UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

PROCESS AND INDUSTRIAL DEVELOPMENTS LIMITED,	:	
Petitioner,	:	
v.	:	Civil Action No. 18-594
FEDERAL REPUBLIC OF NIGERIA and MINISTRY OF PETROLEUM RESOURCES OF THE FEDERAL REPUBLIC OF NIGERIA,	:	
Respondents.	:	

MEMORANDUM OF LAW IN SUPPORT OF PROCESS AND INDUSTRIAL DEVELOPMENTS LIMITED'S PETITION TO CONFIRM ARBITRATION AWARD

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PRELIMINARY STATEMENT

This is an action to confirm a final, binding arbitration award (the "Final Award"). A tribunal of three prominent jurists (the "Tribunal") issued the Final Award in London, United Kingdom, on January 31, 2017, after a years-long arbitration proceeding (the "Arbitration") between Process and Industrial Developments Limited ("P&ID") and the Ministry of Petroleum Resources of the Federal Republic of Nigeria.

The Final Award arises out of a dispute between P&ID and Nigeria over Nigeria's failure to perform its obligations under a Gas Supply and Processing Agreement (the "Agreement"). (*See generally* Andrew Decl. Ex. 1.) The Agreement was executed on January 11, 2010, by P&ID and "the Ministry of Petroleum Resources for and on Behalf of the Federal Government of Nigeria." (*Id.* at 2.[1])

The Agreement laid out the parties' vision for a state-of-the-art gas processing facility to be built in the Nigerian coastlands, where natural gas released during the mining of offshore oil fields—which, to that point, had been wastefully burned off as it was released—could be refined and used to supply Nigeria's national electric grid with desperately needed fuel. The parties' obligations were straightforward: P&ID was to build and operate the facility, and Nigeria was to supply P&ID with agreed-upon quantities of natural gas for its refining operation. When Nigeria failed to uphold its end of the bargain, P&ID referred the dispute to arbitration, consistent with the terms of an arbitration clause in the Agreement. (*See* Andrew Decl. Ex. 1 at 14–15.) After proceedings spanning more than four years—due in part to Nigeria's repeated requests for

[1] Several of the exhibits to the Andrew Declaration are marked with preexisting page numbers. In many cases, one or more cover pages are not numbered. Because this Memorandum contains no specific citations to these unnumbered preliminary pages, exhibit citations will, for ease of reference, be made according to the preexisting numbers appearing at the bottom of an exhibit's pages.

extensions of time and other delay tactics—the Tribunal found that Nigeria had repudiated the Agreement by failing to satisfy its obligations and eventually abandoning the project contemplated thereunder, causing P&ID to lose substantial profits it would have earned over the 20-year period during which Nigeria was to supply P&ID with natural gas. (Andrew Decl. ¶ 15 and Ex. 8.) The Tribunal ordered Nigeria to pay P&ID $6,597,000,000 in damages, with 7 percent interest to be calculated from March 20, 2013, the date on which P&ID accepted Nigeria's repudiation of the Agreement. (Andrew Decl. Ex. 17 at 33–34.) Nigeria did not move to set aside the Final Award at the seat of arbitration, and, under English law, the deadline for doing so has long since passed. Although the Final Award was issued over a year ago, Nigeria has paid P&ID nothing. Interest on the Final Award—totaling $2,303,889,287.67 as of March 16, 2018—continues to accrue at a rate of $1,265,178.08 per day. (Andrew Decl. ¶ 27.)

P&ID is entitled to collect what it is owed. P&ID therefore respectfully requests that this Court confirm the Final Award and incorporate its terms into a U.S. judgment in favor of P&ID. Petitions to confirm international arbitral awards are governed by Chapter 2 of the Federal Arbitration Act (9 U.S.C. § 201 *et seq.*), which incorporates the treaty obligations of the United States under the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). *See* 9 U.S.C. § 201. The New York Convention requires courts in contracting countries to confirm awards falling under the Convention unless one of several limited, enumerated grounds applies. None of these grounds for deferring or denying confirmation applies to the Final Award.

The Final Award should be confirmed by entering judgment against both the Ministry of Petroleum Resources (the "Ministry"), as the named respondent in the Arbitration, and the Federal Republic of Nigeria (the "Republic" and, together with the Ministry, "Nigeria"). The Ministry is

a part of the Republic, created purely for the government's own organizational purposes. It has no independent legal personality. Nigeria explained in the Arbitration that the Ministry is "an unincorporated ministr[y] of government" and "a policy instrument of the government of the Federal Republic of Nigeria; it is not a juristic person." (Andrew Decl. Ex. 4 at 4.) Nigeria has taken the same position in other proceedings, including in litigation in federal court in New York, in which the Republic explained that the Ministry is not a separate entity under Nigerian law, cannot and does not own property, and "cannot be sued as an entity distinct from the [Federal Republic of Nigeria]." (Green Decl. Ex. 1 at 6.) Accordingly, it is appropriate for the Court to enter judgment against both the Ministry and the Republic as a whole.

Finally, Nigeria has no sovereign immunity defense to confirmation of the Final Award. Immunity of foreign sovereigns from federal-court jurisdiction is governed by the Foreign Sovereign Immunities Act ("FSIA"), which lays out several situations in which sovereign immunity cannot be invoked. At least two of those exceptions to sovereign immunity apply here. First, 28 U.S.C. § 1605(a)(6) specifically provides that foreign sovereigns enjoy no immunity from actions "to confirm an award made pursuant to . . . an agreement to arbitrate" where "the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards." The Final Award is governed by such a treaty—the New York Convention—so Nigeria's status as a foreign sovereign does not deprive this Court of jurisdiction to confirm the award. Second, under 28 U.S.C. § 1605(a)(1), a foreign sovereign has no immunity "in any case in which [it] has waived its immunity either explicitly or by implication." Nigeria waived its immunity to confirmation of the Final Award when it agreed to arbitrate disputes arising under the Agreement.

BACKGROUND

A. The Contract and Nigeria's Breach

The Final Award arose from an effort by P&ID to help Nigeria generate much-needed electricity. Despite a flourishing economy—Africa's largest—long buoyed by one of the strongest energy export sectors in the world, Nigeria has been unable to meet the domestic energy needs of its 180 million residents. As of 2016, Nigeria's largest power-generation stations produced a combined 2,800 megawatts of electricity, an amount roughly equal to that used by Edinburgh, Scotland—a city that is home to less than half a million people.

