23-7370(L)

23-7463(XAP), 23-7614 (XAP)

In the United States Court of Appeals for the Second Circuit

PETERSEN ENERGIA INVERSORA S.A.U., PETERSEN ENERGIA S.A.U.,
Plaintiffs-Appellees-Cross-Appellants,

v.

ARGENTINE REPUBLIC,
Defendant-Appellant-Cross-Appellee,

YPF, S.A.,
Defendant-Conditional Cross-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF *AMICUS CURIAE* ORGANIZACIÓN FEDERAL DE ESTADOS PRODUCTORES DE HIDROCARBUROS ("OFEPHI") IN SUPPORT OF DEFENDANT-APPELLANT-CROSS-APPELLEE AND IN SUPPORT OF REVERSAL

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The Argentine Organización Federal de Estados Productores de Hidrocarburos ("OFEPHI"), which translates to the Federal Organization of Hydrocarbon Producing States, submits this brief as *amicus curiae* in support of the Republic of Argentina.[1] For the reasons set forth in this brief, OFEPHI respectfully supports the reversal of the district court's decisions currently on appeal.[2]

INTEREST OF *AMICUS CURIAE*

The Provinces of Chubut, Formosa, Jujuy, La Pampa, Mendoza, Neuquén, Salta, Santa Cruz, Tierra del Fuego, and Río Negro are ten Argentine provinces (the "Provinces") with substantial oil and gas exploration, development, and production ventures. The Provinces are members of OFEPHI, an organization that promotes the unique policy interests of its member provinces. Argentina is a federal state constituted of twenty-three provinces and one autonomous city, with each province holding certain powers not delegated to the federal government. Each province is

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[1] All parties have consented to the filing of this brief. Pursuant to Local Rule 29.1, no party's counsel authored this brief in whole or in part; and no person, other than *amicus curiae* or its counsel, contributed money that was intended to fund preparing or submitting this brief.

[2] The *Petersen* and *Eton Park* appeals address identical issues but have not been formally consolidated. *Amicus curiae* intends for this brief to support both appeals. However, for ease of reference, citations herein are only to Argentina's Opening Brief in the *Petersen* appeal, which is identical in substance to the opening brief filed in the *Eton Park* appeal.

fully autonomous, enacting its own constitution, organizing its local government, and managing its own resources. Each province therefore has its own set of provincial laws and justice system. Among the provincial laws are expropriation laws, which give the provinces the authority to expropriate private property for the public good under certain conditions and with certain requirements. This authority is separate from and exists in parallel to the federal government's expropriation power and, like it, is considered a matter of "public order," a concept denoting a body of principles that underlie and are foundational to the legal system.

OFEPHI, as an organization of Provinces, each with its own laws and justice systems, has a substantial interest in these appeals for two independent and compelling reasons.

First, a central issue on appeal is the correct interpretation of Argentina's General Expropriation Law, National Law No. 21,499, specifically with respect to the framework for resolving third-party claims related to an expropriation. *See* Opening Brief for Defendant-Appellant the Argentine Republic ECF No. 65.1, p. 10 ("Argentina's Opening Brief"). Each of the Provinces has its own expropriation law, with each province's law tracking, and nearly identical in substance to, the federal General Expropriation Law at issue in these appeals. Therefore, the Provinces, represented by OFEPHI, have a significant interest in how this Court may interpret the Argentine federal law or, alternatively, whether this Court may determine, as

amicus curiae respectfully submits that it should, that complex questions of Argentine law are to be left to Argentine courts. If this Court declines to reverse the district court, the Provinces will be adversely impacted by what OFEPHI maintains is the district court's manifestly incorrect interpretation of Argentine law. Just as the decision interferes with Argentina's expropriation processes and powers, it will also impact the Provinces' separate and distinct expropriation processes and powers. In particular, the Provinces have an interest in ensuring that third-party claims relating to provincial expropriations are heard in provincial courts in accordance with the expropriation scheme set forth in provincial law, and not in the courts of foreign countries. Each of the Provinces, moreover, has distinct economic and political interests and needs that require application of their laws in certain circumstances that only those Provinces can judge in the exercise of their specific, local discretion.

