No. 18-716

In The Supreme Court of the United States

PETRÓLEO BRASILEIRO S.A.,

Petitioner,

v.

EIG ENERGY FUND XIV, L.P., *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

BRIEF IN OPPOSITION

DANIEL B. GOLDMAN
Counsel of Record
KERRI ANN LAW
CLAUDIA PAK
SAM KOCH
KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 Avenue of the Americas
New York, New York 10036
Tel: (212) 715-9100
dgoldman@kramerlevin.com

BARRY COBURN
COBURN & GREENBAUM PLLC
1710 Rhode Island Avenue, NW
Washington, D.C. 20036
Tel: (202) 657-4490

Counsel for Respondents

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

As part of a non-prosecution agreement ("Criminal Agreement") with the United States Department of Justice, Criminal Division, Fraud Section and the United States Attorney's Office for the Eastern District of Virginia (collectively, the "DOJ"), Petitioner admitted to engaging in multiple criminal violations of the United States Foreign Corrupt Practices Act ("FCPA") and agreed to a total criminal penalty of $850 million for its violations. *See* https://www.justice.gov/opa/press-release/file/1096706/download at 3, 6. In that Criminal Agreement, Petitioner admitted that "[i]n or around and between at least 2004 and 2012, [its] executives and managers . . . facilitated massive bid-rigging and bribery schemes that, among other things, allowed contractors to obtain contracts from [it] through non-competitive means and caused [it] to remain in favor of many of Brazil's politicians and political parties." *See id.* at A-4, ¶ 14. In 2010, as a continuation of this scheme, Petitioner formed Sete Brasil Participações, S.A. ("Sete"). Petitioner fraudulently induced EIG Management Company, LLC ("EIG") in Washington, D.C. to invest over $221 million of Respondents' money in Sete. As the D.C. Circuit explained: Petitioner specifically targeted U.S. investors for Sete, Petitioner intentionally concealed the ongoing fraud at its company and at Sete, and money invested in Sete was used to pay bribes and kickbacks. Petitioner's Appendix ("Pet. App.") at 10a.

The questions presented are:

1. Whether the D.C. Circuit's holding – that Petitioner, who targeted U.S. investors to invest in a

QUESTIONS PRESENTED – Continued

fraudulent enterprise, is not immune from federal jurisdiction because its activities abroad caused a direct effect in the United States – warrants review where it is consistent with the only other Circuit decision on point, *Atlantica Holdings, Inc. v. Sovereign Wealth Fund Samruk-Kazyna JSC*, 813 F.3d 98, 110 (2d Cir. 2016), *cert. denied*, 137 S. Ct. 493 (2016), and with this Court's precedent.

2. Whether this Court should review the D.C. Circuit's decision where Petitioner has attempted to manufacture a circuit split when none exists by relying on factually distinguishable contract cases to construe the meaning of "direct effect" as used in the Foreign Sovereign Immunities Act.

3. Whether this Court should review the D.C. Circuit's decision where Petitioner incorrectly asserts that the D.C. Circuit's decision conflicts with the law of four circuits by erroneously claiming that those other circuits hold that any direct effect in the U.S. must be the product of "legally significant acts."

PARTIES TO THE PROCEEDING

Petitioner is Petróleo Brasileiro S.A. ("Petrobras"), the defendant-appellant below.

Respondents are EIG Energy Fund XIV, L.P., EIG Energy Fund XIV-A, L.P., EIG Energy Fund XIV-B, L.P., EIG Energy Fund XIV (Cayman), L.P., EIG Energy Fund XV, L.P., EIG Energy Fund XV-A, L.P., EIG Energy Fund XV-B, L.P., and EIG Energy Fund XV (Cayman), L.P. (collectively, "Respondents"), the plaintiffs-appellees below.

Odebrecht S.A., Odebrecht Participaes e Engenharia S.A., Keppel Corporation Ltd., Keppel Offshore & Marine Ltd., Sembcorp Industries Ltd., Sembcorp Marine Ltd., and Jurong Shipyard PTE Ltd. were defendants in the district court but did not participate in the court of appeals and are not parties to this petition.

EIG Management Company, LLC was a plaintiff in the district court but did not participate in the court of appeals and is not a party to this petition.

CORPORATE DISCLOSURE STATEMENT

There are no parent companies, subsidiaries, affiliates, or companies which own at least 10% of the equity interests of any of the Respondents which have any outstanding securities in the hands of the public.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

BRIEF IN OPPOSITION

INTRODUCTION

A panel of the D.C. Circuit properly affirmed the District Court's holding that Petitioner Petróleo Brasileiro S.A. ("Petrobras" or "Petitioner") is not entitled to immunity from the jurisdiction of this Court under the third clause of the "commercial activity" exception because Petitioner's commercial activities abroad caused a direct effect in the United States. *See* Pet. App. at 1a-20a; *see also* 28 U.S.C. § 1605(a)(2). The panel and the full D.C. Circuit also properly denied Petitioner's petitions for rehearing and en banc review. Pet. App. at 97a-100a.

Petitioner fraudulently induced EIG to invest over $221 million of Respondents' money in Sete, a company formed by Petitioner. EIG, as investment adviser, invested such monies on behalf of Respondents, which are six investment funds organized under Delaware law (the "U.S. Funds") and two investment funds organized under the laws of the Cayman Islands (the "Cayman Funds"). Both the U.S. Funds and the Cayman Funds (collectively, the "Funds" or "Respondents") are managed from the United States by EIG. Because of Petitioner's fraud, Respondents' investments are now worthless.

As the D.C. Circuit held: "EIG has made out a *prima facie* case for jurisdiction by alleging that Petrobras specifically targeted U.S. investors for Sete; that Petrobras intentionally concealed the ongoing fraud at Petrobras and at Sete; and that money

invested in Sete was used to pay bribes and kickbacks." *Id.* at 10a (internal citations omitted). The D.C. Circuit also correctly held that there was no merit to Petrobras' defenses to jurisdiction that, among other things, Petrobras' alleged fraud did not cause a direct effect in the United States because the Funds' investment was "funneled" through wholly-owned pass-through entities formed under Luxembourg law. *Id.* at 11a.

