

Oral Argument Not Yet Scheduled
No. 24-7135

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RAMONA MATOS RODRIGUEZ, TATIANA CARBALLO GOMEZ, FIDEL
CRUZ HERNANDEZ, and RUSSELA MARGARITA RIVERO SARABIA,
Plaintiffs-Appellees,

v.

PAN AMERICAN HEALTH ORGANIZATION,
Defendant-Appellant,

JOAQUIN MOLINA, ALBERTO KLEIMAN, DOES 1-10,
Defendants.

*On Appeal from the United States District Court for the District of Columbia,
No. 1:20-cv-00928 (Hon. James E. Boasberg)*

BRIEF OF *AMICI CURIAE*
PROFESSOR WILLIAM S. DODGE, MARK B. FELDMAN, AND
PROFESSOR EDWARD T. SWAINE IN SUPPORT OF APPELLEES AND
DISMISSAL FOR LACK OF APPELLATE JURISDICTION

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July 7, 2025

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties, Intervenors, And *Amici*

Except for the *amici* filing this brief, all parties, intervenors, and *amici* appearing before the district court and in this Court are listed in the Brief of Plaintiffs-Appellees.

B. Rulings Under Review

References to the rulings at issue appear in the Brief of Plaintiffs-Appellees.

C. Related Cases

This case was before this Court in *Rodriguez v. Pan American Health Organization*, No. 20-7114, published at 29 F.4th 706 (D.C. Cir. 2022). Counsel is unaware of any other related cases within the meaning of Circuit Rule 28(a)(1)(C).

CERTIFICATE REGARDING SEPARATE BRIEFING

Pursuant to Circuit Rule 29(d), counsel for *amici curiae* Professor William S. Dodge, Mark B. Feldman, and Professor Edward T. Swaine certifies that a separate brief is necessary because no other *amicus* brief addresses the perspective and arguments of *amici*. *Amici* are particularly well suited to provide this Court important context on these subjects because they are law professors and former State Department officials with expertise on questions of immunity under the Foreign Sovereign Immunities Act and International Organizations Immunities Act. They have an interest in the proper resolution of whether jurisdictional-discovery orders are immediately appealable in immunity cases and believe their expertise may be helpful to this Court.

TABLE OF CONTENTS

	<u>Page</u>
CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES	i
CERTIFICATE REGARDING SEPARATE BRIEFING	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE	1
STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS	3
INTRODUCTION AND SUMMARY OF ARGUMENT	4
ARGUMENT.....	9
I. This Court’s Precedents Do Not Allow Appeals As Of Right From FSIA And IOIA Jurisdictional-Discovery Orders.....	9
II. International Organizations And Foreign States Should Not Receive Appeals As Of Right Under The Collateral-Order Doctrine	15
A. Expanding The Collateral-Order Doctrine Would Not Vindicate A Sufficiently Important Public Interest.....	18
B. Expanding The Collateral-Order Doctrine Would Burden This Court.....	24
C. Expanding The Collateral-Order Doctrine Would Create Perverse Incentives	26
CONCLUSION	28
CERTIFICATE OF COMPLIANCE.....	30
CERTIFICATE OF SERVICE.....	31

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>1964 Realty LLC v. Consulate of the State of Qatar-New York</i> , No. 14-cv-6429, 2015 WL 5197327 (S.D.N.Y. 2015).....	23
<i>Agurcia v. Republica De Honduras</i> , No. 19-cv-38, 2020 WL 5803001 (M.D. Fla. May 22, 2020)	23
<i>Al Odah v. United States</i> , 559 F.3d 539 (D.C. Cir. 2008)	15
<i>In re ALBA Petroleos de El Salvador S.E.M. de C.V.</i> , 82 F.4th 105 (2d Cir. 2023).....	10
<i>Allied Chem. Corp. v. Daiflon, Inc.</i> , 449 U.S. 33 (1980).....	10
<i>Atkinson v. Inter-Am. Dev. Bank</i> , 156 F.3d 1335 (D.C. Cir. 1998)	14
<i>Beecham v. Socialist People’s Libyan Arab Jamahiriya</i> , 424 F.3d 1109 (D.C. Cir. 2005)	5, 11
<i>Belize Bank Ltd. v. Gov’t of Belize</i> , 191 F. Supp. 3d 26 (D.D.C. 2016)	27
<i>Broidy Cap. Mgmt. LLC v. Muzin</i> , 12 F.4th 789 (D.C. Cir. 2021)	17, 24
<i>Brownback v. King</i> , 592 U.S. 209 (2021).....	18
<i>Chevron Corp. v. Republic of Ecuador</i> , 949 F. Supp. 2d 57 (D.D.C. 2013)	28
<i>Coopers & Lybrand v. Livesay</i> , 437 U.S. 463 (1978).....	10
<i>ELG Energy Fund XIV, L.P. v. Petroleo Brasileiro, S.A.</i> , 104 F.4th 287 (D.C. Cir. 2024)	25

