final judgments from being nullified through subsequent litigation.

A. The Underlying Suit And Judgment

In 2000, Goss Graphic Systems, Inc.[2] brought suit against TKS, under the Antidumping Act of 1916, 15 U.S.C. § 72 (the "1916 Act"). After nearly four years of litigation and a three-week trial, the jury determined that TKS violated the 1916 Act by dumping millions of dollars worth of newspaper press equipment on the U.S. market with the intent of destroying or injuring the U.S. industry. (App., *infra*, 127a.) Based on this verdict, the district court entered a $31,619,847 judgment for Goss.

TKS unsuccessfully appealed the judgment to the Eighth Circuit and unsuccessfully petitioned for rehearing, rehearing *en banc*, and a writ of certiorari. On June 5, 2006, this Court denied certiorari, exhausting TKS' appeals of the underlying money judgment. (App., *infra*, 85a.)

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[2] Goss acquired Goss Graphic Systems' assets in February 2002 and substituted as plaintiff in this case.

B. The Prospective Repeal Of The 1916 Act

In November 2004, Congress prospectively repealed the 1916 Act in response to a ruling by the World Trade Organization. In doing so, Congress was well aware of the judgment in this case and the Government of Japan's position that the 1916 Act should be repealed retroactively so as to nullify the judgment.[3] Congress nonetheless chose to *preserve* the judgment in this case by repealing the 1916 Act only prospectively.

C. Japan Passed A "Clawback" Statute To Invalidate And Nullify The U.S. Judgment.

While TKS' appeal of the final judgment was pending, TKS successfully lobbied the Japanese Government for special legislation with the sole purpose of undoing the final judgment in this case. (Goss CA App. at GA-79.) In response, the Japanese Diet passed a "clawback" statute, entitled "The Special Measures Law Concerning the Obligation to Reimburse Benefits, etc. Gained Under the US Antidumping Act of

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[3] *See, e.g.*, H.R. Rep. 108-415 (2004) ("The only 1916 Act case now pending is an Iowa case in which a jury found $10.5 million in actual damages [trebled by that court to $31 million] against a Japanese company on December 3, 2003."). In the three years preceding the repeal, Japan demanded on seventeen separate occasions that the 1916 Act be retroactively repealed and, each time, argued that Congress should eliminate the judgment in this case. (TKS CA App. 1020, 1149, 1164, 1229, 1350, 1385, 1629, 1660, 1670, 1680, 1696, 1709, 1727, 1735, 1745, 1752, 1763.) Even after Congress passed the repeal bill, but before the President signed it, Japan again complained to the Administration that the repeal bill was not retroactive. (TKS CA Opening Br. at 47) (*quoting* Japan's statements to the USTR.) Despite Japan's complaint, the President approved Congress' decision and signed the prospective-only repeal bill into law.

1916" (the "Special Measures Law") in November 2004. The Special Measures Law specifically targets the final judgment in this case. In its press release announcing the legislation, the Japanese Ministry of Economic Trade and Industry ("METI") identified by name this judgment as the reason for the law. (*Id.* at GA-22.)

The Special Measures Law is a "clawback" statute in the purest sense. It has only one element for establishing the liability of a U.S. company—namely, that the U.S. litigant received payment from a Japanese defendant under a 1916 Act judgment.[4] (Goss CA App. at GA-16, Art. 1) (clawback law requires winning U.S. plaintiff to return damages it wins under 1916 Act "to protect the parties who have suffered losses under the said law.") A U.S. company that wins damages under the 1916 Act is thus forced to disgorge the entire U.S. damage award to the losing defendant, plus interest, costs, and attorneys' fees. The law also imposes liability on any of the U.S. company's wholly-owned subsidiaries. (*Id.* at Art. 3.) The Special Measures Law further declares that any U.S. judgment under the 1916 Act is "invalid." (*Id.* at GA-17, Art. 6.)

[4] As Japan admitted in its *amicus* brief filed below, "the sole basis for Goss's liability under the Japanese Special Measures Law is Goss' receipt of damages awarded by [the district court]." (Japan CA *Amicus* Br. at 13.) TKS also conceded that the goal of the Special Measures Law is to "neutralize" the judgment entered by the district court. (TKS CA Opening Br. at 39.)

D. TKS Announced Its Intention To Claw Back In Japan The U.S. Judgment, And The District Court Enjoined TKS From Filing A Clawback Action.

On June 5, 2006, hours after this Court denied TKS' petition for certiorari, TKS informed Goss that it would seek to nullify the final judgment in this case by filing a suit in Japan under the Special Measures Law.[5] (Goss CA App. at GA-7.) TKS' imminent suit presented an immediate threat to Goss and its Japanese affiliate, Goss Graphic Systems Japan Corporation ("Goss Japan"), and endangered Goss Japan's very survival. (App., *infra*, 82a.) Further, Goss and its affiliate would be forced to defend themselves in Japan, despite a final U.S. judgment in Goss' favor. Thus, Goss moved the district court for a preliminary antisuit injunction.