Petitioner propounds that the D.C. Circuit's ruling is contrary to the rulings of several other circuits. That is wrong. The D.C. Circuit expressly followed *Atlantica Holdings, Inc. v. Sovereign Wealth Fund Samruk-Kazyna JSC*, 813 F.3d 98, 110 (2d Cir. 2016), *cert. denied*, 137 S. Ct. 493 (2016), the only decision from another circuit that concerns the Foreign Sovereign Immunities Act ("FSIA") and is a tort case similar to this one where a defendant targeted U.S. investors to invest in a fraudulent enterprise. *Id.* at 15a. Yet, Petitioner does not even refer to the *Atlantica* decision in its petition. Instead, the cases upon which Petrobras relies for the so-called circuit split are largely inapplicable contract cases, including a 1989 Second Circuit case that predates *Atlantica* by twenty-seven years.

Petrobras is also incorrect that the D.C. Circuit's decision conflicts with the law of four Circuits, the Second, Seventh, Ninth and Tenth, that supposedly hold that any direct effect in the United States must be a product of "legally significant acts." The Tenth Circuit has expressly disavowed the test. The Seventh Circuit's decision upon which Petrobras relies was

effectively overruled by this Court's subsequent decision in *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 618 (1992). The Second Circuit has now abandoned the "legally significant acts" test. And, to the extent the Ninth Circuit has its own formulation of the test, the D.C. Circuit's opinion is consistent with it.

Petitioner's focus on the pass-through entities in Luxembourg is an attempt to do an end run around the truth. As Petitioner well knows, the decision to undertake the Sete investment, and all subsequent decisions related thereto, were made by EIG in Washington, D.C. Petitioner specifically targeted U.S. investors, including EIG, to invest in Sete. Petitioner sent fraudulent promotional materials to EIG in the U.S. The president of Sete, João Carlos de Medeiros Ferraz ("Ferraz"), made a special trip to Washington, D.C. to give a presentation about Sete to hundreds of EIG's investors. Ferraz was a former employee of Petitioner, who conceived of Sete and who Petitioner installed as Sete's CEO. During his presentation, Ferraz made multiple fraudulent misrepresentations and omissions about Sete. These fraudulent actions induced EIG to invest in Sete, which it did by wiring over $221 million of Respondents' funds out of U.S. bank accounts. The U.S. Funds (as well as the Cayman Funds) have now suffered hundreds of millions of dollars of damages, losses that are being directly felt by EIG's U.S. Funds in the United States. EIG set up the wholly-owned pass-through Luxembourg entities solely to effectuate its investment in Sete. Their purpose was to take advantage of a tax structure devised by Petitioner to attract

foreign investment in Sete. The Luxembourg entities had no employees and made no investment decisions.

The petition should be denied.

COUNTERSTATEMENT OF THE CASE

A. Factual Background

On September 26, 2018, Petitioner entered into the Criminal Agreement with the DOJ, admitting to criminal violations of the FCPA, and agreed to a total criminal penalty of $853,200,000. *See* https://www.justice.gov/opa/press-release/file/1096706/download at 3, 6. Petitioner admitted in the Criminal Agreement that "[i]n or around and between at least 2004 and 2012, Petrobras executives and managers . . . facilitated massive bid-rigging and bribery schemes that, among other things, allowed contractors to obtain contracts from Petrobras through non-competitive means and caused Petrobras to remain in favor of many of Brazil's politicians and political parties." *Id.* at A-4, ¶ 14. Petitioner further admitted that contractors paid bribes of about one to three percent of the value of contracts with Petrobras, which were then "typically split among certain Petrobras executives, Brazilian politicians, Brazilian political parties, and other individuals who helped facilitate the payment of the bribes." *Id.* at A-4, ¶ 15.

Following the discovery of massive oil and gas reserves off the coast of Brazil, Petitioner's senior

executives conceived of the idea to perpetuate and expand its corruption scheme through the creation of Sete. Pet. App. at 2a, 28a. Sete was an off-balance sheet vehicle, which would raise billions of dollars of capital from third-party financiers in the United States and elsewhere. *Id.* at 28a-29a. The plan, which was developed by Petitioner's employees Ferraz and Pedro José Barusco Filho ("Barusco"), was for Sete to use this capital to hire shipbuilding companies to construct twenty-eight drillships at the cost of $700 million each and to charter the drillships exclusively to Petitioner. *Id.* at 3a, 28a. The resulting charter payments would be used by Sete to repay Sete's construction loans, cover the costs of operating Sete, and provide a return on investment to Sete's investors. *Id.* at 28a-29a.

At the formation of Sete, Ferraz and Barusco, along with Renato Duque ("Duque"), a director of Petitioner, determined that the shipbuilding companies must pay a 1% bribery and kickback override with respect to every one of the drillship contracts. *Id.* at 33a-34a. These illegal payments, which were to be funded by the monies raised from third-party investors, were earmarked for, among others, Duque, Ferraz, Barusco and the Workers Party of Brazil. *Id.*

Petitioner and Sete sought to raise the capital necessary to fund Sete's operations through debt and equity financing sources. *Id.* at 3a, 28a-29a. Sete relied primarily on bank credit lines, including debt financing from Banco Nacional de Desenvolvimento Econômico e Social ("BNDES"), the Brazilian state-owned

development bank. *Id.* Equity investments made up the remainder of Sete's overall capital structure. *Id.*

Petitioner specifically targeted investors from the United States to invest in Sete. *Id.* at 3a, 29a. Ferraz testified before the Brazilian Congress after his arrest that Petitioner solicited U.S. investors for Sete and "[t]here was great market interest . . . , particularly among US private equity groups." *Id.* at 5a.

One of the U.S. private equity firms that Petitioner targeted was EIG, which is located in Washington, D.C. *Id.* at 3a. Among other things, EIG manages the Funds, six of which are limited partnerships organized under the laws of the State of Delaware and two of which are limited partnerships organized in the Cayman Islands. *Id.* at 4a. All the Funds are managed from EIG's U.S. offices in Washington, D.C. *Id.* at 29a.

From 2010 until 2013, Petrobras and ex-Petrobras officials stationed at Sete engaged in a targeted and deliberate effort to fraudulently induce EIG and Respondents to invest in Sete. Petitioner and Sete sent fraudulent marketing materials and emails to EIG, and Ferraz made fraudulent misrepresentations to EIG and Respondents' investors in meetings in Washington, D.C., Houston and elsewhere. *Id.* at 3a-5a, 29a-33a.