<i>Env't Comm. of Fla. Elec. Power Coordinating Grp. v. EPA</i> , 94 F.4th 77 (D.C. Cir. 2024)	14
<i>Exxon Mobil Corp. v. Corporación CIMEX S.A.</i> , 534 F. Supp. 3d 1 (D.D.C. 2021)	22, 23
<i>FedEx Home Delivery, Inc. v. NLRB</i> , 849 F.3d 1123 (D.C. Cir. 2017)	13
<i>Foremost-McKesson, Inc. v. Islamic Republic of Iran</i> , 905 F.2d 438 (D.C. Cir. 1990)	13
<i>Gulfstream Aerospace Corp. v. Mayacamas Corp.</i> , 485 U.S. 271 (1988).....	12
<i>Hansen v. PT Bank Negara Indonesia (Persero), TBK</i> , 601 F.3d 1059 (10th Cir. 2010).....	14
<i>Helmerich & Payne Int'l Drilling Co. v. Bolivarian Republic of Venezuela</i> , 185 F. Supp. 3d 233 (D.D.C. 2016).....	23, 24
<i>Helmerich & Payne Int'l Drilling Co. v. Petróleos de Venezuela, S.A.</i> , 754 F. Supp. 3d 29 (D.D.C. 2024)	25
<i>Hulley Enters. Ltd. v. Russian Fed'n</i> , No. 14-1996, 2023 WL 8005099 (D.D.C. Nov. 17, 2023).....	27
<i>Jam v. Int'l Fin. Corp.</i> , 586 U.S. 199 (2019).....	4, 6, 14
<i>Kerr v. U.S. Dist. Court</i> , 426 U.S. 394 (1976).....	10
<i>Kilburn v. Socialist People's Libyan Arab Jamahiriya</i> , 376 F.3d 1123 (D.C. Cir. 2004)	8, 19, 20
<i>La Reunion Aérienne v. Socialist People's Libyan Arab Jamahiriya</i> , 533 F.3d 837 (D.C. Cir. 2008)	15
<i>Lewis v. Mutond</i> , 62 F.4th 587 (D.C. Cir. 2023)	17, 20

<i>United States v. Manzano</i> , 945 F.3d 616 (2d Cir. 2019).....	10
<i>Matos Rodriguez v. Pan Am. Health Org.</i> , No. 20-928, ECF 124 (D.D.C. Dec. 4, 2024)	8, 26
<i>Mohawk Indus., Inc. v. Carpenter</i> , 558 U.S. 100 (2009).....	7, 11, 15, 16, 17, 19, 20
<i>Nyambal v. Int’l Monetary Fund</i> , 772 F.3d 277 (D.C. Cir. 2014)	6, 12, 13, 14, 15
<i>O’Connell v. United States Conf. of Cath. Bishops</i> , 134 F.4th 1243 (D.C. Cir. 2025)	16, 18
<i>In re Papandreou</i> , 139 F.3d 247 (D.C. Cir. 1998)	5, 6, 7, 9, 10, 11, 12, 13, 15, 17, 26
<i>Phoenix Consulting, Inc. v. Republic of Angola</i> , 216 F.3d 36 (D.C. Cir. 2000)	20
<i>Price v. Socialist People’s Libyan Arab Jamahiriya</i> , 294 F.3d 82 (D.C. Cir. 2002)	25
<i>Process & Indus. Devs. Ltd. v. Fed. Republic of Nigeria</i> , 962 F.3d 576 (D.C. Cir. 2020)	5, 6, 7, 11, 12, 13, 15, 18, 20
<i>Republic of Hungary v. Simon</i> , 145 S. Ct. 480 (2025).....	18, 25
<i>Rodriguez v. Pan Am. Health Org.</i> , 612 F. Supp. 3d 1372 (S.D. Fla. 2020).....	24
<i>Samantar v. Yousuf</i> , 560 U.S. 305 (2010).....	24
<i>Sierra Club v. Jackson</i> , 648 F.3d 848 (D.C. Cir. 2011)	13
<i>In re Terrorist Attacks on Sept. 11, 2001</i> , 298 F. Supp. 3d 631 (S.D.N.Y 2018)	23

<i>Will v. Hallock</i> , 546 U.S. 345 (2006).....	16
<i>Wyatt v. Syrian Arab Republic</i> , No. 01-cv-1628, ECF 80 (D.D.C. April 27, 2006).....	28
<i>Wye Oak Tech., Inc. v. Republic of Iraq</i> , No. 10-cv-1182, 2023 WL 7112801 (D.D.C. Oct. 27, 2023).....	27

Statutes

International Organizations Immunities Act, 22 U.S.C. § 288 <i>et seq.</i>	4
22 U.S.C. § 288a(b)	4-7, 9-14, 16, 18, 19, 21, 22, 24-26
28 U.S.C. § 1292(b)	17
28 U.S.C. § 1391(f)(4)	24, 25
Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-11	4
28 U.S.C. § 1604.....	5-7, 9-14, 16, 18, 19, 21, 22, 24-28

Other Authorities

Convention on Privileges and Immunities of the United Nations, Feb. 13, 1946, 21 U.S.T. 1418, T.I.A.S. No. 6900	4
U.S. Const. amend XI	16

STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE

Amici are law professors and former State Department officials with expertise on questions of immunity under the Foreign Sovereign Immunities Act and International Organizations Immunities Act. They have an interest in the proper resolution of whether jurisdictional-discovery orders are immediately appealable in immunity cases and believe their expertise may be helpful to this Court.

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U.S. Foreign Relations (2023). Professor Swaine served as a Reporter for the first phase of the American Law Institute's Restatement (Fourth) of Foreign Relations Law and is an Adviser to the second phase. From 2005 to 2006, he served as Counselor on International Law to the Legal Adviser at the State Department.

Amici file this brief pursuant to Federal Rule of Appellate Procedure 29(a), and all parties to the appeal have consented to the filing of this brief.

**STATEMENT OF AUTHORSHIP AND
FINANCIAL CONTRIBUTIONS**

No counsel for any party authored this brief in whole or in part and no entity or person, aside from the *amici*, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court should reject Defendant-Appellant the Pan American Health Organization's ("PAHO") contention that "a court's grant of jurisdictional discovery" against "an international organization" is appealable under the collateral-order doctrine. PAHO Br. 19. *Amici* take no position on the merits of this appeal and note that, in extreme cases, a grant of jurisdictional discovery against an immune international organization could be reviewed by mandamus. But this Court should hold that such orders are not appealable as of right.