In 2006, P&ID was formed by two Irish nationals who had been engaged in major engineering projects in Nigeria for over 30 years. (Andrew Decl. Ex. 5 at 5–7.) By 2008, P&ID had developed a proposal for a creative solution to Nigeria's electricity shortage: harnessing the strength of Nigeria's oil-and-gas sector to create natural gas suitable for electricity generation at no monetary cost to Nigeria. (*Id.* at 11–13.) P&ID presented its proposal to Umaru Musa Yar'Adua, who at the time was both President of the Republic and Minister of Petroleum Resources. (*Id.* at 14.)

P&ID's proposal envisioned a natural gas processing facility to be constructed and operated by P&ID at a site in Calabar, Nigeria, a coastal city located near several offshore oil reservoirs that are actively mined by private companies who hold Oil Mining Licenses ("OMLs") issued by Nigeria. (*Id.* at 11–13.) These reservoirs, like many around the world, contain both crude oil and natural gas; as oil is extracted from the reservoirs, natural gas that exists alongside it is also released. (*Id.* at 13.) Historically, it has been far more profitable for companies that hold OMLs to focus exclusively on extracting and exporting crude oil from Nigeria's offshore fields.

(*Id.* at 8.) The natural gas released during the mining process has typically been burned away as it is released into the atmosphere, a process known as "flaring." (*Id.*)

If captured, the natural gas released from these offshore oil fields could be sent to one or several of Nigeria's gas-fueled generating stations, where it could be used to power Nigeria's national electric grid. But this is not a simple process: the natural gas released from Nigeria's offshore oil fields is associated, or "wet," gas; it cannot be used to generate electricity because it contains heavy hydrocarbon condensates known as "natural gas liquids" ("NGLs"). (*Id.* at 7.) Under P&ID's proposal, the natural gas released from some of Nigeria's offshore fields would be sent to the Calabar site, where P&ID would strip away the NGLs at its processing facility, refining the wet gas into non-associated, or "lean," gas. (*Id.* at 11.) Unlike wet gas, lean gas is suitable for electricity generation. (*Id.* at 7.) P&ID would construct and operate the processing facility, supplying Nigeria with sorely needed fuel, capable of meeting its domestic electricity needs, without requiring any monetary payment from Nigeria. (*Id.* at 7, 16.) In exchange, Nigeria would make all necessary arrangements for wet gas to be supplied to the Calabar site, and P&ID would be given the right to retain and sell for its own account the NGLs stripped away during the refining process. (*Id.*) Although they render wet gas unsuitable for electricity generation, NGLs—which include ethane, propane, and butane—are valuable fuels that are independently marketable at lucrative prices. (*Id.* at 16.) P&ID therefore stood to make a substantial profit from these sales.

After extensive discussions, the parties agreed to implement P&ID's proposal according to terms set forth in the Agreement, which both parties executed on or about January 11, 2010. (*See generally* Andrew Decl. Ex. 1.) The parties agreed that Nigeria would supply wet gas under the Agreement for a term of 20 years, to be counted from the date on which Nigeria first delivered wet gas to the Calabar site. (*Id.* at 7.) The Agreement specified that, in entering into this 20-year

supply obligation with P&ID, the Ministry was acting "for and on behalf of the Federal Government of Nigeria." (*Id.* at 2.)

Consistent with P&ID's proposal, the Agreement required Nigeria to "ensure that all necessary pipelines and associated infrastructure [were] installed and all requisite arrangements with agencies and/or third part[ies] [were] in place to ensure the supply and delivery" of agreed-upon quantities of wet gas to the Calabar site. (*Id.* at 7.) In practical terms, this required Nigeria to do two things as necessary precursors to its obligation to supply wet gas to P&ID. First, Nigeria had to complete construction of the Adanga Pipeline, which would carry wet gas from offshore oil fields to the Calabar site. (Andrew Decl. Ex. 5 at 21–22.) Second, Nigeria had to secure a source from which it could supply the necessary quantities of natural gas.

Nigeria failed to satisfy either of these preliminary requirements under the Agreement. By 2011, P&ID had procured engineering designs for the processing facility, made financing arrangements for the construction of the facility, and taken steps to ensure that appropriate parcels of land on the Calabar site were allocated to P&ID. (*Id.* at 24–26.) To secure the wet gas that could potentially be supplied to the Calabar site, Nigeria approached Addax Petroleum, an OML licensee who mined a conveniently located offshore oil field. (*Id.* at 24.) However, Nigeria did not reach an agreement with Addax (or the operator of any other OML) and failed to secure an alternative source for the wet gas. Eventually, Nigeria stopped responding to P&ID's correspondence. Due to Nigeria's failure to secure a source of wet gas and provide the necessary infrastructure for the delivery of the gas to the Calabar site, the project failed.

B. P&ID Commences the Arbitration

On August 22, 2012, P&ID served Nigeria with a notice of arbitration declaring its intent to seek recovery for Nigeria's failure to perform its obligations. (Andrew Decl. ¶ 7 and Ex. 2.)

This was consistent with Article 20 of the Agreement, which provided that in the event of "any difference or dispute . . . concerning the interpretation or performance of [the] Agreement," a party could submit the dispute for arbitration by "serv[ing] on the other a notice of arbitration under the rules of the Nigerian Arbitration and Conciliation Act (Cap Al8 LFN 2004)." (Andrew Decl. Ex. 1 at 14.)

Article 20 also provided the method for appointing arbitrators to the Tribunal:

> Within thirty (30) days of the notice of arbitration being issued by the initiating Party, the Parties shall each appoint an arbitrator and the arbitrators thus appointed by the Parties shall within fifteen (15) days from the date the last arbitrator was appointed, appoint a third arbitrator to complete the tribunal.

In keeping with this procedure, P&ID selected Sir Anthony Evans, Q.C., a former justice of the Court of Appeal of England and Wales and former chief justice of the Dubai International Financial Centre Courts, while Nigeria selected Chief Bayo Ojo, S.A.N., the former Attorney General of Nigeria. The two co-arbitrators then appointed as presiding arbitrator Leonard, Lord Hoffmann, a former Lord of Appeal in Ordinary (which, during Lord Hoffmann's tenure, was the highest judicial position in the United Kingdom).

