No. 07-236

In the Supreme Court of the United States

PATRICIO CLERICI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

PAUL D. CLEMENT
Solicitor General
Counsel of Record
JEFFERY S. BUCHOLTZ
Acting Assistant Attorney General
MICHAEL JAY SINGER
SUSHMA SONI
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

Whether 28 U.S.C. 1782 authorizes a federal district court to order discovery for use in a proceeding in a foreign court concerning that court's execution of its own judgment outside of the United States if the foreign judgment has not been domesticated in the United States.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes, regulations and rules:

Miscellaneous:

Miscellaneous—Continued: Page

In the Supreme Court of the United States

No. 07-236

PATRICIO CLERICI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 481 F.3d 1324. The order of the district court (Pet. App. 24a-31a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 21, 2007. On June 21, 2007, Justice Thomas extended the time within which to file the petition for a writ of certiorari to and including August 18, 2007, and the petition was filed on August 17, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. For more than 150 years, Congress has authorized federal courts to provide assistance in gathering evidence for use in foreign tribunals. See *Intel Corp.* v. *Advanced Micro Devices, Inc.*, 542 U.S. 241, 247 (2004). That assistance may be invoked in several ways, including by the issuance of a foreign "letter rogatory," that is, a type of formal request from a foreign tribunal to a court in the United States seeking the court's assistance in the collection of evidence. See *id.* at 247 n.1; 22 C.F.R. 92.54. While letters rogatory may be delivered directly to the addressee court, Congress has also authorized the United States Department of State to receive letters rogatory and to present them through the Department of Justice to the appropriate court. 28 U.S.C. 1781(a); 22 C.F.R. 92.67(d); see 28 U.S.C. 516; see, *e.g.*, *In re Letter Rogatory from the First Court of First Instance in Civil Matters, Caracas, Venez.*, 42 F.3d 308, 309 (5th Cir. 1995).

Beginning in 1948, "Congress substantially broadened the scope of assistance federal courts could provide for foreign proceedings" through a series of amendments to 28 U.S.C. 1782. *Intel Corp.*, 542 U.S. at 247-249. As amended, Section 1782(a) provides that a district court may order a person within its district to give testimony or produce a document or other thing "for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation," upon request "by a foreign or international tribunal or upon the application of any interested person." 28 U.S.C. 1782(a). The court's order may appoint a person to "take the testimony or statement" and "may prescribe the practice and procedure * * * for taking the testimony or statement or producing the doc-

ument or other thing." *Ibid.* "To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure." *Ibid.*

2. a. Petitioner is a Panamanian citizen who resides in Miami, Florida. Pet. App. 2a. In 1998, petitioner brought a civil suit in Panama against NoName Corporation and others in the Second Court of the Circuit of Colon, Civil Branch, Republic of Panama (Panamanian Court). *Ibid.* As a result of the suit, certain property of NoName Corporation was seized. *Ibid.* The court subsequently dismissed petitioner's lawsuit for failure to prosecute and vacated the attachment of the corporation's property. *Ibid.* In November 2000, that decision was affirmed on appeal. *Ibid.*

In 2001, NoName Corporation filed an incidental proceeding in the Panamanian Court, claiming damages for injury to its business resulting from petitioner's civil suit and the attachment proceeding. Pet. App. 2a-3a. In 2002, the court entered judgment against petitioner, ordering him to pay NoName Corporation, in Panamanian balboas,[1] 1,996,598.00 in damages and 294,589.70 in costs. *Id.* at 3a. Petitioner has represented that he has appealed that judgment in Panama. *Id.* at 8a, 30a-31a.

NoName Corporation filed a petition to domesticate its foreign judgment in Florida state court in 2004, but has not pursued that pending action. Pet. App. 3a & n.2.