Second, pursuant to the expropriation law passed by the Argentine Congress on May 3, 2012, which resulted in the expropriation of Repsol's shares of YPF S.A. ("YPF"), 49% of the expropriated shares are to be transferred to the Provinces, though that transfer has not yet been completed. Given their legal right to ownership of YPF, the Provinces have an important interest in ensuring that their shares are free and clear of any encumbrances, as required by Article 28 of the General

Expropriation Law. YPF Expropriation Law, Law No. 26,741 ECF No. 393 ¶ 66.[3] Article 28 sets out the exclusive process for third-party compensation claims, which must be resolved prior to and as part of the expropriation, so that the expropriation is "free of any encumbrance." But this litigation continues to impact the YPF expropriation, and, in turn, the Provinces, interfering with their ability to carry out their obligations to their citizens including because of the uncertainty that the Provinces face in knowing what their revenue base will be and the challenges in planning accordingly. In a country with economic concerns, as well as localized concerns in the Provinces, this situation needlessly jeopardizes the social welfare of citizens despite the fact that the Republic and the Provinces have followed all applicable laws.

A foreign court with different and inapplicable laws should give significant weight to how another sovereign interprets its own laws, especially in the context of a foreign compensation proceeding relating to rights and obligations under that sovereign's expropriation law. Appellants in this case well knew when they invested in YPF that they were subject to Argentine laws and procedures and the relevant construction of those laws by Argentine courts. Having made the investment decision will full knowledge of the applicable principles of Argentine law that would

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[3] All references to the docket are from the docket in *Petersen Energia Inversora S.A.U. v. Argentine Republic*, No. 1:15-cv-02739 (S.D.N.Y.), unless otherwise stated.

apply to their governance rights, they should not be permitted to then help themselves to the benefits of U.S. courts and legal constructions rather than the courts and constructions which bound their investments.

BACKGROUND

YPF was established in 1922 by the Argentine Republic as a state-owned energy company. ECF No. 393 ¶ 2. It was privatized in 1999, and Repsol S.A., a Spanish oil company, came to acquire over 99% of YPF's capital stock by the end of 2001. ECF No. 393 ¶¶ 20-21. In 2008 and 2011, the Petersen Group, through Plaintiffs-Appellees-Cross-Appellants Petersen Energía Inversora S.A.U. and Petersen Energía S.A.U. (together "Petersen") acquired a 25% stake in YPF. ECF No. 393 ¶¶ 27, 39, 41. Between 2010 and 2012, Plaintiffs-Appellees-Cross-Appellant Eton Park Capital Management ("Eton Park") acquired a 3% stake in YPF. ECF No. 393 ¶¶ 43-46.

In 2012, the Argentine Congress approved the expropriation of YPF shares owned by Repsol representing 51% of YPF's total capital. In accordance with the General Expropriation Law, the Argentine government then had two years to compensate Repsol and to resolve any third-party claims relating to the expropriation. Law 21,499, Art. 33 (S.A. 233).[4] During the statutory compensation

[4] Citations in the form "S.A.___" refer to the pages of the Special Appendix filed by the Republic in its Opening Brief.

appraisal period, several minority shareholders of YPF filed claims in Argentine courts in accordance with the procedures established by the General Expropriation Law. Those claims were similar to those brought by Petersen and Eton Park in this case, in that the shareholders asserted that Argentina had violated YPF's Bylaws by assuming control over Repsol's YPF shares without making a tender offer. Ultimately, within the two-year appraisal period, Argentina reached a global settlement that compensated Repsol for the expropriation and settled the minority shareholders' claims relating to the expropriation. ECF No. 363-15 at 7-13. This is precisely how the General Expropriation Law dictates that third-party claims be addressed—with the expropriating party making one, final payment that accounts for all claims, and receiving the property without any encumbrances.

