

No. 16-136

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IN THE  
**Supreme Court of the United States**

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GOVERNMENT OF BELIZE,  
*Petitioner,*

v.

BCB HOLDINGS LIMITED  
AND BELIZE BANK LIMITED,  
*Respondents.*

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**On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the District of Columbia Circuit**

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**AMICUS CURIAE BRIEF OF THE  
GOVERNMENT OF GUYANA  
SUPPORTING  
THE GOVERNMENT OF BELIZE'S  
PETITION FOR WRIT OF CERTIORARI**

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## **BRIEF OF AMICUS CURIAE**

The Government of Guyana submits this brief in support of the Government of Belize's petition for certiorari.<sup>1</sup>

## **INTEREST OF AMICUS CURIAE**

The Co-operative Republic of Guyana is a sovereign nation on the northern coast of South America, bordering Venezuela, Brazil, Suriname and the Caribbean Sea. Like Belize, Guyana is intimately tied geographically, culturally, historically, linguistically, and politically to the Caribbean region.<sup>2</sup>

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<sup>1</sup> Counsel for the Government of Guyana authored this brief in whole and no other person or entity made a monetary contribution to the preparation or submission of this brief. Guyana's counsel notified counsel for the parties of its intent to file this amicus brief ten days before this filing, and received their consent.

<sup>2</sup> Guyana is the only South American nation with English as its official language. To recognize Guyana's connection to the Caribbean, one need look no further than its sports league affiliations: For international cricket purposes, Guyana is part of the West Indies; for soccer, it is grouped with the Caribbean and Central and North American nations.

Like Belize, Guyana is a member of the Caribbean Community (CARICOM), an organization promoting economic integration and cooperation, and coordinated foreign policy.<sup>3</sup> Indeed, Guyana was a founding member of CARICOM. CARICOM Day (commemorating the signing of the Treaty of Chaguaramas,<sup>4</sup> which established CARICOM) is a Guyanan holiday, and CARICOM's secretariat headquarters is based in Guyana's capital, Georgetown.

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<sup>3</sup> CARICOM contains 20 countries: 15 Member States—Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago—and 5 Associate Members—Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Turks and Caicos Islands.

<sup>4</sup> Chaguaramas, near Port of Spain (Trinidad and Tobago's capital), was an area housing American military bases from World War II to the 1960s and was the focus of nationalist claims during the 1950s. It was slated to become the capital of the short-lived West Indies Federation. Hence, as a location symbolic of Caribbean resistance to colonialism, it was the ideal signing site for the treaty creating CARICOM.

To further the goals of regional economic cooperation and integration, in 2001 the CARICOM nations signed the Revised Treaty of Chaguaramas. A significant achievement of this revised treaty was to establish the Caribbean Court of Justice (CCJ) to serve as an itinerant, multinational, regional judicial tribunal. The CCJ has original jurisdiction (to address disputes between CARICOM nations) and appellate jurisdiction.

The CCJ's appellate jurisdiction (both civil and criminal) was designed to replace appeals to the Judicial Committee of Her Majesty's Most Honourable Privy Council in London. The Privy Council served as the High Court of Appeal for the British Empire (other than for the U.K. itself) and continues to serve as the court of final appeal for British Overseas Territories, Crown Dependencies, and many Commonwealth countries. Allowing countries to sever their anachronistic colonial links to the Privy Council and substitute it with the CCJ is an important component of ending British domination and asserting full autonomy and national sovereignty.

Like several other Caribbean nations that formerly were British colonies, both Belize and Guyana have made the CCJ their highest

court, replacing the Privy Council.<sup>5</sup> Accordingly, Guyana has a vital interest in the respect paid to the CCJ on the international stage and the comity accorded CCJ opinions by other courts. Because CARICOM nations must affirmatively accede to the CCJ's appellate jurisdiction, the CCJ is unique among courts in being a relatively new tribunal that must win the trust and confidence of the public it serves.

Guyana, of course, has no direct role or interest in the specific monetary dispute between Belize and BCB Holdings. But Guyana could very well find itself in a position similar to Belize's in future litigation, i.e., having a CCJ decision circumvented by an American court. Guyana's deep and abiding concern about the treatment of the CCJ's opinion resolving Belize's dispute and the lack of deference given to that opinion by courts in the United States prompts Guyana to respectfully request to be heard in this matter.

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<sup>5</sup> Other nations that have adopted the CCJ as their highest court are Barbados and Dominica. The transfer of final appellate power from the Privy Council to the CCJ is an ongoing process in many CARICOM nations. States with active movements to substitute the Privy Council with the CCJ include Jamaica, Grenada, and St. Lucia.