On January 27, 2005, NoName Corporation filed a post-judgment petition before the Panamanian Court that had entered judgment against petitioner, request-

---

[1] One Panamanian balboa is the equivalent of one U.S. dollar. Pet. App. 3a n.1

ing that the court begin procedures necessary to execute the judgment. Pet. App. 3a-4a. The petition identified certain questions to be asked of petitioner regarding his assets in Panama and elsewhere, as well as other financial matters, and suggested that the court obtain that evidence through the issuance of a letter rogatory. *Id.* at 4a-5a. The Panamanian Court granted the petition and issued a letter rogatory to the "Judicial Authorities of the City of Miami," requesting assistance in obtaining sworn responses from petitioner to "be used in the civil process before this court." *Id.* at 5a-6a.

b. Pursuant to 28 U.S.C. 1782, the United States filed an *ex parte* application in the United States District Court for the Southern District of Florida for an order appointing an Assistant United States Attorney as a commissioner to obtain the evidence requested in the letter rogatory. Pet. App. 6a. On October 12, 2005, the district court granted the application and issued the requested order. *Id.* at 7a-8a.

Petitioner subsequently opposed the application, arguing, *inter alia*, that it should be denied because Section 1782 did not authorize the district court to enforce a foreign judgment pursuant to a letter rogatory and that, even if Section 1782 were applicable, the court should exercise its discretion to deny discovery. Pet. App. 8a. To support his position, petitioner asserted that NoName Corporation's judgment against him was invalid, was being challenged in Panama, and was unenforceable in Florida because it had not yet been domesticated. *Ibid.*

The district court construed petitioner's opposition as a motion to vacate its prior order, and denied the motion. The court concluded that the Panamanian Court's request was "strictly limited to seeking evidence" in the

form of petitioner's sworn statement, which was not an improper attempt to enforce a foreign judgment using Section 1782. Pet. App. 27a-29a. It explained that a federal court's collection of evidence "'complementary to the execution' of a foreign judgment" abroad was not equivalent to enforcement of a foreign judgment in this country, and that petitioner had failed to cite any authority suggesting otherwise. *Id.* at 27a-28a. Finally, the court exercised its discretion to grant the requested evidentiary assistance, explaining that petitioner could continue both "to argue against a domestication of the Panamanian judgment in Florida state court" and "to proceed with his appeal of the foreign judgment in Panama." *Id.* at 30a-31a.[2]

c. The court of appeals affirmed. Pet. App. 1a-23a. It concluded that the district court had authority under Section 1782(a) to grant the request in the Panamanian Court's letter rogatory because all of Section 1782(a)'s statutory prerequisites were satisfied: the request was made by a "foreign or international tribunal" or "any interested person;" it sought evidence either by "testimony or statement" or the production of "a document or other thing;" the evidence was "for use in a proceeding in a foreign or international tribunal;" and the person from whom discovery was sought resided or was found in the district of the district court. *Id.* at 11a-16a.

The court rejected petitioner's contention that the application improperly sought to "enforce" a foreign judgment and was "not seeking evidence." Pet. App. 12a-13a. It explained that the Panamanian Court had

---

[2] The district court indicated that petitioner could move to limit the scope of the Section 1782 request by a date certain. Pet. App. 31a n.4. Petitioner did not do so, and did not challenge the scope or manner of discovery on appeal. *Id.* at 10a, 20a n.16.

"asked for assistance in obtaining only [petitioner's] sworn answers to questions," that such assistance in obtaining evidence was "the primary purpose of § 1782," and that no request had been made to "sequester, levy on, or seize control of [petitioner's] assets or otherwise help enforce NoName's judgment." *Ibid.* Concluding that discovery was not the "equivalent of executing on [NoName's] foreign judgment" in federal court, the court emphasized that "NoName cannot sequester, levy on, or seize control of, any assets of [petitioner] in this country" unless and "until [its] foreign judgment has been domesticated in this country." *Id.* at 13a n.9, 23a.

The court of appeals likewise held that the evidence concerning petitioner's properties and other sources of income was "for use in a proceeding" before a foreign tribunal, and that the proceeding was actually pending in the Panamanian Court. Pet. App. 14a-15a. The court specifically rejected petitioner's argument that the term "proceeding" in Section 1782 was limited to "adjudicative proceedings" because "nothing in the plain language of § 1782" imposed such a requirement. *Ibid.*

Having confirmed Section 1782's application to this case, Pet. App. 11a-16a, the court of appeals held that the district court permissibly exercised its statutory discretion under Section 1782. *Id.* at 16a-19a.