Adopting PAHO's jurisdictional rule would relegate district courts to the role of special masters, empowered only to devise discovery proposals that this Court ultimately must approve, and would carry implications far beyond this case. The International Organizations Immunities Act of 1945 ("IOIA"), 22 U.S.C. § 288 *et seq.*, grants international organizations like PAHO the "same immunity from suit ... as is enjoyed by foreign governments." 22 U.S.C. § 288a(b). "[T]hat means that the Foreign Sovereign Immunities Act" ("FSIA"), 28 U.S.C. §§ 1602-11, generally "governs the immunity of international organizations." *Jam v. Int'l Fin. Corp.*, 586 U.S. 199, 215 (2019).¹ Holding that such jurisdictional-discovery orders are

¹ As the Supreme Court acknowledged in *Jam*, an international organization's charter "can always specify a different level of immunity." *Id.* at 215 (noting that the Convention on Privileges and Immunities of the United Nations, Feb. 13, 1946,

appealable as of right would thus benefit international organizations, foreign states, any entities that claim to be instrumentalities of foreign states, and possibly foreign officials.

PAHO paints its jurisdictional arguments as settled law. In fact, this Court's precedents preclude them. The decisions in *In re Papandreou*, 139 F.3d 247 (D.C. Cir. 1998) (*Papandreou*); *Beecham v. Socialist People's Libyan Arab Jamahiriya*, 424 F.3d 1109 (D.C. Cir. 2005); and *Process & Industrial Developments Ltd. v. Federal Republic of Nigeria*, 962 F.3d 576 (D.C. Cir. 2020) (*P&ID*), all held that a jurisdictional discovery order against a foreign state is reviewable only on *mandamus*, not under the collateral-order doctrine. *Papandreou* implicitly foreclosed collateral-order appeals because it awarded the foreign official mandamus relief from a discovery order. See 139 F.3d at 250-51. Mandamus may issue only if there are no other adequate means for appellate review, and the collateral-order doctrine would have provided an adequate means. *Beecham* explicitly held that "orders to participate in the sort of discovery conference ... are not" appealable under the collateral-order doctrine. 424 F.3d at 1111. And *P&ID* reaffirmed that the collateral-order doctrine would not apply to an order that "addressed only jurisdictional discovery on the immunity issue." 962 F.3d at 582.

21 U.S.T. 1418, T.I.A.S. No. 6900, provides absolute immunity against every form of legal process).

Together these cases hold that mandamus is the only relief from jurisdictional-discovery orders concerning FSIA and IOIA immunity. Appellate review under the collateral-order doctrine is unavailable because jurisdictional-discovery orders do not conclusively determine FSIA or IOIA immunity.

PAHO relies on this Court's statement in *Nyambal v. International Monetary Fund*, 772 F.3d 277 (D.C. Cir. 2014), that a "district court's grant of discovery against an absolutely immune defendant ... qualif[ies] for collateral review." *Id.* at 280 (emphasis added). To quote this passage is to refute PAHO's argument. *Nyambal* rested its holding on this Court's pre-*Jam* jurisprudence, under which international organizations (unlike foreign states) had absolute immunity from suit. *Jam* overturned this precedent, holding that international organizations are "not absolutely immune from suit." 586 U.S. at 215. Whether or not a jurisdictional discovery order against an absolutely immune defendant (like a pre-*Jam* international organization) is immediately appealable is thus beside the point. PAHO is not absolutely immune anymore and cannot benefit from *Nyambal*. Instead, *Papandreou*, *Beecham*, and *P&ID*'s holdings that a foreign state has no such appeal as of right control, because after *Jam*, an international organization has no greater immunity than a foreign state. Because international organizations are entitled only to the "limited or 'restrictive' immunity that foreign governments currently enjoy," *Jam*, 586 U.S. at 202, this Court's jurisprudence holding that

jurisdictional-discovery orders under the FSIA are not appealable as of right controls.

In the alternative, *Nyambal* is just bad law. It misread *Papandreou* and another D.C. Circuit case when it announced its collateral-order holding and is also inconsistent with *Beecham*. When there is a conflict between precedents, the earlier-in-time decision controls. *Papandreou* and *Beecham* thus control over *Nyambal*.

Papandreou, *Beecham*, and *P&ID* are not only controlling, they are also right. The Supreme Court has repeatedly held that courts must be cautious before expanding the collateral-order doctrine, because piecemeal appeals “undermine[] efficient judicial administration and encroach[] upon the prerogatives of district court judges.” *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009) (citations omitted). PAHO’s arguments, which apply equally to all discovery orders, cannot be accepted.

PAHO tries to paint its argument as a logical extension of the rule entitling foreign states and international organizations to appeal orders denying motions to dismiss on immunity grounds. This is not an apt comparison. Unlike orders denying immunity under the FSIA and IOIA, jurisdictional-discovery orders under these statutes do not “so imperil[]” fundamental interests “as to justify the cost of allowing immediate appeal of the entire class of relevant orders.” *Id.* at 108. Mandamus relief remains available, and the equities for jurisdictional-discovery orders differ greatly.

Foreign sovereign and international organization immunity is immunity from jurisdiction, and so resolving the immunity issue conclusively is necessary before a district court can exercise jurisdiction over the defendant. By contrast, a district court always has jurisdiction to determine its own jurisdiction, and so jurisdictional-discovery orders cannot be barred by foreign sovereign or international organization immunity.

Jurisdictional-discovery orders are inherently discretionary. District courts retain “considerable latitude in devising the procedures [they] will follow to ferret out the facts pertinent to jurisdiction.” *Kilburn v. Socialist People’s Libyan Arab Jamahiriya*, 376 F.3d 1123, 1131 (D.C. Cir. 2004). This principle reflects both that district courts have greater institutional competence than appellate courts in managing day-to-day discovery disputes, and that discovery disputes are usually not important enough to merit appellate review.

By contrast, overturning D.C. Circuit precedent and holding that the collateral-order doctrine applies to this class of discovery orders would severely disrupt actions against foreign states and international organizations in this Circuit. As Chief Judge Boasberg put it below, “if any district court order conclusively expanding jurisdictional discovery is appealable, immunity-claiming defendants like PAHO might be able to grind cases like this to a halt by appealing every unfavorable discovery order.” *Matos Rodriguez v. Pan Am. Health Org.*, No. 20-928, ECF 124,

at 8 (D.D.C. Dec. 4, 2024). Authorizing such appeals as of right would allow foreign states at least three interlocutory appeals on sovereign immunity. That would create perverse incentives for foreign states to appeal repeatedly, even on barely colorable grounds, solely to delay their cases.