## SUMMARY OF ARGUMENT

This Court's involvement is necessary to correct an erroneous decision beyond the bounds of both American and international law. Under American law, a clear circuit split now exists, justifying the grant of certiorari. But beyond the procedural prerequisites that this Court uses to evaluate whether to grant review, this Court's attention is required to address an issue of great concern to the nations of the Caribbean region and their millions of inhabitants. That issue is whether American courts will honor CCJ opinions, especially when they conflict with rulings emanating from former colonizing powers.

**A Caribbean Perspective:** Worldwide, and particularly in the former colonial lands of the Caribbean, people look to the United States as a role model in the struggle against British imperialism. America's history provides an exemplar of a path to independence, as well as a blueprint for a vibrant, functioning democracy, free of the corruption that has troubled so many newer and smaller nations.

Creating the CCJ and adopting its appellate jurisdiction are important steps away from Britain and toward full independence for former colonies. But for the CCJ to achieve its laudable goals of regional cooperation and integration, it must be accorded the dignity and comity it deserves as a court of last resort. The



D.C. Circuit's ruling fails to recognize the international consequences of discounting the CCJ. The CCJ's legitimacy and importance to the region are at stake.

Furthermore, the D.C. Circuit's ruling fails to acknowledge the critical importance of the CCJ's landmark decision in this particular case. The CCJ's opinion here is no mere cursory order, but is a lengthy, detailed, and well-developed analysis on principles fundamental to honest democracy. The CCJ outlined compelling grounds for refusing to enforce the arbitration award from the London Court of International Arbitration (LCIA), because—under the exceptional circumstances present—that award is repugnant to the rule of law and basic notions of democratic government.

The CCJ found the purported agreement that BCB Holdings wishes to enforce to be unconstitutional, void, and completely contrary to sacrosanct public policy. The ruling before this Court gravely errs in concluding that the importance of enforcing a private arbitral award outweighs the benefits of combatting governmental corruption at its highest levels. Siding with wealthy and powerful corporate interests to uphold an illegal deal cut by discredited politicians, to the severe detriment (i.e., tens of millions of dollars) of the people of Belize, is not sound policy for any court.

## REASONS FOR GRANTING THE PETITION

Belize's petition already cogently outlines the clear and now entrenched circuit split created by the D.C. Circuit's rejection of *forum non conveniens* (Pet. 17–20) as well as that court's conflict with the law of this Court (Pet. 20–23). Guyana endorses and echoes those arguments.

From Guyana's vantage, however, this litigation presents not merely the specific intricate legal questions at issue, but also broader policy questions of international consequence. This case implicates both the legitimacy of Guyana's highest court, the CCJ, and the import of the CCJ's opinion in this particular case.

Should American courts honor a private arbitration award when doing so would contradict a detailed opinion from the high court of the Caribbean region—a ruling premised on basic democratic principles? And should American courts reward illegal corporate dealings and government corruption? Guyana hopes not.

### I.

#### **The CCJ Is Vitally Important To The Caribbean Region's Goals Of Independence And Solidarity**

Fifty years ago, in 1966, the republic of Guyana—roughly the size of Great Britain—

declared its independence from the United Kingdom. Before then, it was a British colony, British Guiana (1814–1966), and before that, a Dutch colony, Dutch Guiana (1667–1814). Similarly, Belize was formerly British Honduras, until its independence in 1981.

All nations treasure their independence. Full political independence and self-determination includes full judicial independence and self-determination in judicial matters. Judicial independence is a crucial component in casting aside negative psychological legacies of colonialism. Thus independence is incomplete when final decision-making power rests with a court in London, with justice dispensed by judges drawn primarily from the former colonial power.

Appealing to British judges in London is simply incompatible with national sovereignty. Caribbean nations need not export judicial administration to England nor import justice from judges having no connection to the region. Instead, the people of the Caribbean are best served by developing an indigenous Caribbean jurisprudence arising not from British judges, who are far removed from Caribbean culture and society, but from judicial rulings issued by judges having local knowledge, values,

perspective, and an appreciation for the social context of Caribbean realities.<sup>6</sup>

Further, most Caribbean litigants simply cannot afford the costs attendant to taking an appeal to London. This places citizens of the countries that have not yet adopted CCJ appellate jurisdiction in an untenable position: On one hand their court of last resort (the Privy Council) is technically available but not economically accessible, yet a court which their country has already fully funded (the CCJ) is not technically accessible because there is not yet legislative authority allowing access.