Finally, the court of appeals concluded that Rule 69(a) of the Federal Rules of Civil Procedure did not require that NoName's foreign judgment be domesticated before discovery could be taken under Section 1782 because Rule 69(a) did not apply in this context. Pet. App. 19a-23a. It explained that Section 1782 itself authorizes discovery and that Civil Rules 26 through 36 would govern the manner in which that discovery would be taken if, as here, the district court has not exercised

its authority under Section 1782 to order alternative practices and procedures. *Id.* at 19a-20a. Rule 69(a), in contrast, governs the process to "enforce a money judgment" in federal court and "authorizes" the use of discovery in aid of that process of execution. *Id.* at 21a-22a. The court of appeals therefore concluded that Rule 69(a) does not apply because, "[a]s stressed earlier," the district court's discovery order "is not executing on [a foreign] judgment." *Id.* at 21a & n.17.

The court of appeals explained that "imposing a requirement that a foreign judgment first must be domesticated in the United States before a § 1782 application for assistance can be granted * * * would render § 1782 unnecessary in many circumstances." Pet. App. 23a. In this case, the court noted, NoName Corporation may not need to domesticate its judgment in order to seek petitioner's assets in this country if petitioner's testimony reveals sufficient assets abroad to satisfy the judgment against him. *Ibid.*

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court. The petition for a writ of certiorari should therefore be denied.

1. Section 1782 reflects a determination by Congress to authorize federal courts to issue orders for the "gathering evidence for use in foreign tribunals" in order to advance Congress's twin goals of "providing efficient assistance to participants in international litigation" and "encouraging foreign countries by example to provide similar assistance to our courts." *Intel Corp.* v. *Advanced Micro Devices, Inc.*, 542 U.S. 241, 247, 252 (2004) (citation omitted). Congress imposed few statutory re-

strictions on Section 1782's application to foreign requests for assistance. Cf. *In re Gianoli*, 3 F.3d 54, 59 (2d Cir.) (statute "grants wide assistance to others, but *demands* nothing in return"), cert. denied, 510 U.S. 965 (1993). The statute vests district courts with discretion to assist in the collection of pertinent evidence whenever (1) a "foreign or international tribunal" or an "interested person" requests assistance in obtaining (2) either the "testimony or statement" of, or the production of "a document or other thing" from, (3) a person who resides or is found in the district of the district court (4) "for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation." 28 U.S.C. 1782(a).

The court of appeals correctly held that Section 1782 authorized the district court to exercise its discretion to grant the discovery requested by the Panamanian Court because, as is relevant here, that discovery was for use in a "proceeding" in a foreign tribunal. Pet. App. 14a-15a.[3] As the court explained, the text of Section 1782 makes clear that it applies to "proceedings" before such tribunals and is not limited to "adjudicatory proceedings" as petitioner suggests. *Ibid.*

Notably, petitioner makes no attempt to support his interpretation of "proceeding" with textual analysis, see Pet. 6-11, and nothing in Section 1782 supports his extra-textual limitation on the term. This Court has rejected similar attempts to add non-textual restrictions to Section 1782, and no different outcome is warranted here. See, *e.g.*, *Intel Corp.*, 542 U.S. at 256-257 (declining to read "any interested person" to reach only "liti-

---

[3] Petitioner does not contest that Section 1782's other criteria are met or dispute that the Panamanian Court is a foreign "tribunal."

gants"); *id.* at 260-262 (rejecting claim that statute bars discovery of documents that foreign tribunal could not obtain if documents were in its jurisdiction).

Petitioner contends (Pet. 8) that this Court's decision in *Intel Corp.* indicates that the term "proceeding" must be "adjudicative" because it must be an "adjudication on the merits" of a claim. *Intel Corp.* does not support that view. It instead explains that "Congress *eliminated* the requirement that a proceeding be 'judicial'" as well as the requirement that a proceeding be "pending." 542 U.S. at 258 (emphasis added). Thus, to the extent petitioner suggests that an "adjudicative" proceeding is limited to judicial proceedings leading to final judgment, that position cannot be squared with the amended statute. Moreover, *Intel Corp.* "reject[ed] the view * * * that § 1782 comes into play only when adjudicative proceedings are 'pending' or 'imminent," holding instead that, in the context of the case, Section 1782 requires only a "dispositive ruling by the [European] Commission * * * be within reasonable contemplation." *Id.* at 259. The Court did not purport generally to define the scope of the term "proceeding," much less limit it to "adjudicative proceedings."