After an evidentiary hearing, the district court determined that the Special Measures Law exists "'for the sole purpose of terminating' the court's judgment in Goss' favor, thereby in a single filing attempting to undo six years of federal court litigation." (App., *infra*,

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[5] In November 2004, just before passage of the Special Measures Law, Goss sought a preliminary antisuit injunction. At that time, TKS had not paid the judgment and was vigorously contesting it on appeal. During the November 2004 hearing, TKS agreed to be enjoined from using the clawback statute until it exhausted all appeals and expressed its intention to pursue a clawback action. (TKS CA Opening Br. at 2-3.) Even before Goss obtained judgment on the bond against TKS' surety (after which TKS paid the judgment), TKS announced its intention to pursue an action in Japan under the clawback statute.

78a.)[6] The district court held that TKS' "vexatious and oppressive" suit under the clawback statute is "a direct attack on the court's judgment in favor of Goss and a frontal assault on the jurisdiction of [the] court and the federal judiciary as a whole." (*Id.*) The court entered a preliminary injunction prohibiting TKS from proceeding under the clawback statute.

After entry of the preliminary injunction, TKS paid the $31 million judgment, and then appealed the injunction order to the Eighth Circuit. The Eighth Circuit *sua sponte* issued an order requiring the parties to file supplemental briefs on whether the injunction was rendered moot by TKS' payment of the monetary judgment. (CA 9/6/06 Order.)

E. The Eighth Circuit Reversed The District Court's Injunction, Deepening A Three-Way Conflict Among The Circuits.

The Eighth Circuit reversed the district court's injunction order and vacated the preliminary injunction. (App., *infra,* 29a.) The court held that once TKS paid the money judgment, the federal courts lost jurisdiction to protect that judgment. The court also held that, under a restrictive version of the so-called "conservative approach" to international antisuit injunctions, concerns over international comity and deference to the Government of Japan outweighed the federal courts' interests in protecting the judgment once it was paid. In adopting that approach, the lower court joined two other circuits in a three-way circuit split. Three other circuits have chosen a competing

[6] Internal quotation from *Laker Airways Ltd. v. Sabena,,* 731 F.2d 909, 927 (D.C. Cir. 1984).

version of the conservative approach, and at least three more circuits have chosen an opposing "liberal approach" that gives less weight to international comity and more emphasis to protecting federal judgments and jurisdiction from collateral attacks abroad.

F. TKS Sued Goss In Japan Under The Clawback Statute And Continues To Operate In The United States With Impunity.

In August 2007, TKS sued Goss and Goss Japan in Tokyo District Court under the clawback statute. TKS' suit seeks the return of Goss' $31,619,847 damage award, plus Goss' fee award in this litigation. TKS also seeks interest on these funds and its attorneys' fees and costs. TKS has filed a pre-judgment attachment in Japan against Goss Japan's assets, placing a large lien on those assets.

If TKS wins its clawback suit in Japan, it will have succeeded in coming to the United States to do business, intentionally violating U.S. law, causing millions of dollars in damage to Goss, and yet ultimately avoiding all liability for its unlawful conduct. TKS remains free to do business in the United States. It has repeatedly stated publicly that, notwithstanding the judgment in this case, it will service customers in the United States "for years to come" and pursue "new business and services in the U.S." (Goss CA App. at GA-36.) In an open letter to its U.S. newspaper customers, TKS criticized the federal courts' decisions in this case, declaring that "regardless of the foregoing legal dispute and its ultimate outcome, TKS, through its U.S. subsidiary, TKS (U.S.A.), Inc., will continue to

provide world-class, cutting-edge press technologies and services to the U.S. newspaper industry." (*Id.* at GA-34.)[7]

G. The Second Circuit Rejected The Eighth Circuit's Ruling.

Just months after the Eighth Circuit's ruling, the Second Circuit faced the exact same question—whether a federal court retains jurisdiction, after satisfaction of a monetary judgment, to protect the judgment from nullification in a foreign proceeding. In *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 2007 WL 2537466 (2d Cir. Sept. 7, 2007), the Second Circuit reviewed a trial court's grant of an antisuit injunction that barred the losing defendant from seeking to nullify a satisfied money judgment through a foreign action. The Second Circuit specifically

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[7] While seeking to nullify more than six years of federal litigation, TKS has continued to take advantage of the U.S. legal system. In February 2006, TKS filed a malpractice suit against its former attorneys in this case. *TKS (U.S.A.), Inc., v. Perkins Coie, D.C., LLP*, Civ. Action No. 06-1258 (D.C. Super. Ct.). Among its allegations, TKS claimed that its former attorneys advised it to commit the fraud Goss uncovered in this case—including fraud on the federal government—and that the attorneys were negligent in producing during discovery allegedly privileged documents revealing the fraud. TKS recently settled the malpractice case for $19 million. *See* Nathan Carlile, *Hidden Rebate Causes Big Trouble for Perkins Coie, Malpractice Suit Directed at Two D.C. Partners Results in $19 Million Payout*, LEGAL TIMES, Sept. 17, 2007, http://www.law.com/jsp/dc/PubArticleDC.jsp?id=1189501356339.

considered the Eighth Circuit's ruling in this case and rejected it. The court held that federal courts have continuing jurisdiction to enjoin parties before them from "relitigating issues in a non-federal forum that were already decided in federal court . . . *even after a judgment has been satisfied.*" *Id.* at *14 (emphasis added). Otherwise, the court observed, losing defendants "would be free to engage in vexatious proceedings" abroad that "are intended to undermine or vitiate federal judgments." *Id.* at *15.