Therefore, when Caribbean nations adopt the CCJ's appellate jurisdiction in lieu of the Law Lords of the Privy Council, they stake important ground both in finalizing their independence and in furthering access to justice. Accepting the CCJ as the final arbiter of judicial affairs completes the story of independence and embodies the vision of Caribbean leaders of pooling resources to have

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<sup>6</sup> The current CCJ judges are from Saint Kitts and Nevis, Trinidad and Tobago, Saint Vincent and the Grenadines, the U.K., the Netherlands Antilles, and Jamaica; past judges have been from Trinidad and Tobago and Guyana. CCJ judges are not appointed by politicians, and the CCJ functions free of direct political influence. Of note, no CCJ judge has ever been from Belize.

regional issues decided regionally and within reach. Although nations such as Belize, Guyana, Barbados, and Dominica have taken this step, many other Caribbean nations are still considering doing so.

Starkly put, the legitimacy of the CCJ is important to the full freedom and integration of the region. For this reason, international respect for the CCJ is geopolitically important. Conversely, decisions that snub CCJ opinions undermine its legitimacy and impede aspirations for independence and regional cohesion.

Here, the D.C. Circuit has chosen to honor an LCIA decision over a directly contrary CCJ opinion. That outcome merits skeptical review and reversal.

Despite its name, the London “Court” of International Arbitration is not a “court” in the traditional sense of a state-established tribunal created by government to administer justice for the benefit of the people. The LCIA is a private institution, akin to entities like the American Arbitration Association. High courts, like the CCJ and like this Court, are often called on to set matters of policy. In contrast, the LCIA is focused on resolving particular commercial disputes, rather than public policy issues. Although there may be benefits for parties who willingly agree to participate in the private dispensing of justice, rulings of actual

government courts should take precedence when conflicts arise.

A court's power lies in the confidence that litigants have in the potency of its decisions. Allowing CCJ opinions to be circumvented has the deleterious effect of weakening the value of the CCJ as an institution. In short, recognition of CCJ opinions by American courts will bolster movements to accede to CCJ appellate jurisdiction. Conversely, decisions such as the D.C. Circuit's that reject the CCJ's authority damage the CCJ's reputation and undermine its present and future operations to the detriment of the entire Caribbean region.

## **II.**

### **The CCJ's Opinion In This Case Is Of Utmost Importance Because It Addresses Foundational Issues Of Democratic Government**

Any ruling that diminishes the stature of the CCJ would concern Guyana. But the particular ruling in this case has added dimensions cutting to the core of democratic government.

The CCJ opinion here is arguably one of the most profound and significant that it has ever issued. The opinion rests on principles common to all democracies, including constitutional supremacy and separation of powers. The CCJ found compelling grounds not to enforce the LCIA's arbitration award

because such enforcement would be contrary to Belize's constitution and to sound international public policy. "To disregard these values is to attack the foundations upon which the rule of law and democracy are constructed throughout the Caribbean" (*BCB Holdings Ltd. v. Attorney General of Belize*, CCJ Appeal No. CV 7 of 2012, ¶ 59 [App. 94]).

To be sure, many courts, including American courts, have a longstanding policy favoring arbitration and the enforcement of arbitration awards. But that policy must yield when an arbitration award would serve only to ratify, reward, and foster corruption. The New York Convention includes this fundamental notion in its public policy defense, in Article V(2)(b) (App. 46).

Admittedly, the public policy defense is invoked successfully very infrequently. But the scarcity of precedent merely underscores how direction from this Court is sorely needed. The D.C. Circuit found that enforcing the LCIA award would not violate basic notions of morality and justice. That conclusion is hard to square with the facts. Again, this Court's attention and guidance are required.

Similarly, public policy against corruption is joined here by public policy in favor of international comity. BCB Holdings sought judicial relief in the United States only after losing in the courts of Belize, appealing to the

CCJ, and then losing in the CCJ as well. This sort of forum shopping should not be allowed to result in flatly inconsistent results, which is the present situation.

### CONCLUSION

This case is of great significance to foreign sovereigns, especially those in the Caribbean. The D.C. Circuit's ruling conflicts with the Second Circuit's view of the law, creating a legal dispute for this Court's resolution. But even beyond that clear split of authority, the ruling below conflicts with the CCJ's opinion. In a battle between the ruling of a private arbitration entity and the ruling of an international court that serves as the highest court of many nations, the real court's ruling should prevail as a matter of comity. All the more so when that court's ruling rests on foundational democratic principles aimed at combatting government corruption. Such concerns may not be factors in private arbitrations, but they are crucial components of state-sponsored justice.

If allowed to stand, the D.C. Circuit's ruling here may have harmful consequences to the CCJ and to international comity generally. The arbitral award here is an affront to democracy in the Caribbean region, and was properly rejected by the CCJ in a seminal decision. The D.C. Circuit's ruling to confirm



that award is incompatible with the role of the United States as a beacon of democracy in the world. Guyana urges this Court to grant certiorari and to reverse the D.C. Circuit's opinion.

Respectfully submitted,

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