Petitioner similarly misreads (Pet. 8-9) the statute's legislative history as supporting his position. The relevant committee report explains that, if Section 1782 *applies* to a request for assistance, the court "[i]n exercising its discretionary power" to grant or deny assistance may consider "the character of the proceedings in that country." S. Rep. No. 1580, 88th Cong., 2d Sess. 7 (1964). This supports the view that the term "proceedings" is not limited as petitioner contends, and reflects Congress's understanding that district courts might account for differences in the *types* of proceedings only

when exercising their statutory discretion. See also *id.* at 8 ("all * * * proceedings" in foreign administrative and quasi-judicial tribunals are covered); H.R. Rep. No. 1052, 88th Cong., 1st Sess. 9 (1963) (same).

2. Petitioner contends (Pet. 3, 10-11) that the decision of the court of appeals conflicts with decisions in the Second Circuit, which petitioner reads as limiting Section 1782's assistance to certain "adjudicative proceedings." No such conflict exists.

Petitioner's view that a "proceeding" in Section 1782 means an "adjudicative proceeding" traces its origin to the Second Circuit's "holding that an Indian Income-Tax Officer is not a 'tribunal' within 28 U.S.C. § 1782." See *In re Letters Rogatory Issued by the Dir. of Inspection of the Gov't of India*, 385 F.2d 1017, 1022 (2d Cir. 1967) (*India*). The *India* court based that holding on its conclusion that the tax office in question had "an institutional interest in a particular result" and, thus, lacked the "complete objectivity normally associated with a 'tribunal.'" *Id.* at 1020-1021. The court explained that it was not holding that "a foreign agency must satisfy all the requirements for adjudicatory proceedings * * * to qualify as a 'tribunal' under 28 U.S.C. § 1782," but that "one useful guideline" for evaluating whether such an agency is a "tribunal" is the "absence of any degree of separation between the prosecutorial and adjudicative functions." *Id.* at 1020-1021.

The Second Circuit has subsequently stated that *India* reflects that "Congress intended 'tribunal' to have an adjudicatory connotation," *Fonseca* v. *Blumenthal*, 620 F.2d 322, 323 (2d Cir. 1980), and has occasionally abbreviated the two independent statutory requirements of "a *proceeding* in a foreign or international *tribunal*" with the shorthand phrase "adjudicative proceed-

ing." See, *e.g.*, *In re Request for Judicial Assistance (Letter Rogatory) for the Federative Republic of Braz.*, 936 F.2d 702, 705 (2d Cir. 1991) (*Brazil*) (emphasis added) (investigation "conducted by Brazilian police, tax, and currency officials" is not "adjudicative proceeding" under Section 1782 "as construed in *India*"); *In re Esses*, 101 F.3d 873, 875 (2d Cir. 1996) (describing *Brazil* in dicta).

Notwithstanding this terminology, the Second Circuit has never held that Section 1782 is inapplicable to requests for assistance in obtaining discovery for use in a proceeding before a foreign court (satisfying *India*'s requirement of decisional impartiality) on the ground that the particular type of "proceeding" before that court is not "adjudicative." Rather, it has found it "irrelevant" whether the specific portion of a proceeding in which the discovery will be used is "adjudicative" or not. *In re Gianoli*, 3 F.3d at 62.

In re Euromepa, S.A., 154 F.3d 24 (2d Cir. 1998), is consistent with this understanding. *Euromepa* involved a request by insurers for discovery of evidence "for use in [an] appeal" challenging the merits of a French trial court judgment that resolved an insurance claim against them. *Id.* at 26. Before the discovery was taken, their appeal to a French intermediate court of appeal (which could "take and hear new evidence") concluded and the French Supreme Court affirmed. *Id.* at 26 & n.1 The Second Circuit held that the insurers' Section 1782 request was properly dismissed as moot because there were no longer any "foreign proceedings, within the meaning of the statute, in which the discovery could be *used*." *Id.* at 29 (emphasis added).