Petersen and Eton Park (together, "Plaintiffs/Appellees") did not assert claims relating to the expropriation during the statutory process designated for doing so, meaning that under Argentine law, any claims were forfeited and Argentina (and the Provinces) would take their shares in YPF free and clear of any encumbrances. Petersen's lenders foreclosed on Petersen's shares in YPF following a default, and the rights to prosecute the claims asserted in these proceedings were assigned to a litigation finance group in exchange for 70% of any proceeds. ECF No. 377-70 at 25. These entities wanted the advantage of American courts and statutory

methodology rather than the Argentine courts or administrative bodies and construction principles that properly governed this investment.

In April 2015, Petersen initiated this case before the Southern District of New York. ECF No. 1. The thrust of its argument was that when Argentina acquired a controlling stake in YPF, YPF's Bylaws triggered a contractual obligation where Argentina was required to make a tender offer to other shareholders (including Petersen), and that Argentina breached this obligation by failing to make such a tender offer. Eton Park followed suit in November 2016, making the same arguments. *Eton Park Capital Management L.P. et al. v. Argentine Republic et al.*, Case No. 1:16 cv 08569 (S.D.N.Y. Nov. 3, 2016) (ECF No. 1).

One of the arguments advanced by Argentina in the district court was that Plaintiffs'/Appellees' claims were barred under the General Expropriation Law. ECF No. 373 at 33-38. Article 28 of the General Expropriation Law provides: "No action by third parties may impede the expropriation or its effects. The rights of the claimant shall be considered transferred from the [expropriated] thing to its price or to the compensation, leaving the thing free of any encumbrance." Law 21,499, Art. 28 (S.A. 233). Argentina argued that the goal of the General Expropriation Law framework is to ensure that Argentina takes ownership of the expropriated property free of any "encumbrance," including any third-party claims relating to the expropriation. As a matter of law and policy, this framework is essential to avoid

precisely the kind of drawn-out end-runs that create uncertainty, expense and potential jeopardy that the law was specifically created to prevent. Given the requirement of settling all claims relevant to the expropriation so that property can be taken without any encumbrance, this framework necessarily provides the exclusive remedy for third-party claims, including Plaintiffs'/ Appellees' claims. Therefore, Plaintiffs'/Appellees' claims against the Republic were extinguished at the conclusion of the expropriation process and their claims are not cognizable outside of the expropriation law's framework. ECF No. 373 at 34-38. That is the framework that Plaintiffs/Appellees knew to be applicable when they made their investment.

In March 2023, however, the district court denied summary judgment to the Republic and granted summary judgment to Plaintiffs/Appellees. ECF No. 437. The court, construing Argentine law, concluded, *inter alia*, that Plaintiffs'/Appellees' claims were *not* barred by Article 28 of the General Expropriation Law. ECF No. 437 at 48-53. The court reasoned that (i) Article 28 is not applicable because the relevant "encumbrance" was created by Argentina itself through the Bylaws, and not by a third party, and (ii) the tender offer obligation does not relate to the expropriated shares but arises out of separate contractual obligations under the Bylaws. ECF No. 437 at 48-53. After a bench trial on damages, the district court entered final

judgment for plaintiffs for a combined total of $16.1 billion. ECF No. 498. Argentina appealed. ECF No. 504.

ARGUMENT

The district court's interpretation of Argentina's General Expropriation Law—in particular Article 28—was an inappropriate and narrow construction of the law that would be wholly unthinkable to an Argentine court, creating an unprecedented exception to how expropriation-related claims are addressed in Argentina. That interpretation is also inconsistent with the expropriation laws of the Provinces, which are substantively identical to the General Expropriation Law, both textually and in their application.