Article 20 of the Agreement also provided that "[t]he venue of the arbitration shall be London, England or otherwise as agreed by the Parties." (Andrew Decl. Ex. 1 at 15.) Consistent with this provision, the Arbitration was conducted in London and administered through the London Court of International Arbitration. Over the next several months, the Tribunal issued a series of administrative orders and P&ID filed its formal Statement of Claim, initiating the adjudicative portion of the Arbitration. Nigeria raised no objection to the composition of the Tribunal or the procedures according to which the Arbitration would proceed. Nor did Nigeria object to conducting the Arbitration in London, as contemplated in the Agreement.

In late 2013, Nigeria submitted a Notice of Preliminary Objection raising several challenges to the validity of the Agreement. (Andrew Decl. ¶ 11 and Ex. 4.) Among other things, Nigeria asserted that the Agreement was void because the Ministry lacked capacity to contract on behalf of the Republic. (Andrew Decl. Ex. 4 at 3–4.) Nigeria explained that the Ministry "is a policy instrument of the government of the Federal Republic of Nigeria; it is not a juristic person." (*Id.* at 4.) Nigeria argued that this lack of separate legal personhood rendered the Ministry's execution of the Agreement a nullity, because "only natural persons and juristic persons can validly enter into a contract under Nigerian law." (*Id.*) In response, P&ID submitted an expert report on Nigerian law from the Honorable S.M.A. Belgore, a former Justice of the Nigerian Supreme Court. (Andrew Decl. ¶ 12 and Ex. 6.) Justice Belgore agreed with Nigeria that, unlike other state-owned entities that are separately incorporated under Nigerian law, "the Ministry does not have a separate legal personality." (Andrew Decl. Ex. 6 ¶ 18.) But as Justice Belgore explained, the fact that the Ministry "is an unincorporated organ of the Federal Government" does not mean that it lacked capacity to enter into the Agreement. (*Id.* ¶ 19.) Rather, it simply means that, in doing so, the Ministry was acting for the federal government as a whole: "[W]hen the Minister enters into a contract relating to petroleum resources, he does so *qua* Government, and the Government is bound by the contract. It is irrelevant that the Ministry does not have its own separate legal personality." (*Id.*)

The Tribunal addressed this and Nigeria's other preliminary objections in a unanimous Part Final Award dated July 3, 2014 and issued to the parties on July 8, 2014. (Andrew Decl. ¶ 13 and Ex. 7.) The Tribunal first observed that there was no dispute between the parties that the Tribunal had "jurisdiction to rule upon its own jurisdiction"—i.e., that the Tribunal would decide whether the parties' arbitration agreement was valid and, if so, whether the dispute submitted to the

Tribunal fell within its scope. (Andrew Decl. Ex. 7 at 10–11.) The Tribunal explained that its power to rule on its own jurisdiction derived from the United Kingdom's Arbitration Act 1996, which it described as "the law of the seat of arbitration." (*Id.* at 11.) In ruling on the validity of the agreement, the Tribunal found that Nigeria was correct in asserting that the Ministry is legally indistinct from the government as a whole, but adopted Justice Belgore's conclusion about the significance of that fact: "Quite apart from the fact that the Ministry is expressed to contract for and on behalf of the Government, we think that the distinction between the various Ministries and the Government is illusory. The Ministries *are* the Government, operating in different spheres." (Andrew Decl. Ex. 7 at 12.) The Tribunal went on to explain that this relationship is enshrined in Nigeria's Constitution, under which "the executive powers of the Federation are vested in the President and may be exercised by him 'through . . . Ministers of the Government of the Federation.'" (*Id.*) The Tribunal also rejected Nigeria's other challenges to the validity of the Agreement. (*Id.* at 15.)

C. The Tribunal Determines That Nigeria Is Liable Under the Agreement

Over the next year, the parties litigated Nigeria's liability to P&ID. Each party submitted three rounds of written arguments and accompanying witness statements, and P&ID submitted another expert report from Justice Belgore. The Tribunal considered the parties' evidence and arguments at a hearing on June 1, 2015. On July 17, 2015, the Tribunal issued another unanimous Part Final Award (the "Liability Award"), addressing a slew of defenses presented by Nigeria. (Andrew Decl. ¶ 15 and Ex. 8.) Among other things, the Tribunal ruled that:

- Nigeria had the authority to grant P&ID the privileges and concessions contemplated by the Agreement (Andrew Decl. Ex. 8 at 10–13);
- Nigeria's apparent inability to obtain wet gas from certain sources did not excuse its failure to supply wet gas from anywhere, and in the quantities required by the Agreement (*id.* at 14);

- although the 20-year term of Nigeria's supply obligation was to run from a "Start Date" marked by Nigeria's first delivery of wet gas to the Calabar site (which never came to pass), this did not mean that Nigeria had no obligations prior to that date (*id.* at 14–15);
- Nigeria's obligations under the Agreement were not contingent on P&ID's completion of the gas processing facility on the Calabar site (*id.* at 15);
- the Agreement was not void due to any purported mutual mistake, frustration of purpose, or force majeure (*id.* at 16–17);
- the Agreement was not illegal because of P&ID's profit motive (*id.* at 18);
- the public-law doctrine of "legitimate expectation" had no bearing on Nigeria's private contractual obligations to P&ID (*id.*); and
- the Agreement was not contrary to public policy (*id.*).

The Tribunal concluded that Nigeria's conduct amounted to a repudiation of the Agreement, that P&ID accepted the repudiation on March 20, 2013, and that Nigeria was therefore liable to P&ID. (*Id.* at 19.)

Nigeria attempted—but failed—to have the English courts set aside the Tribunal's liability finding. In December 2015, Nigeria applied to the Commercial Court in London under Section 68 of the United Kingdom's Arbitration Act 1996 for "[a]n order setting aside and/or remitting for further consideration all or part of the" July 17, 2015 Part Final Award. (Andrew Decl. ¶ 16 and Ex. 9.) Under the Act, the English courts have such jurisdiction to set aside an award only if the seat of arbitration is in England. (Andrew Decl. ¶ 17.) Nigeria understood that the seat of arbitration was in England: In a witness statement submitted in support of Nigeria's set-aside application, Folakemi Adelore, the Ministry's Director of Legal Services, explained Nigeria's delay in filing the application by writing that Nigeria "understood that in order to challenge the Award, it would need to instruct a firm of solicitors in the U.K. given that any such challenge would have had to be before the English courts under the English Arbitration Act 1996." (Andrew Decl. ¶ 18 and Ex. 9 at 21.) Ms. Adelore further informed the Commercial Court that "[t]he issue

of jurisdiction of this Court and the seat of the Arbitration had first to be considered." (Andrew Decl. Ex. 9 at 23.)