The *Euromepa* court explained that the requested discovery was relevant only to the merits of the insur-

ance dispute, which was finally resolved, and could not be "used" in an ongoing bankruptcy proceeding since "the merits of the dispute" could not be litigated there. *Id.* at 28-29; see *id.* at 29 (dismissal could have been earlier because discovery "could not be 'for use in' the French Supreme Court," which does not "take and hear new evidence"). While the *Euromepa* decision repeats the shorthand phrase "adjudicative proceeding," that language does not affect its holding that a discovery request becomes moot when its fruits can no longer be "used" in a proceeding before a foreign tribunal. That holding, like the Second Circuit's other decisions in this context, are consistent with the decision of the court of appeals here.[4]

In any event, the Panamanian Court proceeding in this case qualifies an "adjudicative proceeding." There is no dispute that the Panamanian Court is an adjudicative "tribunal," nor that the tribunal rendered a judgment against petitioner, which is the subject of the pending proceeding. The proceeding to enforce the court's judgment against petitioner is considered "incidental" to the judgment itself, Pet. App. 2a, much as enforcement proceedings in the United States are considered "supplementary" to, rather than "separate" from, the original judgment. See generally *Peacock* v. *Thomas*, 516 U.S. 349, 356 (1996). Because the pending enforcement proceedings are logically viewed as a continuation of the

[4] Petitioner's assertion (Pet. 2, 8) that "adjudicative" proceedings against him have concluded in Panama, with "no possibility of any future adjudication on the merits," is inconsistent with his representation below that the Panamanian judgment is indeed being challenged (Pet. App. 8a, 30a-31a). The fact that petitioner is contesting the judgment against him in the course of the pending enforcement proceedings further distinguishes this case from *Euromepa*.

original proceedings in which judgment was entered against petitioner, cf. *In re Gianoli*, 3 F.3d at 62, and petitioner offered no basis for concluding that enforcement proceedings are viewed in a different light in Panama, the decision below does not conflict with any of the decisions relied upon by petitioner.

3. Petitioner contends (Pet. 11-15) that the court of appeals' decision permits litigants to obtain discovery in a manner that circumvents the need to domesticate a foreign judgment before obtaining discovery under Federal Rule of Civil Procedure 69(a). That contention is incorrect and does not merit review.[5]

Petitioner conflates two distinct concepts: (1) the recognition and enforcement of a foreign judgment by domestic courts *in the United States* and (2) the collection of evidence for use in foreign proceedings incidental to the enforcement of a foreign judgment *in the foreign country*. "Domestication" is required in the former context because a foreign court's judgment has no "effect, of its own force, beyond the limits of the sovereignty from which its authority is derived," *Hilton* v. *Guyot*, 159 U.S. 113, 163 (1895), and must be formally recognized by a court in the United States before it is treated

---

[5] Petitioner does not appear to contest the court of appeals' holding that Rule 69(a) is inapplicable, Pet. App. 21a-22a, and that holding is plainly correct. Rule 69(a) provides that the "[p]rocess to enforce *a judgment* for the payment of money shall be a writ of execution, unless the court directs otherwise," and that the judgment creditor "may obtain discovery" under the federal civil rules or in the manner specified under state law "[i]n aid of *the judgment* or execution." Fed. R. Civ. P. 69(a) (emphases added). The court of appeal thus correctly concluded that Rule 69(a) authorizes discovery (which might otherwise be unavailable) in aid of "the" judgment when that judgment is being enforced pursuant to Rule 69(a). As discussed below, the district court's discovery order does not enforce a foreign judgment.

as a binding court judgment that can be enforced in this country.[6] The United States thus has long construed Section 1782 to foreclose foreign courts from using letters rogatory to enforce their judgments in the United States.[7] The taking of evidence under Section 1782 in

---

[6] No federal statute or treaty governs the recognition of foreign court judgments in the United States. Consequently, state law governs such recognition and enforcement in proceedings in state courts and in federal courts sitting in diversity. See *Yahoo! Inc.* v. *La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199 (9th Cir.), cert. denied, 126 S. Ct. 2332 (2006); *Restatement (Third) of Foreign Relations Law of the United States* § 481 cmt. a (1987).