I. The District Court's Novel Interpretation Undermines the Provinces' Mandatory Expropriation Framework by Creating an Alternative Remedy for Third Parties

As detailed in Argentina's Opening Brief, the General Expropriation Law provides the exclusive framework for all expropriation and expropriation-related claims in Argentina, and expropriation related claims, or "encumbrances" as described in Article 28, are interpreted broadly. *See* Argentina's Opening Brief, at 61-71. But the district court nevertheless permitted plaintiffs to bring claims outside of this framework based, in part, on its erroneous determination that Article 28 does not apply to expropriation-related claims if based on the bylaws of a state-created

entity, or if the claims are not asserted directly against the expropriated property.[5] In effect, the district court has engrafted a series of limitations on the familiar and broad legal term of "encumbrance" as recognized in Argentina and elsewhere.

The General Expropriation Law exists at the federal level, but each province has its own expropriation law, and the provincial laws largely track the federal law. With respect to Article 28 of the General Expropriation Law in particular, all of the Provinces have laws that are nearly identical to the federal law, precluding any "action by third parties" from "impeding the expropriation or its effects" and providing that the expropriated property will be transferred "free of all encumbrances." Declaration of Chiara Spector-Naranjo ("Decl."), Ex. 2 Art. 27 (Chubut Law I No. 45).[6]

The Provinces also have nearly identical provisions requiring the amount of compensation for the expropriated property to be "objective," and many of the provisions include specifically enumerated or prohibited factors to be taken into consideration when calculating compensation.[7] In other words, both the Provinces

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5 *See* Section II, *infra*.

6 *See also* Decl. ¶ 21, Ex. 3 Art. 36; Ex. 4 Art. 77; Ex. 5 Art. 37; Ex. 6 Art. 27; Ex. 7 Art. 73; Ex. 8 Art 27; Ex. 9 Art. 30; Ex. 10 Art. 21; Ex. 11 Art. 29.

7 *See*, *e.g.*, Chubut Law I No. 45 Art. 9, Decl. Ex. 2 ("Compensation will only include the objective value of the property and damages that are a direct or immediate consequence of the expropriation. Personal circumstances, emotional values, hypothetical profits, or the greatest value that the work to

and the Republic have the legal right to expropriate property and the obligation to compensate fairly within a defined framework so that owners and affected third parties get a reasonable payout and the Province can move on expeditiously and with certainty.

Additional provisions in the provincial laws also provide for agreement between the government and the owner of the property to be expropriated on the amount of compensation, or, in the absence of agreement, a specific judicial or administrative procedure to determine the appropriate amount of compensation.[8]

The provincial laws also set forth the procedure for how the owner of the expropriated property can challenge the compensation to be paid for the expropriated property. While there is some variation, the provincial laws generally specify the specific venue in which a challenge may be brought, who may initiate a proceeding, what evidence and arguments may be presented, and even which party bears the costs of the challenge. *See, e.g.*, Jujuy Articles 35-38, Decl. Ex. 4 (setting the procedure for initiating and answering challenges to expropriation compensation), Article 40 (evidence), and Article 44 (awarding costs to the owner of the property if the

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be executed may confer on the property will not be taken into account…"); *see also* Decl. Ex. 3 Art. 11; Ex. 4 Art. 17; Ex. 5 Art. 14; Ex. 6, Art. 8; Ex. 7 Art. 17; Ex. 8 Art. 12; Ex. 9 Art. 11; Ex. 10 Art. 6; Ex. 11 Art. 11.

[8] *See* Decl. Ex. 2, Arts. 6, 17; Ex. 3 Arts. 19, 27; Ex. 4 Arts. 26, 27; Ex. 5 Arts. 23, 24; Ex. 6 Arts. 18-21; Ex. 7 Arts. 26, 27; Ex. 8 Arts. 13, 14; Ex. 9 Arts. 15, 19; Ex. 10 Art. 11; Ex. 11 Arts. 16, 18, 19.

appraised compensation is 50% higher than the offered compensation, and to expropriator if it is lower than or equal to the offered compensation). Here again, the law provides a comprehensive framework that includes exclusive venue provisions, rules of decision, rules of standing and rules of what is relevant to the dispute.