The Commercial Court in London dismissed Nigeria's application to set aside the Liability Award, finding that it was filed more than four months too late and that in any event the purported grounds for setting aside the award had "no merit." (Andrew Decl. ¶ 19 and Ex. 10.)

Nigeria then reversed course, eschewing the English courts that had found meritless its appeal and turning to its own courts in search of relief from the Tribunal's liability finding. On February 24, 2016, Nigeria initiated proceedings in the Federal High Court of Nigeria, seeking dissolution of the July 17, 2015 Part Final Award and suspension of further proceedings in the Arbitration. Although it already had sought relief in the English courts, Nigeria now argued—for the first time—that in fact Nigeria was the true seat of the arbitration, and that the "Nigerian courts ha[d] exclusive supervisory jurisdiction over the arbitration." (Andrew Decl. ¶ 20 and Ex. 11.) After P&ID became aware of the Nigerian proceedings, it notified the Tribunal and requested that the Tribunal make a ruling on the seat of the arbitration to determine the significance, if any, of the ongoing Nigerian proceedings.

On April 26, 2016, the Tribunal issued an order, "Procedural Order No. 12," in which it found that London was the seat of the arbitration. (Andrew Decl. ¶ 22 and Ex. 12.) The Tribunal based its conclusion on the text of the Agreement, relevant Nigerian law (specifically, the Nigerian Arbitration and Conciliation Act and cases interpreting it), and the parties' and arbitrators' uninterrupted conduct over nearly three years of active proceedings in London. (*See generally* Andrew Decl. Ex. 12.) The Tribunal concluded that the parties had exercised their right to fix the seat of the Arbitration by specifying, in Article 20 of the Agreement, that "[t]he venue of the arbitration shall be London, England." (*Id.* at 9–10 ("[T]he parties' selection . . . indicates that

London was selected under section 16(1) [of the Nigerian Arbitration and Conciliation Act] as the place of the arbitration in the juridical sense, invoking the supervisory jurisdiction of the English court."). The Tribunal also noted that this was consistent with the parties' prior conduct in the Arbitration (including Nigeria's initial attempt to have the Liability Award set aside in the English courts) and with the Tribunal's indication of London as the "place of the arbitration"—a procedural step required by the Nigerian Act—in both Part Final Awards and several other orders. (*Id.* at 12–16.)[2]

The Tribunal's ruling clarifying that London was the seat of the arbitration confirmed that the English courts had supervisory jurisdiction over the Arbitration. (Andrew Decl. ¶ 22.) As Lord Hoffmann later wrote to the parties, given the Tribunal's decision "that the seat of the arbitration is in England," "the Federal High Court [of Nigeria] had no jurisdiction to set aside" the Liability Award. (Andrew Decl. ¶ 24 and Ex. 14.) Thus, even though the Federal High Court of Nigeria did issue an order granting, without any analysis, the relief that Nigeria had requested, the parties continued with the Arbitration. And although it purported to "maintain[] its position" with respect to the Liability Award, Nigeria fully participated in the damages phase of the Arbitration. (Andrew Decl. ¶ 25 and Ex. 15.)

D. The Tribunal Awards Damages to P&ID

The final stage of the Arbitration dealt with quantifying P&ID's damages. As with the liability phase of the Arbitration, the parties made extensive written submissions, including competing reports from economic experts, and presented their positions to the Tribunal at a two-

[2] Several weeks after the Tribunal issued Procedural Order No. 12, Nigeria initiated yet another proceeding in Nigeria, seeking to have that order set aside and the arbitrators removed from the Tribunal. (*See* Andrew Decl. ¶ 26 and Ex. 16 at 1.) Nigeria's request relief was not granted, and this second proceeding was eventually dismissed by the Nigerian court because Nigeria's counsel failed to appear. (*See* Andrew Decl. ¶ 26.)

day hearing in August 2016. On January 31, 2017, the Tribunal issued its 34-page Final Award on damages, in which the panel's majority considered the evidence and arguments presented, and ordered Nigeria to pay to P&ID $6,597,000,000 plus interest to be calculated at a rate of 7 percent from March 20, 2013 (the date on which the Tribunal found P&ID to have accepted Nigeria's repudiation of the Agreement).[3] The Final Award was delivered to the parties ten days later, on February 10, 2017.

As the Tribunal explained in its Final Award, the damages awarded represented P&ID's loss of revenue from the sale of millions of metric tons of NGLs over the 20-year term of Nigeria's supply obligation, less the capital and operating expenditures P&ID would have incurred in building and operating the gas processing facility. (Andrew Decl. Ex. 17 at 16.) The Tribunal observed that "[i]t is a very large sum because (a) it is the present value of income which would have been earned over a long period and (b) the [Agreement] would have been very profitable for P&ID and (although the Tribunal has not had to make any findings on this point) probably for the Government as well." (*Id.* at 33.)

E. Nigeria Has Failed to Pay the Final Award

More than a year since it was issued, the Final Award remains outstanding. Nigeria has made no attempt to set aside the Final Award in the seat of the Arbitration—the United Kingdom—

[3] Chief Ojo, the arbitrator appointed by Nigeria, issued a Dissenting Final Award assessing damages in the amount of $250 million. (*See* Andrew Decl. ¶ 28 and Ex. 18.) Although he did not disagree that Nigeria was liable, Chief Ojo reasoned that P&ID could not recover its lost profits from the full 20-year term because it had a duty to mitigate its damages by finding substitute work. The two other tribunal members, presiding arbitrator Lord Hoffmann and co-arbitrator Sir Evans, explained in the Final Award why they did not agree with Chief Ojo's position: Nigeria, which bore the burden of proof on the mitigation issue, had presented (1) no evidence of alternative work through which P&ID could have mitigated its damages and (2) no evidence or argument explaining why other projects available to P&ID (if any) should be considered substitute—rather than additional—work. (*See* Andrew Decl. Ex. 17 at 32–33.)

or anywhere else, for that matter. (Andrew Decl. ¶ 29.) And its time for doing so has long since run out: under the United Kingdom's Arbitration Act 1996, a party has 28 days to appeal or challenge an arbitration award. (*Id.*) Yet Nigeria has paid P&ID nothing and has expressed no intention to do so anytime soon. Nigeria has left P&ID with no other choice than to enforce the Final Award through judicial means.