Once recognized, a foreign judgment can have preclusive effect on claims litigated in the United States and may be "enforced" in a domestic civil action to obtain "affirmative relief" from a U.S. court, including appropriate orders directing the collection of money owed under the judgment. See *Restatement (Second) of Conflicts of Laws* topic 3, intro. note at 302 (1971); *id.* §§ 98, 100 cmt. d, 101 and cmts. a-b, 102 and cmt. b; *Restatement (Third) of Foreign Relations Law of the United States* § 481 and cmts. b, g-h.

[7] A 1976 memorandum from the Department of State, circulated to consular officials and to the Administrative Office of the United States Courts, explains that requests by foreign tribunals for the enforcement of foreign judgments "are beyond the scope of authority granted to the courts by law * * * [and] cannot be enforced by means of a request for judicial assistance[.]" *In re Civil Rogatory Letters Filed by the Consulate of the United States of Mex.*, 640 F. Supp. 243, 244 (S.D. Tex. 1986) (*Mexico*) (quoting memorandum). That view is reflected in decisions of the few courts that have considered the question. See, *e.g.*, *In re Letter Rogatory Issued by the Second Part of the III Civil Regional Court of Jabaquara/Saude, Sao Paolo, Braz.*, No. 01-MC-212 (JC), 2002 WL 257822, *1 (E.D.N.Y. Feb. 6, 2002) (declining to comply with letter rogatory asking for "order of execution" requiring deposit of funds by respondent); *Osario* v. *Harza Eng'g Co.*, 890 F. Supp. 750, 754 (N.D. Ill. 1995) (declining to enforce award of fees after concluding that "[n]othing" in Section 1782 "nor any other federal statute provides for the enforcement of a foreign judgment through the use of letters rogatory"); *Tacul, S.A.* v. *Hartford Nat'l Bank & Trust Co.*, 693 F.

this case, however, merely provides a foreign court with evidence concerning petitioner's assets and financial information for use in the court's own *foreign* proceedings. It is not tantamount to executing a judgment on assets: it neither entails recognizing a foreign judgment in the United States nor, as the court of appeals explained, permits anyone to enforce a foreign judgment through judicial process in this country. See Pet. App. 13a, 23a ("NoName cannot sequester, levy on, or seize control of, any assets of [petitioner] in this country" until its "foreign judgment has been domesticated in this country").

If the evidence requested by the Panamanian court indicates that petitioner's assets are within the United States, then NoName Corporation will need to comply with applicable federal and state law in order to execute its Panamanian judgment in the United States.[8] But NoName Corporation will not know if that is necessary until the questions posed by the Panamanian court are answered by petitioner. Ultimately, if all or a substantial portion of petitioner's assets are in Panama, then NoName Corporation will not need to execute its Panamanian judgment in the United States.

Petitioner's concern (Pet. 14) that discovery might be used in foreign proceedings "lacking any appearance of due process" is one that a district court might consider in exercising its discretion under Section 1782, and petitioner has not challenged the district court's exercise of

---

Supp. 1399, 1400 (D. Conn. 1988) (declining to enforce foreign judgment against assets in U.S. bank); *Mexico*, 640 F. Supp. at 244 (declining to enforce Mexican judgment against Mexican national in Texas).

[8] We take no position on whether the Panamanian judgment has been domesticated within the United States, or whether NoName Corporation will be able to do so.

discretion here. Moreover, petitioner's construction of "proceeding" to exclude assistance under Section 1782 once a foreign court enters judgment would categorically prohibit such assistance regardless of the fairness of the foreign court's proceedings. The court of appeals correctly rejected petitioner's position, which would improperly undermine the important congressional goal of "encouraging foreign countries by example to provide similar assistance to our courts," *Intel Corp.*, 542 U.S. at 252. Pet. App. 13a-15a.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

PAUL D. CLEMENT
Solicitor General
JEFFREY S. BUCHOLTZ
Acting Assistant Attorney General
MICHAEL JAY SINGER
SUSHMA SONI
Attorneys

DECEMBER 2007