For example, Petitioner sent to EIG a Confidential Information Memorandum, dated January 2010 ("Petrobras Memorandum"). *Id.* at 29a-30a. The Petrobras Memorandum made clear that Petitioner was specifically targeting U.S. investors as sources of capital for

Sete. That memorandum was materially false in that it identified several risk factors without identifying the massive bribery and kickback scheme. *Id.* It also falsely stated that Sete would enter into drillship construction contracts with shipyards that would oblige each shipyard to comply with applicable laws. *Id.*

In September 2010, EIG received in Washington, D.C. a presentation from Petitioner concerning the Sete investment (the "Petrobras Drilling Presentation"). *Id.* at 3a-4a, 30a-31a. This document, too, failed to disclose the massive bribery and kickback scheme. *Id.* at 30a-31a. Making it clear that it was targeting U.S. investors, the Petrobras Drilling Presentation contained a "Cautionary Statement for U.S. Investors," which referred to U.S. Securities and Exchange Commission guidelines on oil and gas investments. *Id.* at 3a-4a, 30a.

In October 2010, EIG received in Washington, D.C. a document prepared and circulated by Petitioner entitled "Pre-Salt Oil Rigs Project." *Id.* at 4a, 30a-31a. In describing the Sete investment premise, it touted that Sete would have "management with extensive experience in the market" without disclosing that such management, which included Ferraz, would be perpetuating and expanding Petitioner's corruption and bribery scheme through Sete. *Id.* at 4a, 32a.

In September 2011, Lakeshore Financial Partners Participações Ltda. – acting as an agent of and/or financial adviser to Sete and/or Petitioner – transmitted to EIG, again at its offices in Washington, D.C., yet

another confidential information memorandum repeating the same misrepresentations and containing the same omissions. *Id.* at 4a, 31a n.2.

Ferraz also regularly communicated with EIG, in person and via e-mail, to encourage Respondents to invest in Sete. *Id.* at 4a, 31a. During the spring of 2013, Ferraz met with EIG in Houston, Texas, touting the investment but failing to disclose Petitioner's illegal scheme. *Id.* at 4a. And in September 2013, Ferraz attended EIG's investor conference in Washington, D.C., again touting the Sete investment, but making material misrepresentations about Sete and failing to disclose the massive corruption scheme at the company. *Id.* at 4a, 31a.

Relying on these false and misleading statements and omissions, EIG invested Respondents' monies in Sete. *Id.* at 4a. Between August 2012 through August 2015, EIG did so by making a series of wire transfers in the total amount of $221,133,393 from U.S. bank accounts. *Id.* at 32a.

To obtain tax benefits from a corporate structure set up by Petitioner to attract foreign investment into Sete, EIG formed two Luxembourg-based pass-through holding companies – EIG Sete Parent SÁRL and its subsidiary EIG Sete Holdings SÁRL (the "Luxembourg Entities"). *Id.* at 3a, 4a-5a, 32a. The Luxembourg Entities had no employees. *Id.* at 19a. EIG, and not the Luxembourg Entities (which are controlled by EIG), made the decision to invest in Sete. *Id.* at 16a. Ferraz, like Petitioner, knew that EIG in Washington, D.C., not a

Luxembourg shell company, was the true investor. Indeed, that is why Ferraz traveled to Washington, D.C., *id.* at 4a, not Luxembourg, to talk to EIG's investors about Sete. Had EIG known that the monies from Respondents that it invested in Sete would be used – and actually were used – to finance Petitioner's corrupt scheme, EIG would have never invested in Sete, nor would EIG have established the Luxembourg Entities solely for purposes of undertaking the Sete investment. *See id.* at 16a, 32a, 46a, 83a. Respondents have been the actual parties at risk in the Sete investment at all times, and the financial losses that Respondents sustained flowed automatically through the Luxembourg Entities to the United States, where six of the Funds reside and from which the two Cayman Funds are managed.

In 2014, Brazilian prosecutors – through an investigation dubbed Operação Lava Jato ("Operation Car Wash") – unearthed the existence of Petitioner's massive and long-running bribery and kickback scheme. *Id.* at 5a. As of the date the complaint in this case was filed, ninety-three individuals had been convicted of crimes in connection with Operation Car Wash, including numerous current and former executives of Petrobras, such as Duque and Roberto Golçalves, as well as former Petrobras/Sete officials, such as Ferraz, Barusco, and Eduardo Costa Vaz Musa. *Id.* at 5a, 33a.

With its illegal activities exposed, Sete's senior lenders refused to provide further financing; Sete defaulted on its shipbuilding contracts, and it eventually filed for bankruptcy. *Id.* at 2a, 6a, 34a. Respondents'

nearly quarter-billion-dollar investment in Sete is now worthless. *Id.*

B. Procedural History

Respondents sued Petitioner in the District Court for the District of Columbia for committing fraud and aiding and abetting Sete's fraud. *Id.* at 26a. Petitioner moved to dismiss the complaint on the basis, among other things, that it was entitled to immunity under the FSIA as an agent or instrumentality of a foreign state. *Id.* at 26a-27a.

The District Court denied the motion. The District Court held that Petitioner could not claim immunity from the lawsuit under the third clause of the commercial activity exception because its commercial activities abroad had caused a direct effect in the United States. *Id.* at 48a-53a (citing 28 U.S.C. § 1605(a)(2)). The District Court found this case to be analogous to *Atlantica*, where "the Second Circuit [had] treated the 'direct effect' and legal injury analyses interchangeably under the FSIA for fraudulent inducement claims brought by U.S.-based investor plaintiffs." *Id.* at 51a-52a (citing *Atlantica*, 813 F.3d at 114). Like in *Atlantica*, Respondents alleged that Petitioner targeted the U.S.-based entities to invest and fraudulently induced their investment by concealing the bribe scheme in promotional materials Respondents received in the United States. *Id.* at 52a. The District Court concluded that a direct effect occurred in this country because Respondents' injury "occurred at the time Petrobras

successfully induced them to invest in the Petrobras-Sete project," which injury occurred in the United States "where six of the eight Funds are organized." *Id.* at 50a. Further, the District Court held that, because the injury arose at the time Respondents were induced to invest, it mattered not that Respondents transferred their investment funds from the United States to Brazil through Luxembourg. *Id.* at 46a.

In denying Petitioner's motion to dismiss, the District Court underscored that:

> Simply stated, Sete was a corrupt enterprise from its very inception. In that respect, Sete is no different than a company formed for the purpose of perpetuating a Ponzi scheme. The act of soliciting money to fund such a scheme, without disclosing it is a criminal enterprise, is quintessential fraud. That is precisely what Petrobras is alleged to have done here: It induced Plaintiffs to part with their money knowing full well that Plaintiffs' money would be used for a criminal purpose, and without disclosing that intention.