ARGUMENT

I. The New York Convention and U.S. law require confirmation of the Final Award.

The Federal Arbitration Act (the "FAA") governs the enforcement of international arbitral awards. Chapter 2 of the FAA (9 U.S.C. § 201 *et seq.*) incorporates the treaty obligations of the United States under the New York Convention, making the rules and procedures set forth in the Convention applicable in confirmation proceedings brought in the courts of the United States. *See* 9 U.S.C. § 201. And because the Final Award arose out of a commercial contract—the Agreement—between P&ID (a company incorporated in the British Virgin Islands) and Nigeria (a foreign sovereign), it is governed by the New York Convention. *See* 9 U.S.C. § 202 (providing that an "arbitral award arising out of a legal relationship . . . which is considered as commercial . . . falls under the Convention" unless the relationship was "entirely between citizens of the United States").

The New York Convention requires a court in a contracting country to confirm an award subject to the Convention, unless the court finds that one of seven specific grounds for deferring or refusing confirmation applies. *See* 9 U.S.C. § 207 ("The court *shall* confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention." (emphasis added)). As the U.S. Court of Appeals for the District of Columbia Circuit has explained:

> Consistent with the "emphatic federal policy in favor of arbitral dispute resolution" recognized by the Supreme Court . . . the FAA affords the district court little discretion in refusing or deferring enforcement of foreign arbitral awards: the Convention is "clear" that a court "may refuse to enforce the award only on the grounds explicitly set forth in Article V of the Convention."

Belize Soc. Dev. Ltd. v. Gov't of Belize, 668 F.3d 724, 727 (D.C. Cir. 2012) (internal citations omitted).

These limited, enumerated grounds for deferring or refusing confirmation are set forth in Article V of the Convention. In summary, they permit courts to deny confirmation only where:

- the parties' arbitration agreement is invalid;
- the award resolves a type of dispute that the parties did not agree to arbitrate;
- the award resolves a type of dispute that, under the laws of the country where confirmation is sought, cannot be resolved through arbitration;
- the award debtor had no notice of the arbitration proceedings or was unable to meaningfully participate;
- the arbitration used procedures (including for the composition of the tribunal) that are inconsistent with the parties' arbitration agreement;
- the award is not yet binding on the parties or has been set aside by a competent authority of the country in which, or under the law of which, the award was made; or
- confirming the award would contravene the public policy of the country where confirmation is sought.

See New York Convention art. V.

"The party resisting confirmation 'bears the heavy burden of establishing that one of the grounds for denying confirmation in Article V applies.'" *Sterling Merchant Fin. Ltd. v. Republic of Cabo Verde*, 261 F. Supp. 3d 48, 53 (D.D.C. 2017) (quoting *Gold Reserve, Inc. v. Bolivarian Republic of Venezuela*, 146 F. Supp. 3d 112, 120 (D.D.C. 2015)).

Further, courts in this and other Circuits have consistently cautioned that these grounds for deferring or denying confirmation are to be construed narrowly. *See, e.g.*, *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 244 F. Supp. 3d 100, 110 (D.D.C. 2017) (characterizing

"scope of review" under New York Convention as "narrow"); *Parsons & Whittemore Overseas Co., Inc. v. Societe Generale De L'Industrie Du Papier*, 508 F.2d 969, 976 (2d Cir. 1974) (holding "defense[s] to enforcement of a foreign award . . . should be construed narrowly" to "comport with the enforcement-facilitating thrust of the Convention"); *Ministry of Def. of the Islamic Republic of Iran v. Gould Inc.*, 887 F.2d 1357, 1364 n.11 (9th Cir. 1989) ("Courts construe . . . defenses to enforcement narrowly."); *Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 288 (5th Cir. 2004) ("Defenses to enforcement under the New York Convention are construed narrowly, 'to encourage the recognition and enforcement of commercial arbitration agreements in international contracts . . .'").

Because "the New York Convention provides only several narrow circumstances when a court may deny confirmation of an arbitral award, confirmation proceedings are generally summary in nature." *Int'l Trading & Indus. Inv. Co. v. DynCorp Aerospace Tech.*, 763 F. Supp. 2d. 12, 20 (D.D.C. 2011); *accord* 3 FED. PROC., L. ED. § 4:140 (2018) ("Thus, an arbitration award under the Convention may be enforced by filing a petition or application for an order confirming the award supported by an affidavit. The hearing on such a petition or application will take the form of a summary procedure in the nature of federal motion practice.").

As explained below, Nigeria cannot satisfy its burden of proving that any of these grounds applies. The Court must therefore confirm the Final Award.

A. P&ID and Nigeria entered into a valid arbitration agreement.

Under the New York Convention, one of the limited grounds for deferring or denying confirmation of an award is that "the parties to the agreement referred to in article II [i.e. an agreement to arbitrate] were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication

thereon, under the law of the country where the award was made." New York Convention art. V(1)(a). Nigeria cannot seriously claim that this ground applies here.

The plain language of Article 20 of the parties' Agreement is clear: it permits either party to submit for arbitration "any difference or dispute . . . concerning the interpretation or performance of [the] Agreement." (Andrew Decl. Ex. 1 at 14.) P&ID exercised this option by serving Nigeria with a Notice of Arbitration on August 22, 2012, consistent with the terms of the Agreement. (Andrew Decl. Ex. 2; *see also* Andrew Decl. Ex. 1 at 14 (party seeking arbitration to "serve on the other a notice of arbitration under the rules of the Nigerian Arbitration and Conciliation Act (Cap Al8 LFN 2004)").) Moreover, the parties agreed that the Tribunal had authority to decide the validity of the arbitration agreement; as the Tribunal observed in its July 3, 2014 Part Final Award, that issue "did not appear to be in dispute" because both the Nigerian Arbitration and Conciliation Act and the United Kingdom's Arbitration Act 1996 clearly confer such authority upon arbitral tribunals. (Andrew Decl. Ex. 7 at 7, 10–11.)