For all these reasons, this Court should dismiss this appeal for lack of jurisdiction.

ARGUMENT

I. This Court’s Precedents Do Not Allow Appeals As Of Right From FSIA And IOIA Jurisdictional-Discovery Orders.

Decades of precedent foreclose PAHO’s argument that interlocutory appeal is available to vindicate its alleged IOIA immunity against jurisdictional discovery. Mandamus is the only relief available from FSIA and IOIA jurisdictional-discovery orders, serving as a safety valve to stop clear abuses of discretion in immunity cases.

This Court first recognized that mandamus is the only proper relief from jurisdictional-discovery orders concerning FSIA and IOIA immunity in *Papandreou*, 139 F.3d 247. Citing principles of international comity, this Court granted a writ of mandamus that vacated a jurisdictional-discovery order requiring Greek government officials to sit for depositions to evaluate Greece’s FSIA immunity defense. *Id.* at 249-50. Mandamus was warranted in part because the order was overly broad and failed to consider “less intrusive means of obtaining the information.” *Id.*

By granting mandamus, *Papandreou* implicitly held that an interlocutory appeal under the collateral-order doctrine was unavailable for such jurisdictional-discovery orders. “Mandamus is a ‘drastic’ remedy, ‘to be invoked only in extraordinary situations.’” *Id.* at 250 (quoting *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976)). And it may “issue only upon a showing that,” among other things, “‘no other adequate means to attain the relief’ exists.” *Id.* (quoting *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980)). Interlocutory appeal under the collateral-order doctrine is one such alternative that precludes mandamus. *See, e.g., In re ALBA Petroleos de El Salvador S.E.M. de C.V.*, 82 F.4th 105, 115 (2d Cir. 2023) (mandamus relief unavailable if the petitioner could obtain “relief through the regular appeals process” (quoting *United States v. Manzano*, 945 F.3d 616, 623 (2d Cir. 2019))). By granting mandamus, *Papandreou* necessarily established that collateral-order review of jurisdictional-discovery orders concerning FSIA or IOIA immunity is unavailable.

Papandreou further explained that such jurisdictional-discovery orders cannot satisfy the collateral-order doctrine’s requirement that an underlying order “conclusively determine the disputed question.” *Id.* at 250 (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978)). “The ordinary way for a party to obtain quick appellate review of a discovery order,” *Papandreou* notes, “is simply to disobey it. If held in contempt, *a litigant then has a final order from which he*

may appeal, asserting any legal flaws in the underlying discovery order.” *Id.* (emphasis added). By distinguishing between discovery and contempt orders, *Papandreou* recognized that discovery orders are not conclusive enough to trigger the collateral-order doctrine. *See also Mohawk Indus.*, 558 U.S. at 112-13. An interlocutory appeal from a jurisdictional discovery order testing FSIA or IOIA immunity differs from an appealable order denying an immunity defense. *See Papandreou*, 139 F.3d at 251.

This Court has reaffirmed *Papandreou*’s jurisdictional holding on two occasions. In *Beecham*, 424 F.3d 1109, the Libyan government appealed from an order that the parties confer and propose a joint plan to conduct jurisdictional discovery as to Libya’s FSIA immunity defense. *Id.* at 1110. This Court held that the collateral-order doctrine applied to orders that “finally determine the foreign state’s right to be immune.” *Id.* at 1111. Orders directing parties to propose a jurisdictional discovery plan “do not by any stretch ... conclusively determine the scope of jurisdictional discovery,” and so could not be subject to an interlocutory appeal. *Id.* (citations omitted). And *Beecham* recognized that the Court has “also exercised mandamus jurisdiction to consider the scope of a district court’s jurisdictional discovery order.” *Id.* (citing *Papandreou*, 139 F.3d at 251-52). “Only if the [district] court orders jurisdictional discovery and clearly abuses its discretion in determining the scope of discovery could mandamus possibly lie.” *Id.* at 1112.

Most recently in *P&ID*, this Court reviewed, under the collateral-order doctrine, an order requiring Nigeria to brief the merits of an arbitral enforcement action before resolving Nigeria's FSIA defense. 962 F.3d at 579. But *P&ID* distinguished such orders from jurisdictional-discovery orders like the one at issue in *Papandreou* (and here). When a district court orders a putatively immune entity to brief the merits, it "conclusively reject[s]" the entity's "immunity from having to defend the merits in th[e] case." *Id.* at 582-83. By contrast, when an order "addresse[s] only jurisdictional discovery on the immunity issue, it [does] not require the foreign sovereign to litigate the merits." *Id.* at 582 (discussing *Papandreou*, 139 F.3d at 249-50). Accordingly, *P&ID* explained that in *Papandreou*, "the collateral-order doctrine would not have applied." *Id.*

Together, *Papandreou*, *Beecham*, and *P&ID* hold that jurisdictional-discovery orders are not appealable under the collateral-order doctrine. Mandamus is the only relief from jurisdictional-discovery orders concerning FSIA and IOIA immunity, and even then, mandamus is available only if the district court clearly abused its discretion in denying a party's "clear and indisputable" right to relief. *Papandreou*, 139 F.3d at 250 (quoting *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988)).

PAHO ignores these holdings and relies instead on this Court's decision in *Nyambal*, 772 F.3d at 280, that a jurisdictional discovery order against "an

absolutely immune defendant” can be subject to interlocutory appeal under the collateral-order doctrine. PAHO Br. 18-24.