And, like the General Expropriation Law, the provincial laws generally dictate a specific mechanism for expropriation-related claims by third parties.[9] The procedures generally require notification to third parties with an interest in the expropriation, and allow third parties to introduce evidence relating to any claimed damages. *See, e.g.*, Mendoza Law No. 1447 Arts. 27, 28, Decl. Ex. 6. The claimed damages are then taken into account in determining the compensation awarded to the owner of the expropriated property. *See id*., Articles 28, 33.

Although the specific details of the Provinces' procedures for handling third party claims vary, the statutes all reflect a legislative intent to prescribe a process for expropriation *with a limited duration, that allows for the resolution of third party claims, and that ultimately yields a completed expropriation free of any encumbrances*.

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[9] *See* Decl. Ex. 2, Arts. 26, 27; Ex. 3 Arts. 35, 36; Ex. 4 Arts. 34, 38, 46, 77; Ex. 5 Arts. 31, 37, 76; Ex. 6 Arts. 25, 27, 29, 42; Ex. 7 Arts. 31, 35; Ex. 8 Art. 24; Ex. 9 Art. 27; Ex. 10 Art. 36; Ex. 11 Art. 28.

Amicus curiae is not aware of any of the provincial laws being interpreted to allow for third-party claims outside of the expropriation framework or in courts outside of the province. None of the Provinces' expropriation statutes creates an exception to the expropriation framework where the third-party claim is asserted against the state rather than the expropriated property, or where the state was involved in creating the alleged right being asserted by the third party. *Amicus curiae* is not aware of any of the provincial laws being interpreted in a way that accords with the district court's interpretation. The district court, by carving out an exception to the exclusive statutory expropriation framework of the federal law, created a remedy for minority shareholders in New York that does not exist in Argentina, that is wholly at odds with the letter and purpose of a comprehensive statutory scheme, and that threatens not only the federal expropriation regime, but the provincial regimes as well.

II. The District Court's Narrow Reading of Article 28 of the General Expropriation Law Conflicts with the Provinces' Interpretations of their Substantially Similar Expropriation Laws

The district court's ruling in Appellees' favor was based, in part, on an erroneous interpretation of Article 28 of the General Expropriation Law. Argentina explains in its Opening Brief (at 62) that expropriation in Argentina is a process defined by public statutory law. That process affords rights to third parties to the expropriation, including a legal procedure through which third parties, such as

minority shareholders, may make claims or bring challenges. Plaintiffs/Appellees here had every right and opportunity to avail themselves of such claims or challenges in Argentina but made a strategic decision not to do so. Argentine law does not provide for expropriation-related contractual claims outside of the statutory expropriation framework. Argentina's Opening Brief at 63.[10] Moreover, the statutory expropriation process eliminates "encumbrances" on the expropriation. This is universally interpreted to mean that all claims must be timely brought within and resolved through the expropriation process so that Argentina takes the expropriated property free and clear so that the Argentine economy and its Provincial economies are not thrown into limbo. As stated above, the Provinces all have provisions that likewise prohibit third parties from "encumbering" the expropriation.

Nevertheless, the district court crafted its own exception to the requirement that the statutory expropriation regime result in an unencumbered expropriation. First, the court found that Plaintiffs/Appellees were not "third parties" under the statute because their claims were contractual in nature, purportedly based on corporate bylaws written by Argentina decades before Plaintiffs/Appellees became

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[10] *See also Tohmé v. Provincial Directorate of Roads*, TR Laley AR/JUR/2026/1995 (Sup. Ct. Province of Mendoza, Sala 1995), Decl. Ex. 13 ("Expropriation derives from the Constitution, consequently, it must be based on public law rules… The legal relationship created by the expropriation is of public law and cannot be substituted or compensated by those arising from private law; nor can private law govern the claim arising from the expropriation.").