During the Arbitration, Nigeria raised several challenges to the Agreement as a whole, and the Tribunal rejected each of those challenges in its Part Final Awards, finding the Agreement valid and enforceable. (*See* Andrew Decl. Exs. 7, 8.) The validity of the Agreement (other than the arbitration clause) cannot be challenged in this confirmation proceeding, as it is not one of the grounds enumerated in Article V of the New York Convention. As the Supreme Court held in *Buckeye Check Cashing, Inc. v. Cardegna*, "a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator." 546 U.S. 440, 449 (2006); *see also* New York Convention arts. II(2), V(1)(a) (confirming court may consider validity of "agreement referred to in article II," i.e., "an arbitral clause in a contract or an arbitration agreement"); *BCB Holdings Ltd. v. Gov't of Belize*, 110 F. Supp. 3d 233, 248 (D.D.C. 2015) ("[A]

challenge brought under Article V(1)(a) [of the New York Convention] must be brought against the agreement to arbitrate, not against the contract as a whole."). Because Nigeria's challenges were aimed at the Agreement as a whole—not the arbitration clause—the Tribunal's decision cannot be challenged by Nigeria in this proceeding.

B. The dispute resolved by the Final Award was squarely within the scope of the parties' agreement to arbitrate.

Under the New York Convention, confirmation of an award may be deferred or refused where "the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced." New York Convention art. V(1)(c). There is no basis for Nigeria to assert this ground, either.

At no point in the Arbitration did Nigeria contend that the parties' dispute fell outside the scope of their arbitration agreement, and with good reason. Article 20 of the Agreement provides for arbitration of "any difference or dispute . . . concerning the interpretation or performance of [the] Agreement." It is beyond dispute that the Final Award is an award "concerning the interpretation or performance of [the] Agreement"; it holds Nigeria liable for its failure to perform obligations set forth in the Agreement and awards damages to P&ID caused by that failure.

C. United States law permits—indeed, strongly favors—arbitration for the resolution of international commercial disputes.

The New York Convention permits courts "in the country where recognition and enforcement is sought" to defer or refuse confirmation of an award where "[t]he subject matter of the difference [i.e., the dispute submitted to arbitration] is not capable of settlement by arbitration under the law of that country." New York Convention art. V(2)(a).

But the courts of this country have long favored arbitration for the resolution of disputes arising out of international commercial contracts like the Agreement here. "The Supreme Court has recognized an 'emphatic federal policy in favor of arbitral dispute resolution,'" and "'that federal policy applies with special force in the field of international commerce.'" *Belize Soc. Dev.*, 668 F.3d at 727 (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985)). Confirmation of the Final Award is entirely consistent with this policy.

D. Nigeria had notice of the Arbitration and was able to, and did, present its case.

Under the New York Convention, confirmation of an award can be deferred or denied if "[t]he party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present [its] case." New York Convention art. V(1)(b). This ground plainly does not apply to this case.

P&ID gave Nigeria proper notice of the arbitration, and Nigeria was fully able to present its case to the Tribunal. In addition to participating in administrative and procedural matters (including the appointment of the Tribunal), Nigeria was represented by counsel at each stage of the Arbitration and mounted a painstaking defense to the merits of P&ID's claim on both liability and damages. It submitted a preliminary objection challenging the validity of the Agreement; it defended itself in the Arbitration's liability phase with a written witness statement, other written submissions spelling out legal and factual arguments, and an appearance at the liability hearing; and it argued for a reduced damages award with both written and in-person arguments supplemented by an extensive expert report. In view of these facts, there can be no serious argument that Nigeria lacked notice of the Arbitration or was somehow unable to present its case. To the contrary, Nigeria made its case, and the Tribunal explained at great length why it was unpersuasive.

E. The composition of the Tribunal and the procedures used in the Arbitration were consistent with the parties' agreement to arbitrate.

A court may defer or deny confirmation under the New York Convention if it finds that "[t]he composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place." New York Convention art. V(1)(d). Nigeria cannot possibly object on this ground.

The Tribunal was composed with Nigeria's involvement and in accordance with the parties' agreement to arbitrate, and Nigeria raised no objection during the Arbitration to the Tribunal's composition or the procedures that governed the Arbitration. Having remained silent then, Nigeria cannot now cry foul. As a court in this District recently observed in another case seeking confirmation of a New York Convention award against a foreign sovereign, the "issues of fairness" behind principles of waiver apply "in any adjudicatory context." *Gold Reserve*, 146 F. Supp. 3d at 126. As that court concluded, "a litigant has an obligation"—including in arbitration—"to spell out its arguments . . . or else forever hold its peace." *Id.* at 126–27 (internal quotation marks omitted).

F. The Final Award is binding and has not been set aside at the seat of arbitration.

P&ID's petition seeks confirmation of the Final Award issued on January 31, 2017. The Final Award is the culmination of a lengthy arbitration that P&ID commenced pursuant to the arbitration clause in the Agreement. That clause expressly provides that "the arbitration award shall be final and binding upon the Parties." (Andrew Decl. Ex. 1 at 15.)

Nigeria has not attempted to set aside the Final Award in the United Kingdom and the time for doing so—within 28 days after the award was delivered to the parties—has long since expired. (Andrew Decl. ¶ 29.) And even if Nigeria had repeated what it did with the Liability Award and

had turned to the Nigerian courts seeking a set-aside order (which, to P&ID's knowledge, it has not done), such an order would not affect the enforceability of the Final Award in the United States.