To be clear, *Nyambal* misreads the sole precedent it cites for the proposition that “[a] district court’s grant of discovery against an absolutely immune defendant is sufficiently conclusive to qualify for collateral review.” *Nyambal*, 772 F.3d at 280 (citing *Foremost-McKesson, Inc. v. Islamic Republic of Iran*, 905 F.2d 438, 443 (D.C. Cir. 1990)). *Foremost-McKesson* concerned Iran’s interlocutory appeal of the denial of its motion to dismiss on FSIA immunity grounds. *Foremost-McKesson*, 905 F.2d at 442. *Papandreou*, *Beecham*, and *P&ID* all distinguished such orders from jurisdictional-discovery orders.

Error aside, *Nyambal* does not control, for two reasons.

First, *Nyambal* cannot control because it is inconsistent with *Papandreou* and *Beecham*, both of which predate *Nyambal*. “[W]hen a decision of one panel is inconsistent with the decision of a prior panel, the norm is that the later decision, being in violation of that fixed law, cannot prevail.” *Sierra Club v. Jackson*, 648 F.3d 848, 854 (D.C. Cir. 2011); see, e.g., *FedEx Home Delivery, Inc. v. NLRB*, 849 F.3d 1123, 1127 & n.3 (D.C. Cir. 2017). *P&ID* then reaffirmed, six years after *Nyambal*, that mandamus, and not interlocutory appeal, is the appropriate way to review jurisdictional-discovery orders regarding FSIA or IOIA immunity. *P&ID*,

962 F.3d at 582. Thus, there can be no suggestion that *Nyambal* limited or overruled *Papandreou* or *Beecham*.

Second, *Nyambal* cannot control because it rests on a premise that the Supreme Court has expressly abrogated. *Nyambal* held that “[a] district court’s grant of discovery against an *absolutely immune* defendant is sufficiently conclusive to qualify for collateral review.” 772 F.3d at 280 (emphasis added). Under this Court’s former jurisprudence, international organizations enjoyed absolute immunity from suit under the IOIA absent express waiver of immunity. *Atkinson v. Inter-Am. Dev. Bank*, 156 F.3d 1335, 1341 (D.C. Cir. 1998). But in *Jam*, the Supreme Court held that the IOIA confers the same immunity on international organizations as the FSIA does foreign governments, and that international organizations are “not absolutely immune from suit.” 586 U.S. at 215. Because *Nyambal* rests on now-overturned precedent, it cannot control.

Holding that *Nyambal* is no longer good law is also necessary to avoid a circuit split. No other circuit allows interlocutory appeals as of right from district court orders granting jurisdictional discovery into FSIA or IOIA immunity. And in *Hansen v. PT Bank Negara Indonesia (Persero), TBK*, 601 F.3d 1059 (10th Cir. 2010), the Tenth Circuit rejected the notion “that a FSIA defendant may immediately appeal from a discovery order that it considers impermissibly broad.” *Id.* at 1064. This Court tries to “avoid creating circuit splits when possible.” *Env’t Comm. of*

Fla. Elec. Power Coordinating Grp. v. EPA, 94 F.4th 77, 116 (D.C. Cir. 2024) (citation omitted). Reading *Nyambal* as having been implicitly overruled by *Jam*, or as inconsistent with prior, controlling D.C. Circuit precedent, avoids a split.

II. International Organizations And Foreign States Should Not Receive Appeals As Of Right Under The Collateral-Order Doctrine

This Court should also rest assured that *P&ID*, *Beecham*, and *Papandreou* were rightly decided. “The collateral order exception allows appellate review of an interlocutory order if the order: ‘[1] conclusively determines the disputed question, [2] resolves an important issue completely separate from the merits of the action, and [3] is effectively unreviewable on appeal from a final judgment.’” *Al Odah v. United States*, 559 F.3d 539, 543 (D.C. Cir. 2008) (quoting *La Reunion Aerienne v. Socialist People’s Libyan Arab Jamahiriya*, 533 F.3d 837, 843 (D.C. Cir. 2008)) (internal quotations and alteration omitted). The collateral-order doctrine “must never be allowed to swallow the general rule that a party is entitled to a single appeal, to be deferred until final judgment has been entered,” because “piecemeal, prejudgment appeals ... undermine[] efficient judicial administration and encroach[] upon the prerogatives of district court judges.” *Mohawk Indus.*, 558 U.S. at 106 (internal quotations omitted).

PAHO contends that all three of the doctrine’s prongs are satisfied because “the challenged order conclusively determined that PAHO must respond to plaintiffs’ discovery requests,” the issue raised in the appeal is separate from the

merits of plaintiffs' claims, and "the issue of PAHO's immunity from jurisdictional discovery cannot be effectively reviewed on appeal from final judgment." PAHO Br. 24-25. But these arguments apply to *all* discovery orders and are not unique to jurisdictional discovery under the FSIA and IOIA.

PAHO's argument is inconsistent with how the Supreme Court has applied the collateral-order doctrine. Because every pretrial ruling can be characterized as "effectively unreviewable," the Court instead requires "some particular value of a high order ... in support of the interest in avoiding trial." *Will v. Hallock*, 546 U.S. 345, 351-52 (2006) (listing, as examples, presidential immunity, qualified immunity, Eleventh Amendment immunity, and double jeopardy, but holding that the Federal Tort Claims Act's judgment-bar does not qualify). "[T]he Supreme Court has rarely extended the collateral order doctrine to cover new categories." *O'Connell v. United States Conf. of Cath. Bishops*, 134 F.4th 1243, 1253 (D.C. Cir. 2025) (orders relating to the church autonomy doctrine do not qualify). Abiding "by the final decision rule, even when an admittedly important right is at stake, is utterly unexceptional." *Id.* at 1257. Litigants often must "wait until after final judgment to vindicate valuable rights, including rights central to our adversarial system." *Mohawk Indus.*, 558 U.S. at 108-09. "The crucial question ... is not whether an interest is important in the abstract; it is whether deferring review until final judgment so imperils the interest as to justify the cost of allowing immediate appeal of the entire class of relevant

orders.” *Id.* at 108 (denials of attorney-client privilege do not qualify). “[P]retrial discovery orders” virtually never meet this bar. *Id.*