Id. at 78a-79a.

On appeal, the D.C. Circuit affirmed. *Id.* at 1a-20a. The D.C. Circuit also expressly relied on the Second Circuit's *Atlantica* decision to find that Respondents made a prima facie case for jurisdiction, given their allegations that Petitioner targeted investors in the United States, including EIG, to invest in Sete, and concealed the fraud from EIG and those investors. *Id.*

at 10a (citing *Atlantica*, 813 F.3d at 110), 14a. It further rejected Petitioner's defenses to jurisdiction.

In relevant part, the D.C. Circuit disagreed with Petitioner's theory that the "locus" of a tort is dispositive on whether a direct effect occurred in the U.S. *Id.* at 11a. Relying upon *Atlantica* and *Antares Aircraft, L.P. v. Federal Republic of Nigeria*, 999 F.2d 33, 36 (2d Cir. 1993), the D.C. Circuit reasoned that "[i]t may well be" that a "U.S. locus is sufficient (but not necessary) to establish jurisdiction under the FSIA," but "a foreign locus does not always mean that a tort causes no 'direct effect' in the United States." *Id.* at 15a. The D.C. Circuit stated, "[t]o our knowledge no court has held otherwise." *Id*. The D.C. Circuit held that even "[a]ssuming *arguendo* that Luxembourg was the locus of Petrobras's alleged fraud," a direct effect occurred here based on Respondents' allegations that Petrobras "specifically targeted" U.S. investors, deliberately concealed its years-long bribery scheme from EIG "to part EIG from its money under false pretenses" and "[a]t least some of the misstatements and omissions in service thereof took place in the United States, where the ultimate consequences of the fraud were later felt." *Id.* at 10a, 16a-17a (emphasis in original). In any event, the D.C. Circuit made clear that EIG was first injured when it was "fraudulently induced to invest in Sete." *Id*. at 14a. According to the Court, EIG "would never have signed the investment agreement (which it did in Washington, D.C.) if Petrobras and Sete had not fraudulently induced it to do so." *Id.* at 16a.

Judge Sentelle dissented from the D.C. Circuit's decision on the ground that the effect did not appear sufficiently direct. *Id.* at 20a-23a. Judge Sentelle did not cite any FSIA case that supported his view and did not refer to any purported split among the circuits over the meaning of "direct effect." *Id.*

Petitioner petitioned the D.C. Circuit for a panel rehearing and for rehearing en banc, which were both denied. *Id.* at 97a-100a. Petitioner now petitions this Court for a writ of certiorari.

REASONS FOR DENYING THE PETITION

I. THE D.C. CIRCUIT'S DECISION FALLS SQUARELY WITHIN THE THIRD CLAUSE OF THE "COMMERCIAL ACTIVITY" EXCEPTION TO THE FSIA AND IS WHOLLY CONSISTENT WITH RELEVANT PRECEDENT

The FSIA confers jurisdiction over Petrobras under the third clause of the "commercial activity" exception. *See* 28 U.S.C. § 1605(a)(2). Pursuant to that clause, Petrobras is not entitled to immunity from the jurisdiction of this Court because this action "is (1) based . . . upon an act outside the territory of the United States; (2) that was taken in connection with a commercial activity of [Petrobras] outside this country; and (3) that cause[d] a direct effect in the United States." *Weltover*, 504 U.S. at 607 (quotations omitted) (citing 28 U.S.C. § 1605(a)(2)). The fact that the case satisfies the first and second of the three requirements

is not in dispute. Pet. App. at 9a-10a. That is, this action is based, at least in part, upon an "act" that occurred abroad and that was taken in connection with a commercial activity of a foreign state.

The issue is whether Petrobras' activities abroad caused a direct effect in the United States. *Id.* The United States "need not be the location where the *most* direct effect is felt, simply *a* direct effect." *Atlantica*, 813 F.3d at 109 (quoting *Hanil Bank v. P.T. Bank Negara Indon. (Persero)*, 148 F.3d 127, 133 (2d Cir. 1998)) (emphasis in original). A "direct effect" is one that "follows as an immediate consequence of the defendant's . . . activity." *Weltover*, 504 U.S. at 618 (internal quotations and citations omitted). It need not be "substantial" or "foreseeable." *Id.* at 617.

Where Petitioner targeted U.S. investors, including EIG, to invest in Sete; where Petitioner sent fraudulent promotional materials to EIG in the U.S.; where as a direct result of Petitioner's U.S. fraud, Respondents suffered injury by signing the investment agreement in Washington, D.C. and investing from U.S. bank accounts hundreds of millions of dollars into a company that was a "corrupt enterprise" no different than a "Ponzi scheme," Pet. App. at 78a; and where the "ultimate consequences of the fraud" have been felt in the U.S. in the form of over $221 million in damages, *id.* at 17a, there can be little doubt that there was at least "a" direct effect in this country.

There is only one other case among other circuits like this one, *Atlantica*, 813 F.3d 98. Notwithstanding

the fact that the D.C. Circuit (and the District Court) expressly relied upon *Atlantica*, Petitioner stays well clear of *Atlantica* and does not even mention the case in its petition. In *Atlantica*, like here, the defendant was an agent of a foreign state that had drafted an information memorandum, which contained material misrepresentations and omissions concerning the value of certain notes that were issued by a non-party bank. *Id.* at 102-03. The plaintiffs were two investment funds based in Panama and individuals residing in the U.S., who relied on the information memorandum to purchase notes from the defendant through a broker, UBS. *Id*. at 103-04. Like Petrobras, the defendant in *Atlantica* targeted investors in the U.S. *Id.* at 110-11. The defendant marketed the notes in the U.S., directed marketing to U.S. investors, and sent representatives to the U.S. to meet with investors. *Id.* at 103-04.

The Second Circuit affirmed the lower court's decision that it had jurisdiction to hear the dispute under the third clause of the commercial activity exception. The Second Circuit held that while an economic injury within the United States is not sufficient to overcome immunity, standing alone, such injury is sufficient where, like here, the defendant "contemplated and acted to encourage investment by United States persons." *Id.* at 111. While the court found that the "locus" of the fraud was the U.S., it nevertheless made clear that "even 'a foreign tort may have had sufficient contacts with the United States to establish the requisite "direct effect" in this country.'" *Id*. at 109, 113 n.7 (quoting *Antares*, 999 F.2d at 36).