Article V of the New York Convention provides that recognition and enforcement of an award may be refused if the party opposing the application can prove that "[t]he award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made." New York Convention art. V(1)(e). The phrase "[t]he country in which or under whose arbitral law an award was made is considered the 'primary jurisdiction,' and all other member-countries to the New York Convention are considered 'secondary jurisdictions.'" *Salini Costruttori S.p.A. v. Kingdom of Morocco*, 233 F. Supp. 3d 190, 197 (D.D.C. 2017). This distinction is significant: while "[s]econdary jurisdictions may refuse to enforce an award . . . only a primary jurisdiction may set aside an award." *Id.* "Courts of primary jurisdiction are usually the courts of the country of the arbitral situs," i.e. the seat of the arbitration. *Id.* (internal quotation marks omitted). A secondary jurisdiction's pronouncements about the validity of an award "do not preclude other jurisdictions from enforcing it." *Id.*

Here, the United Kingdom is the primary jurisdiction, and therefore only the courts of the United Kingdom could have set aside the Final Award. The Tribunal ruled in Procedural Order No. 12 that the parties had agreed that the seat of arbitration was London, and it based its ruling on the Agreement itself—which provided that the "[t]he venue of the arbitration shall be London, England"—as well as on the parties' own conduct over the course of three years of arbitration. The Tribunal noted, among other things, that Nigeria had applied to the London Commercial Court to have the Liability Award set aside, making clear in that application that it considered the seat of the arbitration to be in the United Kingdom. Based on the Tribunal's ruling, there can be no serious

dispute that the seat of the arbitration was London and therefore only the courts of the United Kingdom could have set aside the Final Award. They have not done so.

Accordingly, even if Nigeria had sought and obtained an order from a Nigerian court purporting to set aside the Final Award, such an order would do nothing to disturb the Final Award's enforceability under the New York Convention. *Salini*, 233 F. Supp. 3d at 199 (holding that confirming court "need not and should not take into consideration whether or not a secondary court," including those in sovereign respondent's home jurisdiction, "set aside or declined to enforce a portion of the award").

G. Confirmation of the award is consistent with the public policy of the United States.

Finally, the New York Convention authorizes a court "in the country where recognition and enforcement is sought" to decline to confirm an award if "[t]he recognition or enforcement of the award would be contrary to the public policy of that country." New York Convention art. V(2)(b). In this case, confirmation would be consistent with—not contrary to—U.S. public policy, which favors enforcement of commercial arbitration awards.

Confirming the Final Award would offend no public policy of the United States. In an action for confirmation under the New York Convention, "the public policy defense is . . . to be applied only where enforcement would violate the United States' most basic notions of morality and justice." *Belize Bank Ltd. v. Gov't of Belize*, 852 F.3d 1107, 1111 (D.C. Cir. 2017) (internal alterations and quotation marks omitted). The Final Award—a straightforward award of expectation damages to one party based on the other's breach of a commercial contract—comes nowhere close to this standard. As this Court has observed, "[a]lthough [the public policy] defense is frequently raised, it 'has rarely been successful.'" *Chevron Corp. v. Republic of Ecuador*, 949 F. Supp. 2d 57, 69 (D.D.C. 2013) (quoting *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665 F.3d 1091, 1097 (9th Cir. 2011)).

The large size of damages awarded is no basis for refusing confirmation of the Final Award. The Tribunal's damages calculation was well reasoned and based on written expert reports presented to the tribunal and discussed at the damages hearing. As the Tribunal explained, the damages awarded represent the net present value of two decades' worth of profits that P&ID lost due to Nigeria's breach. (Andrew Decl. Ex. 17 at 10, 33.) In fact, the Tribunal noted the parties' agreement that "the general rule" for calculating P&ID's consequential damages was "formulated by Alderson B [i.e., Baron Sir Edward Hall Alderson] in *Hadley v Baxendale*," a leading English contract law case from the mid-19th century. (Andrew Decl. Ex. 17 at 10.) Nigeria argued in the Arbitration that this rule supported a smaller award, and it lost. This cannot constitute a violation of U.S. public policy. *See Chevron Corp.*, 949 F. Supp. 2d at 71 (rejecting public-policy challenge to damages award calculated as "the comparison of the victim's actual situation to that which would have prevailed had the [breaches of contract] not been committed," and observing that "[b]ased on the limited nature of the Court's review here, it could not conclude that the Tribunal's proposed remedy was so egregious that it violated U.S. public policy and should be vacated"); *see also Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, No. 16-cv-2020 (RJL), 2018 WL 1143153, at *7 (D.D.C. Mar. 2, 2018) (rejecting respondent's "disagreements as to the damages calculation" because "courts have no authority to disagree with the arbitrator's honest judgment in that respect" (internal citations and alterations omitted)).

II. The Final Award should be confirmed against the Federal Republic of Nigeria because the nominal award debtor—the Ministry of Petroleum Resources—is its legally indistinct political organ.

The Ministry is part of the Republic and does not have an independent legal personality, as Nigeria itself has confirmed. Accordingly, the Final Award should be confirmed by entering judgment against both the Ministry, as the named respondent in the Arbitration, and the Republic.

In the Arbitration, Nigeria explained that the Ministry is a "Ministry of the Federal Republic of Nigeria" and an "unincorporated department of government" which is "not a juristic person." (Andrew Decl. Ex. 4 at 1.) Nigeria pointed out that the Ministry lacks any of the "rights and duties of a human being." (Andrew Decl. Ex. 4 at 4, 5.) P&ID's expert, a former Justice of the Supreme Court of Nigeria, concurred that "the Ministry . . . does not have a separate legal personality." (Andrew Decl. Ex. 6 ¶¶ 18–19.) The Tribunal accepted that position, finding that "any distinction between the various Ministries and the Government is illusory" because "[t]he Ministries *are* the Government, operating in different spheres." (Andrew Decl. Ex. 7 at 12.) And when it later applied to the English courts in a failed attempt to have the Liability Award set aside, Nigeria referred to the Ministry as "an arm of the Federal State of Nigeria." (Andrew Decl. Ex. 9 at 1.)

Nigeria took the same position in an unrelated U.S. litigation in which a Nigerian corporation sued the Republic, the Ministry, and four corporations alleging that its right to mine one of Nigeria's offshore oil fields was wrongfully revoked. *See* Defs.' Mem. of Law in Support of Motion to Dismiss (Dkt. No. 11) at 1, *Malabu Oil & Gas Ltd. v. Federal Republic of Nigeria*, No. 02-cv-6162 (S.D.N.Y. Apr. 15, 2003) (Green Decl. Ex 2). In that case, Nigeria submitted a declaration from the Director of the International and Comparative Law Department of the Federal Ministry of Justice of Nigeria, which explained that the Ministry is not a separate entity under Nigerian law, does not have an enabling statute, and cannot be sued or sue in its own name and cannot and does not own property. Decl. of Idenyehim Stella Omiyi (Dkt. No. 10), *Malabu Oil & Gas Ltd. v. Federal Republic of Nigeria*, No. 02-cv-6162 (S.D.N.Y. Apr. 15, 2003) (Green Decl. Ex. 1 at 4–5). On the strength of this declaration from its own legal expert, Nigeria asserted that "the Ministry cannot be sued as an entity distinct from the FRN [i.e., the Federal Republic of

Nigeria]," because it is "an integral part of the FRN's political structure as its function is the formulation and implementation of policies and programs for the petroleum industry on behalf of the FRN." (Green Decl. Ex 2 at 3.)