REASONS FOR GRANTING THE PETITION

The Court should grant the petition to resolve conflict among the circuits regarding two important and recurring questions of federal jurisdiction and international comity that go to the heart of the federal courts' power to protect and effectuate their judgments.

A direct conflict exists between the Eighth and Second Circuits over whether federal courts retain jurisdiction to protect their judgments from attack after the judgments are paid or satisfied. The Eighth Circuit held that when TKS paid the judgment, the district court lost jurisdiction to enter an injunction prohibiting TKS from nullifying the judgment through a Japanese clawback action. The Second Circuit expressly rejected the Eighth Circuit's holding, and ruled that the district court retained jurisdiction, even after satisfaction of judgment, to enjoin the defendant from proceeding with a foreign suit aimed at nullifying the judgment. *Karaha*, 2007 WL 2537466 at *14. The Second Circuit explained that the Eighth Circuit's contrary holding would permit international firms to

engage in "vexatious proceedings" that are "intended to undermine or vitiate federal judgments." *Id.* at *15.

The decision here also adds to a conflict among eight other circuits over the weight to give to comity in gauging the propriety of international antisuit injunctions. The Eighth Circuit joined two other circuits in adopting an approach that gives great deference to international comity to the exclusion of nearly all other factors. Applying that approach, the Eighth Circuit bowed to a Japanese clawback statute that the court acknowledged would "effectively nullify" the final judgment in this case. (App., *infra,* 25a.) Three other circuits apply a less restrictive analysis that gives weight to comity, but also considers multiple equitable factors in assessing the propriety of a foreign antisuit injunction. At least three other circuits adopt yet another approach that gives less deference to international comity.

The standards for obtaining a foreign antisuit injunction are in utter disarray, leading to flatly inconsistent results—as this case and *Kahara* demonstrate—and encouraging forum shopping. These deep disagreements among the circuits also have wide-ranging implications for the federal judiciary and its ability to enforce U.S. laws against foreign firms doing business in the United States. The Eighth Circuit's holding invites international firms and cartels to do business in the United States, violate U.S. law, and then insulate themselves from liability through foreign proceedings. The district court accurately described TKS' intended use of the Japanese clawback statute as a "direct attack" on the court's judgment and "a frontal assault on the jurisdiction of

[the] court and the federal judiciary as a whole." (App., *infra*, 78a.)

The Eighth Circuit's holding that courts are powerless to prevent such vexatious conduct will encourage foreign countries to enact clawback legislation to undermine any U.S. law they find objectionable and losing litigants to file suit abroad to relitigate or nullify federal judgments entered against them. The decision threatens to create a dual system of justice, in which international firms operating in the U.S. can escape liability from laws that U.S. citizens and domestic firms are bound to obey.

The decision below also has serious adverse implications for purely domestic cases. This Court and the lower federal courts have long upheld the inherent power of federal courts to protect and effectuate their judgments, including through domestic antisuit injunctions prohibiting losing federal litigants from filing suit in state courts to undermine federal judgments. The Eighth Circuit's decision would tie the hands of the federal judiciary in these situations as well, inviting vexatious relitigation and collateral attacks against federal judgments in both state and foreign courts.

This Court's review is essential to resolve squarely presented issues of great importance to U.S. litigants and the integrity of the federal legal system. The circuit splits, upon which the Eighth Circuit's erroneous decision rests, are well developed and acute, and involve recurring issues of federal jurisdiction.

I. CERTIORARI SHOULD BE GRANTED TO RESOLVE TWO IMPORTANT INTERCIRCUIT CONFLICTS.

A. The Circuits Are In Conflict Over The Jurisdiction Of Federal Courts To Protect Final Judgments From Collateral Attack.

The Eighth Circuit's decision in this case is in direct conflict with the Second Circuit's recent holding that federal courts have continuing jurisdiction to enjoin parties before them from "relitigating issues in a non-federal forum that were already decided in federal court . . . *even after a judgment has been satisfied.*" *Karaha*, 2007 WL 2537466 at *14 (emphasis added).

As in this case, the losing defendant in *Karaha* commenced a foreign proceeding after the entry of final judgments in the United States, with "the obvious purpose of nullifying the judgments of the [U.S. district courts]." *Id.* at *5 (citation and quotation marks omitted). The plaintiff in *Karaha* received an arbitral award against the defendant in a Swiss arbitration proceeding, confirmed that award in a U.S. district court in Texas, and then registered the Texas court's judgment with a New York district court. *Id.* at *3. Once the Texas court's judgment was paid and fully satisfied, the foreign defendant sued the U.S. plaintiff in the Cayman Islands, alleging a "new" fraud claim. *Id.* at *4. The New York district court, finding that the Cayman Islands action was "a misuse of the foreign court to evade the American judgments," enjoined the defendant from proceeding in the Cayman Islands. *Karaha Bodas Co. v. Pertamina*, 465 F. Supp. 2d 283, 295 (S.D.N.Y. 2006). The Second Circuit affirmed, finding that "the District Court

retained—and retains—continuing jurisdiction to maintain the anti-foreign-suit injunction even though the federal judgments against [the defendant] have been satisfied." *Karaha*, 2007 WL 2537466 at *15.