The D.C. Circuit (as well as the District Court) expressly followed *Atlantica*. The D.C. Circuit held that Respondents satisfied the requirements of the "direct effect" prong to the commercial activity exception of the FSIA by alleging that,

> Petrobras specifically targeted U.S. investors for Sete, JA 25; that Petrobras intentionally concealed the ongoing fraud at Petrobras and at Sete, JA 26-27; and that money invested in Sete was used to pay bribes and kickbacks, JA 32-34. *See Atlantica Holdings, Inc. v. Sovereign Wealth Fund Samruk-Kazyna JSC*, 813 F.3d 98, 110 (2d Cir. 2016) (defendant's misrepresentations about investment cause direct effect in United States when defendant "contemplated investment by United States persons" and "at least some investors . . . suffered an economic loss in this country as a result of those misrepresentations.").

Pet. App. at 10a; *see also id.* at 50a-53a (District Court's reliance on *Atlantica*).

In 2016, this Court denied the petition for certiorari on the Second Circuit's *Atlantica* decision. *Sovereign Wealth Fund Samruk-Kazyna JSC v. Atlantica Holdings, Inc.*, 137 S. Ct. 493 (2016) (denying certiorari). There is no reason to accept certiorari here.

II. THERE ARE NO CIRCUIT SPLITS WARRANTING REVIEW OF THE D.C. CIRCUIT'S DECISION

Petrobras attempts to manufacture a circuit split where none exists. Petitioner contends that in the years since *Weltover*, the courts of appeals have diverged on two aspects of the "direct effect" requirement: "(1) Just how direct an effect must be to subject a foreign state to the jurisdiction of the U.S. courts; and (2) Whether a tort's foreign locus means there is not a direct effect in the United States." Petition at 10. There is not even a whiff of this supposed circuit split in the opinions of the District Court, the majority's opinion of the D.C. Circuit, the dissent in the D.C. Circuit or by any of the judges of the D.C. Circuit when they denied Petrobras' petition for an en banc review. For good reason. No split exists.

A. There is No Conflict Among the Circuits Over How Direct an Effect Must Be

There is no conflict among the circuits over "how direct" an effect must be to defeat immunity. The vast majority of FSIA cases, including virtually all of the cases upon which Petitioner relies, are contract or quasi-contract cases. Yet, this case sounds entirely in tort and involves fraud by Petitioner in connection with the sale of equity interests in Sete.

Notwithstanding that the D.C. Circuit followed the Second Circuit's 2016 *Atlantica* decision, Petitioner argues that the D.C. Circuit's decision is somehow

contrary to a 1989 Second Circuit decision, *Int'l Housing Ltd. v. Rafidain Bank Iraq*, 893 F.2d 8, 11 (2d Cir. 1989), which also predates the Supreme Court's decision in *Weltover*, 504 U.S. at 611. Petition at 12. Unlike this case and *Atlantica*, *Int'l Housing* is a contract case in which a Bahamian corporation sued an Iraqi sovereign entity relating to a contract to build housing in Iraq. None of the performance required under the contract even related to the United States. At most, some employees of the plaintiff were U.S. citizens. That is not this case where Petitioner specifically targeted U.S. investors, including Respondents, to invest in Sete; where Respondents executed the investment agreement in Washington, D.C.; where EIG invested $221 million of Respondents' funds into Sete from U.S. bank accounts; and where the loss of such investment was sustained by Respondents in the United States. Pet. App. at 10a. *Atlantica* controls the law of the Second Circuit in cases like this one, not *Int'l Housing*.

Nor is the D.C. Circuit's decision contrary to Fifth Circuit law. Petition at 13. In *Frank v. Commonwealth of Antigua & Barbuda*, 842 F.3d 362, 365-66, 368-70 (5th Cir. 2016), victims of the Stanford Ponzi scheme attempted to hold a bank in Antigua, a third party with whom the scheme did business, liable for their losses. In that case, plaintiffs had no connection with or relationship with the bank and thus their losses were not deemed direct. Here, Petitioner dealt directly with Respondents in the United States and made numerous misrepresentations directly to Respondents in the

United States. Pet. App. at 3a-5a. There is nothing remote about Respondents' losses.

Finally, there is no conflict with Tenth Circuit law. In *Big Sky Network Canada, Ltd. v. Sichuan Provincial Gov't*, 533 F.3d 1183 (10th Cir. 2008) – one of two Tenth Circuit cases cited by Petitioner (Petition at 11, 13) – the plaintiff, a British Virgin Islands corporation with offices in Canada, formed a joint venture with a Chinese company to provide cable services in China. Due to a national directive banning foreign ownership of cable companies after the venture was formed, the foreign defendants – two regional Chinese governments – allegedly required Big Sky's Chinese partner to terminate the joint venture. Big Sky sued the defendants for intentional interference with contractual relations and unjust enrichment. In response to an FSIA challenge, Big Sky argued that there was a direct effect in the U.S. because its parent corporation – a U.S. non-party – suffered financially and was forced to restructure as a result of Big Sky's lost investment. The Tenth Circuit rejected that argument, reasoning that the "financial injury, though ultimately felt in the United States, [was] too attenuated to qualify as direct." 533 F.3d at 1191 (quotations and citation omitted).

Big Sky does not set forth a different direct effect standard – it merely found that jurisdiction was lacking based on distinguishable facts. The joint venture in *Big Sky* did not require any action in the U.S., none of the activities that formed the basis of the lawsuit occurred in the U.S., and plaintiff who made the investment was not a U.S. entity – indeed, all of the parties

were foreign. The fact that plaintiff's parent company happened to be a U.S. entity was purely fortuitous, a stark contrast from here where Petrobras deliberately targeted U.S. investors, including EIG, where Petrobras dealt directly with EIG by sending it fraudulent promotional materials into the U.S., where EIG executed the investment agreement in Washington, D.C. and wired over $221 million of Respondents' funds out of U.S. bank accounts to invest in Sete, and where Respondents suffered damages in the U.S.

United World Trade, Inc. v. Mangyshlakneft Oil Prod. Ass'n, 33 F.3d 1232, 1238 (10th Cir. 1994) – another contract case cited by Petitioner at p. 11 – is no different. Plaintiff brought suit against a Kazakhstan sovereign company for breach of an agreement relating to the purchase and sale of oil, which was to be delivered to plaintiff in Naples, Italy. The contract was negotiated in Russia and had no connection to the United States. Not a single clause of the contract was to be performed in the United States and plaintiff could not identify a single communication from defendant to plaintiff into the U.S. Again, that is far different from the targeted and repetitive U.S. activities and communications in this case.