YPF shareholders. And second, the district court held that there was no encumbrance resulting from Plaintiffs'/Appellees' claims because the claims were against Argentina, and not the expropriated shares. *Petersen Energia Inversora, S.A.U. v. Argentine Republic & YPF S.A.*, No. 15 CIV. 02739 (LAP), 2023 WL 2746022, at *15-16 (S.D.N.Y. Mar. 31, 2023), on reconsideration in part, No. 15 CIV. 02739 (LAP), 2023 WL 3625784 (S.D.N.Y. May 24, 2023). However, neither the federal nor the provincial expropriation statutes support these distinctions in any way that would be accepted by an Argentine court applying Argentine law.

The district court's error was based, in part, on its misunderstanding of "third party" as that term is used in Article 28 of the General Expropriation Law. Under both the federal and provincial statutory expropriation regimes, "third party" refers to any claimant who is *not* the expropriating party or the owner of the property being expropriated. As the Salta Province's appellate court explained in a recent decision relating to a provincial expropriation (the "Salta Case"), there are only two "subjects that make up the expropriation relationship: the active or expropriating party and … the owner of the property to be expropriated."[11] Any party who is neither the government expropriator nor the owner of the specific property being expropriated is considered a "third party." The Salta Province's appellate court specifically so

[11] Decl. Ex. 12, at 1.

held, concluding that the appellant, an estate with a usufructuary interest in the property to be expropriated, was a "third party" under the Salta Province's equivalent to Article 28, because, though its rights would be affected by the expropriation, it was neither the expropriator nor the owner of the expropriated property and was therefore a third party and not a party. [12] The district court's contrary conclusion that Article 28 did not apply to bar claims relating to encumbrances arising out of the expropriating party's contracts is without textual foundation under either federal or provincial law. [13] The provision by its terms applies to all "third parties" and the district court's exclusion of this specific instance is without legal foundation in Argentine law or statutory construction.

The appellant in the Salta Case was not without recourse for its expropriation-related claims. The court found that the appellant *should* be involved in the appraisal process for the expropriated property, because the appellant's claims would impact the objective value of the property to be expropriated, a measure that is meant to incorporate damages caused by the expropriation.[14] The court's conclusion highlights the dual purposes of the statutory expropriation process: it protects the

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12 *Id*. at Point 5.

13 *Id*.

14 *Id*. The General Expropriation Law has a similar provision. *See* Law No. 21,499 Article 10 (S.A. 230).

legal rights of third parties impacted by the expropriation, but also requires their involvement in that process to account for the cost of compensating their claims when arriving at a valuation for the expropriated property.[15] In the Salta Province case, as in the federal YPF expropriation, the amount to be paid for the expropriation would compensate not only the owner of the expropriated party, but also third parties with expropriation-related claims. In other words, as the legislators intended, all encumbrances would be extinguished through and by the conclusion of the expropriation process. *See* Law No. 21,499 Article 28 (S.A. 233); Salta Law 2614, Article 30.[16] The district court's alternative approach, allowing third parties to sit on their rights until the expropriation process has been completed, is unworkable and anathema to this statutory regime. If the district court's decision is allowed to stand, there is real risk of other courts following suit and reading into Argentine—and, by extension, provincial—law exceptions to the expropriation framework that federal and provincial legislators clearly did not intend. In essence, a United States legal ruling regarding the meaning of an Argentine statute would disempower and supplant the Argentine courts and a comprehensive Argentine statutory scheme and substitute its own judgment for that of Argentina. Such an outcome would not only

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15 Decl. Ex. 12, at Points 3, 5.

16 Decl. Ex. 9.

be contrary to the deference and respect owed by one sovereign court to another under the doctrine of comity and private international law, it would fundamentally change the available remedies that the parties bargained for under the Argentine regime.

The district court's interpretation of the statutory expropriation regime reflects a misunderstanding of how Argentine laws, and by extension provincial laws, should be analyzed by a court. "Civil law jurisdictions such as Argentina review the relevant 'civil code and statutory provisions as the primary source[s] of law and give them preponderant consideration.'" *Pegasus Aviation IV, Inc. v. Aerolineas Austral Chile, S.A.*, No. 08 CIV. 11371 (NRB), 2012 WL 967301, at *6 n.11 (S.D.N.Y. Mar. 20, 2012) (quoting *Curley v. AMR Corp.*, 153 F.3d 5, 14 (2d Cir. 1998)) (alteration in original). The same framework applies to the provincial laws.