It also bears emphasis that the operative question is not whether jurisdictional-discovery orders should *ever* be reviewable. Mandamus exists as a safety valve when a district court clearly oversteps its discretion. *Papandreou*, 139 F.3d at 250. Nor is the issue whether this Court should review jurisdictional-discovery orders *de novo*. PAHO agrees that, under this Court’s precedent, jurisdictional-discovery orders are reviewed for abuse of discretion. *See* PAHO Br. 18 (citing *Lewis v. Mutond*, 62 F.4th 587, 590 (D.C. Cir. 2023)). Permissive interlocutory review under 28 U.S.C. § 1292(b) might also be available for the rare discovery orders posing “a controlling question of law” that would “materially advance the ultimate termination of the litigation.” *See, e.g., Mohawk Indus.*, 558 U.S. at 110-11 (citing the possibility of Section 1292(b) and mandamus review as reasons not to expand the collateral-order doctrine). The sole issue is whether this Court should expand the collateral-order doctrine to cover jurisdictional-discovery orders, on abuse-of-discretion review, whether or not mandamus or Section 1292(b) review would be available.

There is no reason to do so. “[I]mmediate appealability is strong medicine that is harmful when misused.” *Broidy Cap. Mgmt. LLC v. Muzin*, 12 F.4th 789, 796 (D.C. Cir. 2021). Expanding the collateral-order doctrine in this way would “contravene [the] strong judicial-efficiency interests supporting the final judgment

rule.” *Id.* International organizations’ and foreign states’ interests in avoiding jurisdictional discovery does not outweigh the harm this expansion of the collateral-order doctrine would do to the final judgment rule.

A. Expanding The Collateral-Order Doctrine Would Not Vindicate A Sufficiently Important Public Interest

Orders conclusively determining foreign sovereign immunity are immediately appealable because respecting foreign countries’ immunity serves important public policies, including international comity, reciprocity, and separation-of-powers interests. *See P&ID*, 962 F.3d at 581. But this Court “would risk a dramatic expansion of the collateral order doctrine by hinging it on concerns of encumbrance.” *O’Connell*, 134 F.4th at 1256. Jurisdictional-discovery orders are different from orders denying immunity from suit, for at least five reasons.

First, a district court unquestionably has jurisdiction to grant jurisdictional discovery in FSIA and IOIA cases. The FSIA “provides foreign states with presumptive immunity from suit in the United States” under 28 U.S.C. § 1604, “unless a specified exception applies.” *Republic of Hungary v. Simon*, 145 S. Ct. 480, 488 (2025). This entails a right to avoid “merits litigation,” not discovery into sovereign (or international organization) immunity. *P&ID*, 962 F.3d at 584. This distinction matters. A district court lacks jurisdiction to try the merits unless and until a final decision has been reached on a party’s immunity defenses. *See, e.g., id.* But “a federal court always has jurisdiction to determine its own jurisdiction” and

thus cannot be said to lack jurisdiction to order discovery into a party's jurisdictional defenses. *E.g., Brownback v. King*, 592 U.S. 209, 218 (2021) (citation omitted).

Second, a district court's decision denying immunity has greater significance to a foreign state or international organization than an order granting jurisdictional discovery. The former is all-or-nothing: If the defendant has immunity, no discovery or merits briefing may go forward; if not, the case can proceed. By contrast, appellate review of FSIA and IOIA jurisdictional-discovery orders lacks this binary focus on *whether* discovery is proper and instead turns on *how much* and *what kind* of discovery is necessary. This difference results from the nature of a foreign sovereign or international organization immunity defense. A foreign state or international organization always has the option of challenging "the legal sufficiency of the plaintiff's jurisdictional allegations," in which case, "the plaintiff's factual allegations [are taken] as true," and there is generally no need for jurisdictional discovery. *Kilburn*, 376 F.3d at 1127 (citation omitted). Jurisdictional discovery generally arises only when the defendant challenges "the factual basis of the court's jurisdiction," as the court may no longer assume that the plaintiff's allegations are true but must instead "resolve any disputed issues of fact." *Id.* (citation omitted). The propriety of jurisdictional discovery thus does not involve a "conclusive" ruling on a discrete legal issue, *Mohawk Indus.*, 558 U.S. at 106

(citation omitted), but rather the proper exercise of the district court's discretion in deciding precisely what sort of discovery is needed to inform its decision.

Third, the standard of review is different. Because the equities that foreign sovereign immunity and international organization immunity protect are so important, orders denying immunity are reviewed *de novo*. *P&ID*, 962 F.3d at 579. Jurisdictional-discovery orders, by contrast, are reviewed for abuse of discretion. *See, e.g., Lewis*, 62 F.4th at 590. If the interests served by reviewing jurisdictional-discovery orders are not so significant to require plenary appellate review, they are not so important to require interlocutory review for every order. *See, e.g., Mohawk Indus.*, 558 U.S. at 110 (declining to expand the collateral-order doctrine to attorney-client privilege decisions because “[m]ost district court rulings on these matters involve the routine application of settled legal principles” and “are unlikely to be reversed on appeal, particularly when they rest on factual determinations for which appellate deference is the norm”).

Fourth, appellate courts do not have greater institutional competence than district courts in fashioning the scope of jurisdictional-discovery orders. True, “jurisdictional discovery should be carefully controlled and limited.” *Phoenix Consulting, Inc. v. Republic of Angola*, 216 F.3d 36, 40 (D.C. Cir. 2000) (citations omitted). But district courts retain “considerable latitude in devising the procedures [they] will follow to ferret out the facts pertinent to jurisdiction.” *Kilburn*, 376 F.3d

at 1131. Disputes over jurisdictional discovery often turn on whether subpoenas, depositions, and the like are appropriate and proportionate under the circumstances of a particular case. This appeal is a case in point: Stripped of its legal posturing, PAHO challenges, among other things, the proportionality of “interrogatory 1,” “document request 8,” “document requests 1-3 and 7, as well as plaintiffs’ deposition request,” and offers a line-by-line explanation for why each request is too broad. PAHO Br. 35-39. It also challenges the relevance of discovery requests. PAHO Br. 28-35. These fact-bound, case-specific discovery questions lie in the heartland of district court expertise and often admit to a wide range of reasonable solutions, without raising recurring appellate issues. They are far less common in appellate courts, as few appeals hinge on the propriety of discovery orders.