In reaching its decision, the Second Circuit specifically rejected the Eighth Circuit's holding and rationale in this case. The Second Circuit concluded that the Eighth Circuit's limited view of federal jurisdiction would leave defendants "free to engage in vexatious proceedings" that are "intended to undermine or vitiate federal judgments." *Id.* at *15.

Significantly, in reaching their opposite conclusions, the courts of appeals in this case and in *Karaha* relied upon the same precedents from this Court—notably, *Peacock v. Thomas*, 516 U.S. 349 (1996), and *Riggs v. Johnson County*, 73 U.S. 166 (1867).[8] Both courts of appeals looked to this Court's observation in *Riggs* that jurisdiction "continues until th[e] judgment shall be satisfied." *Riggs*, 73 U.S. at 187. The Eighth Circuit construed this language to mean that jurisdiction continues *only* until the judgment is satisfied. (App., *infra*, 21a.) Accordingly, the Eighth Circuit found that, under *Riggs*, the satisfaction of the district court's final money judgment rendered the court powerless to protect that judgment from being nullified by the Japanese clawback suit. (*Id.*)

The Second Circuit, observing that the cases addressing the boundaries of ancillary jurisdiction "are hardly a model of clarity," rejected the Eighth Circuit's reading of the phrase from *Riggs*. Instead, the

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[8] The *Karaha* court quoted the Eighth Circuit's quotation of *Riggs* without attribution to the *Riggs* case. 2007 WL 2537466 at *14.

Second Circuit reached the opposite result, holding that jurisdiction continues even after satisfaction of judgment. *Karaha,* 2007 WL 2537466 at *14. In reaching that conclusion, the Second Circuit looked to *Peacock*, 516 U.S. at 356-57, which cited the same sentence from *Riggs* upon which the Eighth Circuit relied. *Karaha,* 2007 WL 2537466 at *14. Although *Peacock* did not address the jurisdictional question presented here,[9] the Court recognized that "[w]ithout jurisdiction to enforce a judgment entered by a federal court, 'the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution.'" *Peacock*, 516 U.S. at 356 (*quoting Riggs*, 73 U.S. at 187).

The Eighth Circuit erred in reading *Riggs* to hold that jurisdiction terminates after the entry of a satisfaction of judgment. The issue in *Riggs* was whether the district court had jurisdiction to compel county officials to assess taxes to satisfy a final judgment against the county. 73 U.S. at 187. Because the money judgment in *Riggs* had not yet been satisfied, *Riggs* did not consider whether the courts have jurisdiction to enjoin subsequent litigation aimed at nullifying a satisfied judgment. As the Sixth Circuit observed in *Lytle v. Freedom Int'l Carrier, S.A.*, 519

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[9] *Peacock* involved a plaintiff's attempt "in a subsequent lawsuit to impose an obligation to pay an existing federal judgment on a person not already liable for that judgment." 516 U.S. at 357. The Court found that the district court's jurisdiction in the original suit did not extend to the plaintiff's attempt in a subsequent lawsuit seeking "to *establish liability*" of a third party. *Id.* at 357 n.6 (quotation omitted). *Karaha* recognized that *Peacock* is distinguishable from the current issue on the ground that it concerned new claims "*involving third parties.*" *Karaha*, 2007 WL 2537466 at *14 n.19 (quotation omitted).

F.2d 129, 132 (6th Cir. 1975), neither *Riggs* nor its progeny "deals with the circumstances where the district court purports to exercise jurisdiction after the filing of satisfactions of judgment."

This Court should resolve the stark conflict between the Eighth and Second Circuits. The decisions here and in *Karaha* reach diametrically opposed conclusions on the same important issue of federal jurisdiction. There is no doubt that, applying the standards articulated in *Karaha,* the Second Circuit would have upheld the antisuit injunction that the Eighth Circuit here set aside. And, both the Eighth and Second Circuits' decisions rest on contradictory interpretations of this Court's opinions in *Peacock* and *Riggs*, demonstrating a clear need for this Court to clarify its prior precedent.

B. Nine Circuits Are Deeply Divided Over The Standards For Issuing Foreign Antisuit Injunctions And Whether Deference To International Comity May Trump A Final Federal Judgment.

The Eighth Circuit also rested its decision on its finding that the antisuit injunction entered by the district court was "contrary to principles of comity." (App., *infra,* 26a.) In so finding, the lower court deepened an extensive circuit split concerning the weight to be accorded to international comity in determining whether to issue a foreign antisuit injunction. Nine circuits are now evenly divided between three different approaches to this issue.

1. The Eighth Circuit Added To The Conflict Among The Circuits Concerning The Role International Comity Plays In Evaluating Foreign Antisuit Injunctions.

The Eighth Circuit determined that it could not rule on TKS' appeal of the district court's foreign antisuit injunction without first resolving the "level of deference afforded to international comity." (App., *infra,* 8a.) The court acknowledged that the question is subject to widely divergent treatment by the circuits that have already addressed it. (*Id.*) ("The circuits are split . . . on the level of deference afforded to international comity . . . ."); *see Gen. Elec. Co. v. Deutz AG,* 270 F.3d 144, 160 (3d Cir. 2001) ("The federal Courts of Appeals have not established a uniform rule for determining when injunctions on foreign litigation are justified."); *accord Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren,* 361 F.3d 11, 17 (1st Cir. 2004); *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 626 (5th Cir. 1996).