Given that the Ministry, by its own account, does not have a legal personality separate from the Republic, it is proper for the Court to confirm the Final Award by entering judgment against the Republic.

The U.S. Court of Appeals for the Second Circuit reached a similar conclusion in *Compagnie Noga D'Importation et D'Exportation, S.A. v. Russian Federation*, 361 F.3d 676 (2d Cir. 2004). In that case, the district court had refused to confirm against the Russian Federation a foreign arbitral award issued against the "Government of the Russian Federation," on the grounds that the Federation itself was not a party to the arbitration. *Id.* at 683–88. The Second Circuit reversed, observing that "no meaningful legal distinction can be drawn between a sovereign and one of its political organs" and holding that "regardless of whether principles of Russian law, federal common law, or international law are applied, the Russian Federation and the Government are not separate 'parties' for the purposes of confirming and enforcing an arbitral award under the [New York] Convention." *Id.* at 688, 690. The same logic applies here with respect to the Ministry and the Republic.[4]

[4] The Second Circuit reached a similar result in an action for recognition of a foreign court judgment. *See Servaas Inc. v. Republic of Iraq*, 540 F. App'x 38 (2d Cir. 2013). There, the Second Circuit recognized a French judgment against the Republic of Iraq even though the judgment had been issued only against Iraq's Ministry of Industry. The Court explained that "[b]ecause Iraq and the Ministry are treated as the same entity in France with respect to the French Judgment," "Iraq need not have been a separately named party for the judgment against the Ministry to be final, conclusive, and enforceable against Iraq as well." *Id.* at 41 (observing that the French judgment referred to the Ministry of Industry as "an 'emanation' of Iraq").

The U.S. Court of Appeals for the District of Columbia Circuit has likewise recognized in certain contexts that a state organ is legally identical to the state itself. *See, e.g.*, *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 30 F.3d 148, 153 (D.C. Cir. 1994) (holding, for purposes of determining the proper method of service under the FSIA, that the Bolivian Air Force was not legally separate from the Bolivian state because it was "so closely bound up with the structure of the state that [it] must in all cases be considered as the 'foreign state' itself"); *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 234-35 (D.C. Cir. 2003) (holding, for purposes of terrorism exception to sovereign immunity under the FSIA, that "the Ministry of Foreign Affairs must be treated as the state of Iran itself" because the conduct of foreign affairs is an important and indispensable governmental function).[5]

Here, Nigeria has already acknowledged that the Ministry is not a separate legal entity, cannot be sued separately from the Republic, and cannot and does not own property. Given this reality, the Court should confirm the Final Award by entering judgment against the Republic as well as the Ministry.

[5] In *First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611 (1983) ("*Bancec*"), the U.S. Supreme Court held that where a foreign state creates an instrumentality as a separate legal entity, that instrumentality is typically entitled to a rebuttable presumption of separateness. *Id.* at 626–27 (concluding that "government instrumentalities established as juridical entities distinct and independent from their sovereign should normally be treated as such"). Following *Bancec*, a court in this District applied the presumption of separateness in dismissing an action against the Republic of Honduras to confirm an arbitration award because the award had been issued only against the Honduran Social Development Fund—a fund which the Republic of Honduras had "establish[ed] as a juridically independent entity." *See DRC, Inc. v. Republic of Honduras*, 71 F. Supp. 3d 201, 214 (D.D.C. 2014). As Nigeria's Ministry of Petroleum Resources is not a distinct legal entity but, rather, a political organ of the Republic itself, the *Bancec* presumption of separateness does not apply here.

III. Nigeria has no sovereign immunity defense to confirmation of the Final Award.

The Foreign Sovereign Immunities Act ("FSIA") governs the immunity of foreign sovereigns from the jurisdiction of American courts. While foreign sovereigns are generally immune from suit in the United States, the FSIA vests federal district courts with jurisdiction over actions "with respect to which the foreign state is not entitled to immunity under" any one of several exceptions enumerated in 28 U.S.C. §§ 1605–07. *See id.* § 1330.

Two such exceptions apply here. First, under 28 U.S.C. § 1605(a)(6), foreign states have no jurisdictional immunity from an action "to confirm an award made pursuant to" an arbitration agreement "made by the foreign state," where "the award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards." 28 U.S.C. § 1605(a)(6). This is such an action: P&ID seeks confirmation of the Final Award, which was entered pursuant to a valid agreement to arbitrate to which Nigeria was a party, and the Final Award is governed by the New York Convention, "a treaty . . . in force for the United States calling for the recognition and enforcement of arbitral awards."

Second, 28 U.S.C. § 1605(a)(1) provides that a foreign state does not enjoy sovereign immunity "in any case . . . in which the foreign state has waived its immunity either explicitly or by implication." When it entered into a valid arbitration agreement with P&ID, Nigeria implicitly waived its immunity to actions seeking to enforce an award issued pursuant to that agreement. As courts in this district have recognized, a contrary conclusion would produce absurd results, rendering ineffective at the moment of its signing any arbitration agreement to which a foreign state is a party. *See, e.g.*, *Ipitrade Int'l, S.A. v. Federal Republic of Nigeria*, 465 F. Supp. 824, 826 (D.D.C. 1978) (holding Nigeria's entry into arbitration agreement waived sovereign immunity as

to actions seeking enforcement of award issued thereunder); *M.B.L. Int'l Contractors, Inc. v. Republic of Trinidad and Tobago*, 725 F. Supp. 52, 55–56 (D.D.C. 1989) (same). Nigeria therefore has no sovereign immunity defense to this Court's jurisdiction to confirm the Final Award.

CONCLUSION

For the foregoing reasons, the Court should confirm the Final Award and incorporate its terms into a judgment against the Republic and the Ministry.

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Washington, D.C.

Respectfully Submitted,

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