In the Provinces, as at the federal level, these laws preempt private law agreements. *See* Argentina's Opening Brief, at 62. Interpreting the expropriation framework, as the district court did, in a manner that would render it inapplicable to government-created entities entails allowing a private law agreement to effectively preempt public law. This violates Argentina's interpretative approach. *See id.*, at 62; *United States v. Aguilar*, No. 20 CR 390 (ENV), 2024 WL 665947, at *2 (E.D.N.Y. Feb. 16, 2024) (quoting *Delaune v. United States*, 143 F.3d 995, 1002 n.6 (5th Cir. 1998)). Argentina, like most civil law jurisdictions, does not permit the

often more flexible approach to the construction and application of legal frameworks that a common law court might adopt based on its review of analogous case law. Civil law systems hew to close analysis of applicable codes and do not rely on case precedent, legislative history or other tools of construction that American judges regularly employ. A common law judge applying its familiar methodologies is inviting error.

Likewise, the district court's narrow interpretation of "encumbrances" to mean only formal legal claims to the specific property being expropriated, *Petersen Energia*, 2023 WL 2746022, at *15, lacks any justification or support in the civil law context. To the contrary, neither the Argentine nor the provincial laws contemplate a separate framework for contractual claims related to the expropriation, and therefore there was no reason for legislators to distinguish between claims against the property and claims against the government.[17] Encumbrance, when used in the context of expropriation, has a single and well recognized meaning in Argentine law and it is not for another country's court to cleave the meaning of a familiar term in two in a manner that is case dispositive. The district court's fundamental error in interpreting the statute underscores why it was not well-suited to decide complex matters of Argentine law.

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[17] Decl. Ex. 12, the Salta Case, at 5.

When interpreting Argentine law, the district court, to the extent it did not decline to exercise jurisdiction in these circumstances, should have interpreted Argentina's expropriation law as a closely integrated body of statutory law, and avoided arriving at any interpretation that would result in a divergence from the usual expropriation structure and jurisprudence. *Curley*, 153 F.3d at 14. And because expropriation is a process entirely regulated by public law, the district court should have avoided interpretations that would allow private agreements—regardless of who made them—primacy over statutory law. The district court's erroneous interpretations of Article 28 conflict with how the General Expropriation Law and similar provincial laws were intended to and have always been applied in Argentina. That error is fundamental and in derogation of Argentine sovereignty and statutory law and construction.

Moreover, the district court's erroneous interpretations of Argentine law, if affirmed, will likely come into stark focus if Plaintiffs/Appellants seek enforcement of the judgment in Argentina. According to Article 517 of the Civil and Commercial Procedure Code, a foreign judgment cannot be enforced in Argentina if the judgment "violate[s] the principles of public order of Argentine law." Decl. Ex. 1. As explained above, the YPF Expropriation Law, like any federal or provincial expropriation law, is considered a matter of "public order" under Argentine law, YPF Expropriation Law, Law No. 26,741, Art. 18 (S.A. 243), meaning that it is

fundamental to how the legal system operates. For the reasons explained above and in the Republic's Opening Brief, an Argentine court, and perhaps, eventually, the Republic's Supreme Court, may conclude that the district court's judgment is unenforceable, setting up serious and politically fraught conflicting judgments between the two nations' appellate courts.

CONCLUSION

For these reasons, *amicus* respectfully submits that this Court should reverse the orders entered by the district court.

Dated: February 29, 2024

Respectfully submitted,

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Dated: February 29, 2024

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CERTIFICATE OF SERVICE & CM/ECF FILING

I hereby certify that on February 29, 2024, I caused the foregoing motion to be filed with the Clerk of the Court for the U.S. Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 29, 2024

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