The Eighth Circuit joined the Third and Sixth Circuits in applying the most restrictive version of the "conservative approach" to foreign antisuit injunctions. Under that approach, concerns over international comity and deference to foreign proceedings are given the most weight. As the Eighth Circuit explained, a court using this approach issues a foreign antisuit injunction only when the foreign proceeding (1) threatens the jurisdiction of the enjoining forum or an important public policy, and (2) the domestic interests outweigh concerns of international comity. (App., *infra,* 8a); *accord Deutz,* 270 F.3d at 161 (applying the "more restrictive standard," which approves

foreign antisuit inunctions "only to protect jurisdiction or an important public policy"); *Gau Shan Co., Ltd. v. Bankers Trust Co.*, 956 F.2d 1349, 1355 (6th Cir. 1992) (same).

The Eighth Circuit frankly acknowledged that TKS' foreign clawback action would "effectively nullify" the judgment in this case obtained after six years of federal litigation. (App., *infra,* 25a.) The court reasoned, however, that the restrictive conservative approach compelled the finding that comity outweighed the court's interest in protecting a final judgment. (*Id.*)

Ironically, the Eighth Circuit's strict adherence to comity resulted in its tacit approval of a foreign clawback statute, even though such statutes are themselves offensive to comity and uniformly condemned as "deplorable measure[s]" that go "beyond the pale" and represent "a step backward [] as a matter of international law." Andreas F. Lowenfeld, *Sovereignty, Jurisdiction, and Reasonableness: A Reply to A.V. Lowe*, 75 AM. J. INT'L LAW 629, 637 (1981); *accord* Michael J. Danaher, *Anti-Antitrust Law: The Clawback and Other Features of the United Kingdom Protection of Trading Interests Act, 1980*, 12 LAW & POL'Y INT'L BUS. 947, 961 (1980) (clawback laws are an "unprecedented offense" against comity and international law). Even the Eighth Circuit recognized that the clawback statute here "like other clawback or blocking provisions, can be regarded as an affront to the laws and judicial rules of the United States." (App., *infra,* 26a.)

Although the Eighth Circuit stated that it was adopting the conservative approach to foreign antisuit

injunctions, it failed to acknowledge that the circuits endorsing this approach are themselves divided as to what factors may be considered. The First, Second, and District of Columbia Circuits endorse the "traditional version" of the conservative approach, which was first articulated by the District of Columbia Circuit in *Laker Airways*. *See Quaak*, 361 F.3d at 18.

Unlike the standard applied by the Eighth Circuit here, the traditional version of the conservative approach gives weight to equitable considerations in determining whether a foreign antisuit injunction is warranted. *See Laker Airways*, 731 F.2d at 927 ("The equitable circumstances surrounding each request must be carefully examined to determine whether . . . the injunction is required to prevent an irreparable miscarriage of justice."); *accord Karaha*, 2007 WL 2537466 at *6 ("whether the foreign action threatens the enjoining forum's jurisdiction or its strong public policies" should be accorded "greater significance," but not to the exclusion of concern for whether the foreign litigation would "be vexatious," "prejudice other equitable considerations," or "result in delay, inconvenience, expense, inconsistency, or a race to judgment.") (internal quotation marks omitted); *China Trade & Dev. Corp. v. M.V. Choong Yong*, 837 F.2d 33, 35 (2nd Cir. 1987) (directing courts to consider equitable factors in determining whether foreign antisuit injunction should issue).

By contrast, the Third, Sixth—and now Eighth—Circuits do not evaluate equitable considerations in assessing foreign antisuit injunctions. In fact, although the Eighth Circuit conceded that the ruling below "understandably is objectionable to Goss" because it "effectively nullif[ies] the remedy Goss

legitimately procured in the United States courts," it did not give any weight to this injustice. (App., *infra*, 25a.)

The circuits applying the "traditional version" of the conservative approach have rejected the more restrictive version endorsed by the Eighth Circuit here as being "inflexible." *Quaak*, 361 F.3d at 18. The First Circuit, for example, criticized the restrictive version of the conservative approach as too narrow because the approach considered "preservation of jurisdiction and protection of important national policies" as the *only* justifications sufficient to support the issuance of an antisuit injunction, thereby excluding the equitable factors that play a role in the traditional conservative approach. *Id.*

A third group of circuits undertakes an entirely different analysis. The Fifth, Seventh, and Ninth Circuits have adopted a so-called "liberal approach"[10] that gives little weight to international comity, holding that a court may enjoin any "vexatious and duplicative" foreign proceeding. *See Kaepa*, 76 F.3d at 626-28 (emphasizing "the need to prevent vexatious or oppressive litigation" and declining to require district court to "genuflect before a vague and omnipotent notion of comity every time it must decide whether to enjoin a foreign action"); *Allendale Mut. Ins. Co. v. Bull Data Sys. Inc.*, 10 F.3d 425, 431-32 (7th Cir. 1993) (rejecting the "strict" views that "presume a threat to international comity whenever an injunction is sought against litigating in a foreign court," instead

[10] The term "liberal" refers to the willingness of a federal court to protect its jurisdiction and judgment by entering an injunction under established precedents of this Court (*see, infra*, § III), without deferring to concepts of international comity.

of demanding evidence "that comity could be impaired by such an injunction"); *E. & J. Gallo Winery, v. Andina Licores S.A.*, 446 F.3d 984, 990-95 (9th Cir. 2006) (error for district court to "conclude[] it was trumped by the doctrine of comity" in declining to issue foreign antisuit injunction); *accord Seattle Totems Hockey Club, Inc. v. Nat'l Hockey League*, 652 F.2d 852, 856 (9th Cir. 1981). These circuits would not have placed the heavy emphasis on comity that led the Eighth Circuit to reverse the injunction barring TKS from clawing back the federal courts' final judgment.