In short, Petrobras does not cite a single case from another circuit that is remotely similar to this tort case involving Petrobras' fraud in connection with an investment. At best, Petrobras has merely illustrated that circuit courts have applied *Weltover* to varying sets of facts with varying results. A circuit split that does not make.

B. There is No Conflict Among the Circuits Concerning the "Legally Significant Act" Test

Petitioner also argues that the D.C. Circuit's decision conflicts with the law of "four circuits," the Second, Seventh, Ninth and Tenth Circuits, which supposedly require that "the FSIA's direct-effect provision requires that a 'legally significant act' cause direct effects in the United States." Petition at 14-16. Again, there is no such circuit split.

What Petrobras fails to disclose is that the Tenth Circuit has expressly disavowed the test. In *Orient Mineral Co. v. Bank of China*, 506 F.3d 980, 998 (10th Cir. 2007), the Tenth Circuit held that, "[t]his court has *never adopted* the 'legally significant act' test, and we now explicitly reject that additional, judicially-created criteria to satisfy 28 U.S.C. §1605(a)(2)'s third clause" (emphasis added).

The Seventh Circuit case on which Petitioner relies, *Rush-Presbyterian-St. Luke's Med. Ctr. v. Hellenic Republic*, 877 F.2d 574, 581 (7th Cir. 1989), was effectively overruled by the Supreme Court's decision in *Weltover*. In a pre-*Weltover* decision, *Rush* held that the "domestic effects of a foreign state's actions must be 'substantial' and 'direct and foreseeable.'" *Id*. at 581. That formulation was expressly rejected by the Supreme Court in *Weltover* when it held that "we reject the suggestion that §1605(a)(2) contains any unexpressed requirement of 'substantiality' or 'foreseeability.'" 504 U.S. at 618.

The Second Circuit, which appears to have developed the test in the first place, has now abandoned it. While Petitioner relies on a 2010 Second Circuit case, *Guirlando v. T.C. Ziraat Bankasi A.S.*, 602 F.3d 69, 76-78 (2d Cir. 2010), *see* Petition at 15, the Second Circuit's 2016 *Atlantica* case does not even mention the "legally significant act" test. Likewise, in *Petersen Energia Inversora S.A.U. v. Argentine Republic et al.*, 895 F.3d 194, 205 (2d Cir. 2018), the most recent "direct effects" case in the Second Circuit, the court does not embrace the "legally significant act" test. Instead, consistent with *Weltover*, the Second Circuit holds that "to be direct, an effect need not be substantial or foreseeable, but rather must simply follow[] as an immediate consequence of the defendant's . . . activity." *Petersen Energia*, 895 F.3d at 205 (internal quotation and citation omitted).

That leaves the Ninth Circuit. Petitioner relies upon *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699 (9th Cir. 1992). Petition at 14. But *Siderman*, like *Rush*, predates and was overruled by *Weltover*, as the Ninth Circuit held that the "direct effects" must be "substantial" and "foreseeable." 965 F.2d at 710. Although not cited in its argument section, Petitioner also includes another Ninth Circuit case in a string cite in its Introduction section – *Adler v. Fed. Republic of Nigeria*, 107 F.3d 720, 727 (9th Cir. 1997). Petition at 4. While *Adler* purports to give lip service to the test, the formulation in *Adler*, that a plaintiff must show "something legally significant actually happened in the U.S.," 107 F.3d at 727 (quotation and citation

omitted), is consistent with the D.C. Circuit's decision, which relied upon the fact that "Petrobras specifically targeted U.S. investors for Sete." Pet. App. at 3a. Indeed, something legally significant also happened in the U.S. when Petrobras sent fraudulent promotional materials to EIG in the U.S., when EIG wired $221 million from U.S. bank accounts to Sete and when Respondents lost $221 million in the U.S. As the D.C. Circuit observed, "[EIG] would never have signed the investment agreement (which it did in Washington, D.C.) if Petrobras and Sete had not fraudulently induced it to do so." *Id.* at 16a.

Petitioner claims that the courts have adopted the so-called "legally significant acts" rule to prevent American plaintiffs from suing sovereigns merely because they have "suffered *some* financial harm here from a distant, foreign tort." Petition at 15 (emphasis in original). There is no such concern here. EIG wired $221 million from its U.S. bank accounts to Sete and lost that money precisely because of Petitioner's actions in the United States when it targeted U.S. investors, including EIG, to invest in Sete and sent fraudulent promotional materials into the U.S to EIG. *See Atlantica*, 813 F.3d at 110-11 (finding direct effect where U.S. investors suffered financial losses *and* where "the defendant contemplated and acted to encourage investment by United States persons" in fraud scheme).

Finally, Petrobras argues that the D.C. Circuit's failure to rest its holding on the so-called "locus" of Petrobras' tort is also at odds with decisions of other

circuits, including the Second Circuit. However, in reasoning that a "foreign locus does not always mean that a tort causes no 'direct effect' in the United States," the D.C. Circuit relied upon Second Circuit precedent in *Atlantica* and *Antares*, which "expressly reserved the question whether a foreign tort can cause a direct effect in the United States." Pet. App. at 15a. After surveying the law, the D.C. Circuit held that, "[t]o our knowledge no court has held otherwise." *Id.* Petitioner cites no contrary authority. But, had the D.C. Circuit determined that a finding that the locus of Respondents' injury is the U.S. was necessary, which it refused to do, *id.* at 15a, it could have easily made that finding as did the District Court. *Id.* at 52a-53a.

In short, there is no circuit split.

III. THE D.C. CIRCUIT'S DECISION IS CONSISTENT WITH THIS COURT'S CASES AND THE FSIA'S PLAIN TEXT

The D.C. Circuit's decision is wholly consistent with existing Supreme Court precedent and the plain text of the FSIA.

A. The D.C. Circuit's Decision is Consistent with this Court's Precedent

Taking one word (ricochet) out of context from the D.C. Circuit's decision, Petitioner argues that the D.C. Circuit's finding is inconsistent with *Weltover*, arguing that a "direct effect in the United States is not an effect that occurs at the tail end of a global 'ricochet.'"