Fifth, there is no reason to believe that district courts are routinely abusing their discretion when considering requests for jurisdictional-discovery orders. Of the many FSIA and IOIA cases filed in federal district courts nationwide in the last five years, *amici* have not identified *any* in which the district court has yet granted jurisdictional discovery relating to sovereign immunity or international organization immunity.² Upon a search for jurisdictional-discovery orders relating to foreign

² Counsel for *amici* conducted a search on LexMachina for dockets across federal district courts nationwide with the query: “Foreign Sovereign Immunities Act” OR “International Organizations Immunities Act.” The search was restricted to cases commenced between June 25, 2020, and June 25, 2025. Counsel designed this search query to be over-inclusive, and capture cases where the FSIA or IOIA may

sovereign or international organization immunity across federal district courts nationwide within the last ten years,³ *amici* identified only five orders granting such jurisdictional discovery—six if the present action is included.

The jurisdictional-discovery orders in those five cases are all modest in scope and carefully limited to uncovering the specific contested facts that bear on the immunity determination, either because the defendant seeking immunity put those facts in question or has peculiar knowledge of those facts. For example, in *Exxon Mobil Corp. v. Corporación CIMEX S.A.*, 534 F. Supp. 3d 1 (D.D.C. 2021), the court permitted “limited jurisdictional discovery” on “three topics,” one of which was the

have been mentioned in *any* docket entry—such as a defendant’s responsive pleading or court order—even if the plaintiff failed to properly plead her claims under those statutes. This search yielded 1,377 cases. Of those cases, only 82 mentioned “jurisdictional discovery” in *any* papers on the docket—including any briefing and court orders. Upon reviewing those 82 cases, counsel determined that only 31 involved discussions of foreign sovereign immunity or international organization immunity. The rest discussed jurisdictional discovery in other contexts, such as personal-jurisdiction discovery against a non-sovereign or non-international-organization defendant. In 11 of those 31 cases, the parties did not request jurisdictional discovery into foreign sovereign or international organization immunity. Finally, of the remaining 20 cases, the court denied jurisdictional discovery in 12, and briefing is still ongoing in 8.

³ Counsel for *amici* conducted a search on Westlaw for orders from federal district courts nationwide—issued after June 30, 2015—that contained the term “jurisdictional discovery” within 100 words of a reference to the FSIA or the IOIA. Counsel found 46 such orders, issued from 28 distinct cases. Then, counsel reviewed these orders to determine whether (1) a request for jurisdictional discovery into foreign sovereign or international organization immunity was at issue, (2) if yes, whether such jurisdictional discovery was granted, and (3) if yes, the scope of jurisdictional discovery granted.

veracity of factual representations by one defendant in declarations upon which the court had relied. *Id.* at 30, *vacated and remanded for other reasons, Exxon Mobil Corp. v. Corporacion CIMEX, S.A.*, 111 F.4th 12 (D.C. Cir. 2024). Similarly, in *Agurcia v. Republica De Honduras*, No. 19-cv-38, 2020 WL 5803001 (M.D. Fla. May 22, 2020), the court granted discovery on twelve categories of plaintiffs’ discovery requests “limited to facts essential to an immunity determination” after the sovereign defendants submitted declarations as to those facts. *See id.* at *2-4.

Other jurisdictional-discovery orders pertained to principal-agent relationships or the foreign sovereign’s ownership or control over an instrumentality—facts uniquely in possession of the defendants. In *In re Terrorist Attacks on Sept. 11, 2001*, 298 F. Supp. 3d 631 (S.D.N.Y. 2018), the court permitted “limited and targeted” discovery on the “nature and scope” of the agency relationship between two individuals and Saudi Arabia because Saudi Arabia had submitted no “contrary evidence” on the issue. *Id.* at 640, 649-50; *see also Helmerich & Payne Int’l Drilling Co. v. Bolivarian Republic of Venezuela*, 185 F. Supp. 3d 233, 243-47 (D.D.C. 2016) (narrowly tailoring discovery into the foreign sovereign instrumentality’s legal and practical control over the allegedly expropriated property and the agency relationship between defendants); *1964 Realty LLC v. Consulate of the State of Qatar-New York*, No. 14-cv-6429, 2015 WL 5197327, at *8-15 (S.D.N.Y. 2015) (“limited jurisdictional discovery” on four

categories of information “peculiarly within the knowledge of” the foreign state that bore on the existence of a principal-agent relationship between the foreign sovereign and a diplomatic official who executed a disputed real estate agreement).

This evidence suggests that the district courts are exercising their discretion responsibly. There is no injustice or inefficiency that needs correcting.

B. Expanding The Collateral-Order Doctrine Would Burden This Court

Permitting collateral-order review here would have far-reaching negative consequences. The Court’s holding here will extend not just to international organizations, but also to foreign states and instrumentalities, because after *Jam*, the IOIA confers the same immunity as afforded foreign states under the FSIA. *See supra*, Part I. Foreign officials will likely argue that they too can appeal under the collateral-order doctrine. *See, e.g., Broidy*, 12 F.4th at 798 (“Foreign sovereign immunity may, in certain circumstances, also protect individuals even though the FSIA does not.” (citing *Samantar v. Yousuf*, 560 U.S. 305, 324-25 (2010))).

The burdens associated with expanding the collateral-order doctrine, *supra*, pp.15-17, would be disproportionately felt by this Court. The U.S. District Court for the District of Columbia is the default venue for cases against foreign states. 28 U.S.C. § 1391(f)(4). Some courts have held that this Court is also the default venue for actions against international organizations. *See Rodriguez v. Pan Am. Health*

Org., 612 F. Supp. 3d 1372, 1382 (S.D. Fla. 2020) (“international organization immunity must necessarily encompass Section 1391(f)’s venue restrictions”).