The courts of appeals' decisions highlight the depth of the three-way division among nine circuits concerning the level of deference to accord comity. This case presents the Court with an appropriate vehicle to resolve this conflict and clarify the law on this important and recurring issue.

2. Further Confusion Exists Among The Circuits Concerning Which Standard To Apply To Foreign Suits Initiated After Final U.S. Judgments.

The Eighth Circuit's decision also creates additional conflict among the circuits over the weight to be accorded to comity once a final judgment is entered in the United States. Other circuits have held that once a U.S. court enters a final judgment, comity carries less weight, and the courts' primary focus should be on protecting their final judgments from relitigation abroad. *E.g., Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 655 (2d Cir. 2004) ("where one court has already reached a judgment—on the same issues, involving

the same parties—considerations of comity have diminished force"); *Silva Run Worldwide Ltd. v. Gaming Lottery Corp.*, 2002 WL 31907194 (2d Cir. Dec. 31, 2002) ("'a more lenient standard' [for an antisuit injunction] prevails once judgment has been entered") (citation omitted); *Laker Airways*, 731 F.2d at 928 n.53 ("There is less justification for permitting a second action after a prior court has reached a judgment on the same issues."); *cf. Karaha*, 2007 WL 2537466 at *7 (under traditional version of conservative approach, equitable consideration of finality "will tend to weigh in favor of an anti-foreign-suit injunction").

In direct conflict with these other circuits, the Eighth Circuit held that because the judgment was final and satisfied, concerns about protecting the judgment were insufficient to outweigh comity. (App., *infra*, 26a.) Thus, contrary to other circuits, the Eighth Circuit perversely gave less weight to the protection of a final judgment, rather than more.

Review is warranted in this case to resolve the widespread circuit split regarding the standards for issuing foreign antisuit injunctions, the level of deference to afford international comity, and how this analysis applies where, as here, the foreign action at issue occurs after final judgment in the United States.

II. THE CONFLICTS AMONG THE CIRCUITS IMPLICATE IMPORTANT AND RECURRING ISSUES OF FEDERAL LAW AND JURISDICTION.

The Eighth Circuit's decision permits what the district court accurately described as a "frontal assault on . . . the federal judiciary as a whole." If, as the Eighth Circuit held, federal courts have no power to protect their judgments from being nullified once the judgments are paid, the courts' ability to fulfill their essential function is open to attack from many directions, foreign and domestic.

A. Allowing The Lower Court's Judgment To Stand Would Have A Serious And Harmful Impact On The Enforcement Of U.S. Law And The Protection Of U.S. Judgments.

The disagreements among the courts of appeals as to whether federal courts may protect their final judgments from nullification or relitigation in foreign courts have profound implications for the U.S. economy and the rule of law. This is especially true in light of the increasing expansion of international trade and the prevalence of multinational companies doing business in the United States. The Eighth Circuit's decision allowing a litigant to completely claw back a final U.S. judgment gives a green light to foreign firms and countries to undermine any U.S. law they find objectionable, even where the prohibited conduct occurs entirely within the United States. This reasoning threatens to create a dual system of justice in which international firms can escape ultimate

liability from laws that U.S. citizens and domestic firms are bound to obey.

The adverse consequences of the Eighth Circuit's ruling to the integrity of the U.S. legal system are enormous. For example, the United States is the only country in the world that authorizes treble damages to deter statutory violations such as price fixing, monopolization, and racketeering. *See, e.g., F. Hoffman-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 167-168 (2004). Many nations prohibit treble damage awards and have passed legislation banning the enforcement of foreign multiple damage awards.[11] The holding below, that federal courts' hands are tied in preventing a foreign litigant from filing a clawback action, will encourage these same nations to enact and utilize clawback statutes, the most extreme form of retaliatory legislation. That would undermine U.S. antitrust policy by effectively nullifying federal civil antitrust enforcement against international cartels operating in the United States. RICO judgments against foreign actors likewise could be rendered meaningless.

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[11] See, e.g., Kevin O'Malley, *Notes & Comments, Does U.S. Antitrust Jurisdiction Extend to Claims of Independent/Dependent Foreign Injury?*, 20 TEMP INT'L & COMP. L.J. 219, 236 (Spring 2006) (noting foreign nations' *amici* briefs in *Empagran* case; explaining that foreign disdain for treble damage awards has led to enactment of enforcement-blocking legislation); James M. Grippando, *Declining to Exercise Extraterritorial Antitrust Jurisdiction on Grounds of International Comity: An Illegitimate Extension of the Judicial Abstention Doctrine*, 23 VA. J. INT'L L. 395, 417 (Spring 1983) (commenting on uniform foreign hostility to treble damage awards resulting in enforcement-blocking legislation).