Petition at 17. But the D.C. Circuit did not find a direct effect "at the tail end of a global ricochet." Rather, the D.C. Circuit, consistent with *Weltover*, found that "EIG has made out a *prima facie* case for jurisdiction by alleging that Petrobras specifically targeted U.S. investors for Sete; that Petrobras intentionally concealed the ongoing fraud at Petrobras and at Sete; and that money invested in Sete was used to pay bribes and kickbacks." Pet. App. at 10a (internal citations omitted). In so finding, the D.C. Circuit, quoting *Weltover*, explained that a "direct" effect is one that "follows 'as an immediate consequence of the defendant's . . . activity' " and that while "jurisdiction may not be predicated on purely trivial effects in the United States," there is no "unexpressed requirement of 'substantiality' or 'foreseeability.' " *Id.* (quoting *Weltover*, 504 U.S. at 618).

The D.C. Circuit also properly cited *Weltover* in rejecting Petitioner's theory that EIG was injured in Luxembourg because EIG "booked the loss" from its Sete investment in Luxembourg and only somewhere down the line was that loss felt, indirectly, in the United States. *Id.* at 17a-19a. Petitioner's continued and exclusive focus on Luxembourg is a smokescreen that elevates form over substance. EIG is headquartered in Washington, D.C. *Id.* at 3a. Petitioner targeted U.S. investors, including EIG in D.C., to invest in Sete. *Id.* Petitioner sent fraudulent promotional materials to EIG in D.C. *Id.* at 3a-5a. EIG made its investment decisions in D.C. *Id.* at 16a. EIG wired $221 million from U.S. bank accounts to Sete. Respondents, six of which are located in the U.S., lost hundreds of millions of dollars in the investment. EIG established the Luxembourg

Entities as pass-through entities solely to effectuate Respondents' investment in Sete. *Id.* at 4a-5a. It did so to obtain tax benefits from a corporate structure set up by Petrobras for the purpose of attracting foreign investment, including investment from the U.S. *Id.* at 3a, 4a-5a. The Luxembourg Entities had no employees, and EIG made and continues to make all investment decisions relating to Sete. *Id.* at 19a. Based on these facts and citing *Weltover*, the D.C. Circuit found that "there [was] no basis to treat EIG's investment loss differently from the failure to deposit scheduled interest payments in New York bank accounts." *Id.* There is nothing inconsistent between *Weltover* and this finding.

Nor is there merit to Petitioner's claim that the D.C. Circuit decision is contrary to *Dole.* In *Dole*, this Court considered whether a defendant subsidiary of a foreign state was entitled to FSIA immunity. *Dole Food Co. v. Patrickson*, 538 U.S. 468 (2003). This Court found that it was not, holding that "[a] corporation is an instrumentality of a foreign state under the FSIA only if the foreign state itself owns a majority of the corporation's shares," and "instrumentality status [is] determined at the time suit is filed." *Id.* at 477-78. In that case, this Court found that while Israel, at various times, held shares in "companies one or more corporate tiers above" the defendant, it did not "own a majority of shares" in the defendant itself. *Id.* at 475. This Court's decision thus placed a limitation on the scope of the FSIA's immunity exception. While the decision discussed the general principle of corporate

separateness, *id*. at 474, it did not deal with the commercial-activity exception, let alone the "direct effect" clause, of the FSIA.

In the D.C. Circuit, Petitioner sought to apply to *Plaintiffs-Respondents* the holding in *Dole* concerning the corporate formalities for a *defendant* claiming sovereign immunity. The D.C. Circuit declined Petrobras' invitation "to fashion the *Dole Food* principle of corporate formalism – which *narrowed* the scope of foreign-state immunity – into a limitation on what entity can be an FSIA plaintiff, with the effect of *broadening* the scope of foreign-state immunity." Pet. App. at 18a (emphasis in original). There is no conflict between *Dole* and the D.C. Circuit's decision.

In any event, the D.C. Circuit did not "ignore" corporate formalities in its decision, as Petrobras contends. *See* Petition at 19. The D.C. Circuit's refusal to wield *Dole* as a means to restrict subject matter jurisdiction in this case was not based on any disregard of corporate structure. To the contrary, the D.C. Circuit considered the Luxembourg investment structure, and determined that the structure did not alter the direct effect analysis here because the losses flowed automatically through shell companies. Pet. App. 19a (noting the Luxembourg Entities have "no employees there and receives its mail at a U.S. address" and Respondents "booked a loss in the same amount in the United States").

Nothing in the D.C. Circuit's decision is contrary to this Court's holdings in either *Weltover* or *Dole*.

B. The D.C. Circuit's Decision is Consistent with the Plain Text of the FSIA

Relying on a dissenting opinion by Judge Sentelle in the D.C. Circuit's decision, Petitioner argues that "[b]y holding that a loss that passed to Respondents from Sete and through three separate entities – FIP Sondas, EIG Luxembourg, and EIG Sete Parent SÁRL – was sufficiently 'direct' to trigger the third clause of the commercial-activity exception, the D.C. Circuit effectively read the word out of the FSIA." Petition at 20-21. But that is not what the D.C. Circuit held. The D.C. Circuit found a "direct" effect because "Petrobras specifically targeted U.S. investors for Sete; that Petrobras intentionally concealed the ongoing fraud at Petrobras and at Sete; and that money invested in Sete was used to pay bribes and kickbacks." Pet. App. at 10a (internal citations omitted).

Petitioner's focus on Luxembourg is a red herring. As explained above, for the sole purpose of executing the Funds' investment in Sete and to obtain tax benefits from a corporate structure set up by Petrobras to attract foreign investment into Sete, EIG formed the Luxembourg Entities, two Luxembourg-based pass-through holding companies. *Id.* at 3a-5a, 32a. The Luxembourg Entities had no employees. *Id.* at 19a. EIG, and not the Luxembourg Entities (which are controlled by EIG), made the decision to invest in Sete. *Id.* at 7a, 16a, 46a, 50a.

EIG would like nothing more than to be able to say to the Funds that they need not worry about their

hundreds of millions of dollars of losses in Sete because those losses flowed through Luxembourg shell companies. Yet, Luxembourg was no barrier to their losses. There was no question that once Sete imploded due to Petitioner's corruption, the Funds would and did suffer enormous losses in the U.S. There was nothing attenuated or indirect about these losses. They were immediately and directly caused by Petitioner's fraud consistent with the plain language of the FSIA.