Expanding the collateral-order doctrine as PAHO advocates would result in at least *three* interlocutory appeals by foreign states, instrumentalities, and officials and international organizations on immunity alone. Defendants claiming immunity under the FSIA or IOIA already enjoy two opportunities for interlocutory appeal: first, after the denial of a motion to dismiss on immunity grounds before discovery, *Price v. Socialist People’s Libyan Arab Jamahiriya*, 294 F.3d 82, 91 (D.C. Cir. 2002); and second, after the denial of summary judgment on immunity grounds after discovery, *EIG Energy Fund XIV, L.P. v. Petroleo Brasileiro, S.A.*, 104 F.4th 287, 292 (D.C. Cir. 2024). For this reason, several cases against foreign states have been pending for decades, prolonged by successive appeals. *E.g.*, *Simon*, 145 S. Ct. at 489 (filed in 2010); *Helmerich & Payne Int’l Drilling Co. v. Petróleos de Venezuela, S.A.*, 754 F. Supp. 3d 29, 36 (D.D.C. 2024) (noting that since the case was filed in 2011 “there have been a district court opinion, two D.C. Circuit opinions, and one Supreme Court opinion” dealing with “preliminary issues” like foreign sovereign immunity). Holding that jurisdictional-discovery orders are immediately appealable will potentially result in additional interlocutory appeals on immunity alone.

Three interlocutory appeals on immunity is, if anything, a conservative estimate of what will happen if PAHO prevails. After the first appeal on a

jurisdictional discovery order, the district court might need to authorize a second discovery order. If PAHO is right, that order, too—no matter how limited—would be appealable. Foreign states might also disobey discovery orders, incur sanctions, and then have the right to take *another* interlocutory appeal. *Papandreou*, 139 F.3d at 250. In this case, for example, if this Court affirms the jurisdictional discovery even in part, but the PAHO fails to abide by the discovery orders on remand, the district court might order further discovery or impose contempt sanctions against the PAHO. Each order could spawn its own appeal.

Chief Judge Boasberg thus had it right: “[I]f any district court order conclusively expanding jurisdictional discovery is appealable, immunity-claiming defendants like PAHO might be able to grind cases like this to a halt by appealing every unfavorable discovery order.” *Matos Rodriguez, supra*, ECF 124, at 8. There is no logical stopping point for PAHO’s conception of the collateral-order doctrine. And it is this Court that will bear the brunt of expanded appellate jurisdiction.

C. Expanding The Collateral-Order Doctrine Would Create Perverse Incentives

Finally, expanding the collateral-order doctrine to cover appeals from jurisdictional-discovery orders under the FSIA and IOIA would create perverse incentives. In the interest of avoiding successive appeals on successive discovery orders, plaintiffs might be incentivized to seek the broadest possible discovery at the

outset to avoid multiple trips to this Court. District judges might also be more inclined to grant broad discovery to prevent piecemeal litigation.

Foreign states and international organizations might adjust their litigation tactics too. They would have every reason to follow PAHO's playbook: challenge the legal sufficiency of a complaint, appeal the denial of a motion to dismiss, file a new motion to dismiss contesting the facts underlying the complaint, appeal when the district court authorizes discovery into the truth of the factual showing, and then appeal again once the district court resolves factual disputes on the motion to dismiss.

This risk is hardly speculative. Even under current law, courts have lamented the “all too familiar story of [foreign sovereigns] losing in [FSIA] litigation and then dragging their feet to compensate a plaintiff.” *Wye Oak Tech., Inc. v. Republic of Iraq*, No. 10-cv-1182, 2023 WL 7112801, at *1 (D.D.C. Oct. 27, 2023). Examples abound of foreign states that undertake such delay tactics. *See, e.g., Hulley Enters. Ltd. v. Russian Fed’n*, No. 14-1996, 2023 WL 8005099, at *2 (D.D.C. Nov. 17, 2023) (noting sovereign defendant’s almost decade-long consumption of the court’s resources as well as those of courts around the world, and that it “has repeatedly advanced permutations of the same arguments in attempts to avoid enforcement of the Final Awards”); *Belize Bank Ltd. v. Gov’t of Belize*, 191 F. Supp. 3d 26, 33 (D.D.C. 2016) (rejecting sovereign’s arguments regarding arbitration agreement that

were “squarely foreclosed” by an earlier D.C. Circuit opinion in which sovereign was the defendant), *aff’d*, 852 F.3d 1107 (D.C. Cir. 2017); *Chevron Corp. v. Republic of Ecuador*, 949 F. Supp. 2d 57, 63 (D.D.C. 2013) (sovereign defendant attempted “to get two bites at the apple of the merits of its dispute with Chevron, by seeking to have this Court separately determine the arbitrability of the underlying dispute under both the FSIA and the New York Convention”), *aff’d*, 795 F.3d 200 (D.C. Cir. 2015); *Wyatt v. Syrian Arab Republic*, No. 01-cv-1628, ECF 80, at 3 (D.D.C. April 27, 2006) (“With the defendant’s carte blanche refusal to engage even in planning for jurisdictional discovery, let alone levying specific challenges to the plaintiffs’ jurisdictional discovery plan, the court will endorse the plaintiffs’ discovery plan in large part.”).

Expanding the collateral-order doctrine to encompass jurisdictional-discovery orders would open the floodgates to similar gamesmanship. That prudential consideration only reinforces the legal conclusion that jurisdictional-discovery orders are not, and should not be, appealable.

CONCLUSION

For the foregoing reasons, the appeal from the district court should be dismissed for lack of jurisdiction.

Dated: July 7, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7) because it contains 6102 words (based on the Microsoft Word word-count function), excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 32(e)(1).

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on July 7, 2025. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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