Clawback statutes have already been enacted based on foreign hostility to the perceived extraterritorial application of U.S. laws. The United Kingdom's Protection of Trading Interests Act ("PTIA"), for example, includes a provision allowing the clawback of the multiple portion of a U.S. damages judgment. *See* PTIA, 1980, c. 11, § 6; *see also* Danaher, *supra*, 12 LAW & POL'Y INT'L BUS. at 948. Canada's Foreign Extraterritorial Measures Act ("FEMA") likewise permits the clawback of antitrust judgments from foreign countries—notably, the United States—that the Canadian Attorney General deems to be adverse to Canada's interests. *See* FEMA, R.S.C., ch. F-29, § 9 (1985), amended by 1996 R.S.C., ch. 28. (Can.).

The adverse impact of the Eighth Circuit's decision is not limited to U.S. antitrust enforcement. It predictably will encourage foreign clawback legislation aimed at other important but internationally controversial aspects of our judicial system, including punitive damage awards, liberal discovery, and enhanced damages in patent infringement and other intellectual property suits. Federal judgments based on any of these laws or procedures are vulnerable to nullification under the holding in this case.

Failing to protect U.S. judgments from foreign clawbacks also threatens to create a dual system of justice that disadvantages U.S. defendants. Many foreign and multinational firms will effectively be immunized from liability for illegal or anticompetitive conduct within the United States, while U.S. firms and citizens are held accountable for the same conduct. The Eighth Circuit's ruling would permit foreign firms to do business in the United States, violate U.S.

law, and then nullify virtually any U.S. judgment under a foreign clawback statute.

This issue is not limited to the use of foreign clawback statutes, but is a recurring issue where litigants file other statutory or common law claims in foreign courts to nullify final U.S. judgments. *See, e.g., Karaha*, 2007 WL 2537466 at *4 (defendant attempted to annul arbitration award by filing Cayman Islands action alleging that award had been procured through fraud); *Triton Container Int'l Ltd. v. Di Gregorio Navegacao Ltda.*, 440 F. 3d 1137, 1138 (9th Cir. 2006) (defendants filed Brazilian action against plaintiff concerning same underlying facts, after money judgment rendered against them); *Canon Latin America Inc. v. Lantech (CR), S.A.*, 453 F. Supp. 2d 1357, 1364-66 (S.D. Fla. 2006) (defendant filed suit in Costa Rica in an "evasive" effort to avoid forum selection clause); *Commercializadora Portimex S.A. de CV v. Zen-Noh Grain Corp.*, 373 F. Supp. 2d 645, 648 (E.D. La. 2005) (plaintiff filed new foreign suit on same facts two and one-half years after district court rendered final judgment against plaintiff); *Younis Bros. & Co., Inc. v. Cigna Worldwide Ins. Co.*, 167 F. Supp. 2d 743, 744 (E.D. Pa. 2001) (plaintiffs filed damages claims against defendant in foreign court four years after district court entered judgment against plaintiffs on same claims).

As set forth above, nine circuits are now evenly divided on the basic test to employ to decide these important and recurring issues. Review by this Court is warranted to resolve the widespread disagreement and confusion among the circuits on these issues.

B. The Decision Below Will Have An Unsettling Impact On Federal Courts' Jurisdiction To Protect Final Judgments From Collateral Attack In State Court.

The conflict between the Eighth Circuit in this case and the Second Circuit in *Karaha* also directly impacts the question of whether federal courts have jurisdiction to protect their final judgments from nullification by subsequent proceedings in state court. If, as the Eighth Circuit held, federal courts lack jurisdiction to protect a judgment once it is paid, the necessary implication is that the federal courts are powerless to prevent state court proceedings aimed at relitigating or nullifying a satisfied federal judgment.

This, too, is a frequently recurring issue. Federal courts are routinely called upon to exercise ancillary jurisdiction to discharge their obligation to protect final judgments. *See, e.g., Next Level Commc'ns LP v. DC Commc'ns Corp.*, 179 F.3d 244, 248-50 (5th Cir. 1999) (affirming antisuit injunction to "protect and effectuate" final money judgment, notwithstanding fact that satisfaction of judgment already had been filed); *Cole v. United States,* 657 F.2d 107, 110 (7th Cir. 1981) (affirming antisuit injunction barring plaintiff from relitigating in state court issue that had been resolved by district court); *Southwest Airlines Co. v. Texas Int'l Airlines, Inc.*, 546 F.2d 84, 90 (5th Cir. 1977) (affirming antisuit injunction barring state court action that was "frontal attack" on district court's final judgment); *Samuel C. Ennis & Co. v. Woodmar Realty Co*, 542 F.2d 45, 48 (7th Cir. 1976) (affirming injunction of state court action that would have "nullified" final bankruptcy order); *Lee v. Termi-*

nal Transp. Co., 282 F.2d 805, 806 (7th Cir. 1960) (upholding permanent antisuit injunction to prevent plaintiffs from pursuing prejudgment interest in state court after federal court awarded a judgment that did not include such interest); *Berman v. Denver Tramway Corp.*, 197 F.2d 946, 950 (10th Cir. 1952) (antisuit injunction properly issued to protect 25-year-old final decree from relitigation because "jurisdiction of the court to entertain such a supplemental proceeding is not lost by the intervention of time or the discharge of res from the court").