There is no question that the D.C. Circuit considered whether the effect in this case was "direct." Indeed, the D.C. Circuit stated in its opinion that this was the "only" question it needed to consider. Pet. App. at 10a; *see also id.* at 49a (District Court noting that the parties "are at odds over whether these activities had a 'direct effect' on the United States"). That the Petitioner does not like the outcome does not mean that the D.C. Circuit's decision had the effect of writing the word "direct" out of the FSIA.

IV. THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW THAT NEEDS TO BE SETTLED BY THIS COURT

The D.C. Circuit's decision also was consistent with the purpose of the FSIA. As this Court has explained, "the Act (and the commercial exception in particular) largely codifies the so-called 'restrictive' theory of foreign sovereign immunity first endorsed by the State Department in 1952." *Weltover*, 504 U.S. at 612-13. Accordingly, "[t]he restrictive theory of foreign

sovereign immunity would not bar a suit based upon a foreign state's participation in the marketplace in the manner of a private citizen or corporation." *Id.* at 614 (citation omitted). This is because "[a] foreign state engaging in 'commercial' activities do[es] not exercise powers peculiar to sovereigns; rather, it exercise[s] only those powers that can also be exercised by private citizens." *Id.* (internal quotations and citation omitted).

In a recent decision concerning a different FSIA exception (a foreign state's immunity from attachment), this Court stated: "This Court consistently has recognized that foreign sovereign immunity 'is a matter of grace and comity on the part of the United States.'" *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 821 (2018) (citations omitted). As this Court explained, the FSIA came about because "foreign states became more involved in commercial activity in the United States" and "the State Department recognized that such participation 'makes necessary a practice which will enable persons doing business with them to have their rights determined in the courts.'" *Id*. at 821-22 (citation omitted). Indeed, "Congress enacted the FSIA in an effort to codify this careful balance between respecting the immunity historically afforded to foreign sovereigns and holding them accountable, in certain circumstances, for their actions." *Id*. at 822 (citation omitted).

The House Report concerning the passage of the FSIA is in accord. The Report informs that "[a]t the hearings on the bill it was pointed out that American

citizens are increasingly coming into contact with foreign states and entities owned by foreign states. These interactions arise in a variety of circumstances, and they call into question whether our citizens will have access to the courts in order to resolve ordinary legal disputes." H.R. Rep. No. 94-1487, at 6 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 6604, 6605. The Report referred to the bill as "urgently needed legislation" "[i]n a modern world where foreign state enterprises are every day participants in commercial activities." *Id*. at 6605. The Report explained that the bill sought to codify the "'restrictive' principle of sovereign immunity, as presently recognized in international law." *Id.* Under the "restrictive principle of sovereign immunity," the immunity of a foreign state would be restricted to suits involving a foreign state's public acts and would not extend to suits based on its commercial or private acts. *Id.*

The U.S. has an interest in seeing that its citizens are not defrauded. The FSIA was enacted in part to ensure that its citizens are protected. This case concerns the acts taken by a predatory foreign entity that purposefully targeted and solicited investments from U.S. investors with materially misleading marketing pitches, orally and in writing, in the United States, and caused them to suffer injury in the United States. That is exactly the conduct meant to be addressed by the FSIA's commercial-activity exception.

Petitioner argues that "Congress had good reason to not give the U.S. courts jurisdiction over acts taken by foreign sovereigns that only have indirect effects in

the United States" because, for example, the "state will be subject to American discovery and litigation." Petition at 22-23. But that is not a concern here. The effect was direct, and American litigation and discovery is appropriate and consistent with the FSIA. Indeed, Petrobras has defended a securities class action in the Southern District of New York relating to the bribery scheme, took an appeal to the Second Circuit Court of Appeals in that action and settled it for close to $3 billion. *See In re Petrobras Sec. Litig*., 317 F. Supp. 3d 858 (S.D.N.Y. 2018). It willingly assented to jurisdiction in this country and never once raised an argument that it is immune to jurisdiction under the FSIA. Under the Criminal Agreement, Petrobras willingly accepted jurisdiction in this country to reach an agreement with the DOJ, and it agreed to a continuing three years of jurisdiction for the purposes of further cooperation, compliance and remedial action. *See* https://www.justice.gov/opa/press-release/file/1096706/download at 4.

Nor is there any merit to Petitioner's claim that the Court should grant the petition because the "Court routinely grants certiorari in FSIA cases." Petition at 23. A mere two years ago, this Court faced the same arguments in a petition for certiorari on the Second Circuit's *Atlantica* FSIA decision, and denied that petition. *Atlantica*, 137 S. Ct. 493 (denying certiorari); Petition for a Writ of Certiorari, *Sovereign Wealth Fund Samruk-Kazyna JSC v. Atlantica Holdings, Inc.*, No. 16-2011, 2016 WL 4363497, at *30 (Aug. 10, 2016). There is no circuit decision that has altered the FSIA

landscape since the denial of certiorari in *Atlantica*, and Petitioner has not cited any.

There is also no reason to invite the Solicitor General to express the views of the United States, as Petitioner requests. Petition at 24. In making this request, Petitioner solely points to the fact that FSIA cases concern the foreign relations of the United States. *Id.* at 23-24. Not every FSIA case warrants placing a burden on the Solicitor General to submit a response. Where Petitioner has not shown there to be a circuit split or confusion on any aspect of the FSIA in this case, this request should be denied.

Finally, there is no merit to Petitioner's claim that this Court should review this matter because the "District of Columbia District Court is the default venue for FSIA suits against foreign states and their political subdivisions." Petition at 24; *see also id.* at 14 (claiming there is an "outsize role the D.C. Circuit plays in FSIA cases"). Our research reveals that in the last ten years, the Second Circuit – which decided *Atlantica* – published nearly as many FSIA decisions as the D.C. Circuit, and the Ninth Circuit was a close third. Petitioner's factual predicate is incorrect.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

DANIEL B. GOLDMAN
Counsel of Record
KERRI ANN LAW
CLAUDIA PAK
SAM KOCH
KRAMER LEVIN NAFTALIS &
FRANKEL LLP
1177 Avenue of the Americas
New York, New York 10036
Tel: (212) 715-9100
dgoldman@kramerlevin.com

BARRY COBURN
COBURN & GREENBAUM PLLC
1710 Rhode Island Avenue, NW
Washington, D.C. 20036
Tel: (202) 657-4490

Counsel for Respondents