The Eighth Circuit's decision ordains that a federal court loses subject matter jurisdiction to enjoin a subsequent proceeding the moment the federal judgment is paid. (App., *infra,* 22a) ("[T]he judgment now is rendered, paid, and satisfied. . . . Neither the All Writs Act nor the court's ancillary enforcement jurisdiction provides the district court with a separate source of jurisdiction to enjoin TKS under these circumstances.") It necessarily follows that federal courts cannot take steps to protect or effectuate their final judgments, at least with regard to satisfied money judgments, regardless of whether the subsequent attack comes in a foreign or state court.

Widespread disagreement and confusion exists among the circuits with regard to the power of federal courts to protect their final judgments from nullification by foreign or state courts. Such issues are recurring and of great practical importance to U.S. litigants and to the integrity of the U.S. judicial system. Only this Court's intervention can end these conflicts and prevent serious harm to the U.S. legal system that will otherwise result.

III. THE EIGHTH CIRCUIT'S APPLICATION OF THIS COURT'S PRECEDENTS CONCERNING ANCILLARY AND SUPPLEMENTAL JURISDICTION IS CLEARLY ERRONEOUS.

This Court has long held that federal courts have "ancillary" jurisdiction "in aid of and to effectuate [a] prior decree to the end either that the decree may be carried fully into execution or that it may be given fuller effect." *Dugas v. American Surety Co.*, 300 U.S. 414, 428 (1937); *see* 12 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3013 (2d ed. 1987). This ancillary jurisdiction "follows that of the original suit," and may be invoked after judgment in a supplemental proceeding. *Dugas*, 300 U.S. at 428. Because jurisdiction over the supplemental proceeding follows that of the original suit, "[n]o independent basis for federal jurisdiction is necessary in such an action." *Samuel C. Ennis,* 542 F.2d at 48 (*citing Local Loan Co. v. Hunt*, 292 U.S. 234, 239 (1934)). Rather, ancillary jurisdiction extends to claims having a factual and logical relationship to the primary suit and arises from "the practical need 'to protect legal rights or effectively resolve an entire, logically intertwined lawsuit.'" *Peacock*, 516 U.S. at 355 (*quoting Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 376-77 (1978)).

The Eighth Circuit's conclusion that the courts have no power to prevent a losing litigant from clawing back in a foreign court a final judgment is inconsistent with this established doctrine. As the Court explained in *Dietzsch v. Huidekoper*, 103 U.S. 494, 497 (1880), courts have a duty to ensure that litigants retain "the

substantial fruits of a judgment rendered in their favor." Thus, federal courts have jurisdiction to enforce and protect a judgment "no matter how or when [a party] may attempt to evade it or escape its effect." *Id.*

Ancillary jurisdiction is now codified by 28 U.S.C. § 1367(a), which provides that federal courts have jurisdiction over "all other claims that are so related to the claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III." Under this doctrine, a federal court has ancillary jurisdiction to enable it to "function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 379-80 (1994).

The district court also had jurisdiction over the antisuit injunction under the All Writs Act, which provides that federal courts "may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). A court has the power to issue such commands under the All Writs Act as appropriate to "effectuate and prevent the frustration of orders it has previously issued." *United States v. New York Tel. Co.*, 434 U.S. 159, 172 (1977).

In *Dugas*, 300 U.S. at 428, this Court upheld an antisuit injunction to protect the integrity of a final monetary judgment. There, an insurance company filed a federal interpleader action to resolve its liability among numerous claimants on a bond. The district court's final judgment distributed the proceeds of the

bond to claimants on a *pro rata* basis. *Id.* at 420. Nearly two years after the proceeds of the bond were fully distributed—satisfying the judgment and discharging the insurer from further liability—one of the claimants filed a state court action that would have resulted in additional liability against the insurer. Although the insurer's request for an antisuit injunction came two years after satisfaction of the final judgment, this Court held that federal jurisdiction was "free from doubt." *Id.* at 428.

In *Dietzsch*, 103 U.S. at 497, this Court found that the district court could enforce its final judgment by enjoining a state court action that would have put the winning federal plaintiffs "in precisely the same plight as if the judgment of the [federal court] had been against them, instead of for them." The federal judgment had previously awarded the *Dietzsch* plaintiffs ownership of disputed property.[12] The defendants filed the subsequent state court action to recover a replevin bond that the plaintiffs had posted in the state court before removal to stand in place of the disputed property. *Id.* This Court found that an injunction was appropriate to prevent the "defeated party from wresting the replevied property" from the winning plaintiffs, notwithstanding the fact that the federal action was complete and its judgment effectuated. *Id.* at 495-97.

Absent the power to enforce final judgments, "the judicial power would be incomplete and entirely inadequate for the purposes for which it was conferred

[12] *See Kern v. Huidekoper*, 103 U.S. 485 (1880) (establishing final judgment in favor of plaintiffs on ownership of property).

by the Constitution." *Riggs*, 73 U.S. at 187. This is true regardless of whether a losing federal litigant seeks to undermine a final judgment through a subsequent state law claim or a foreign clawback lawsuit. To hold otherwise "would require the American judges to abdicate their oath of office to uphold the laws of the United States." *Laker Airways*, 731 F.2d at 941 n.121.

This case presents the Court with an ideal vehicle to clarify the bounds of federal jurisdiction to protect final judgments from subsequent nullification by a losing litigant, and to overturn a court of appeals decision that is flatly inconsistent with this Court's governing precedent.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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