No. 24-1130

In the Supreme Court of the United States

KINGDOM OF SPAIN, PETITIONER

v.

BLASKET RENEWABLE INVESTMENTS, LLC, ET AL.

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

SUPPLEMENTAL BRIEF FOR RESPONDENTS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

SUPPLEMENTAL BRIEF FOR RESPONDENTS 1

CONCLUSION 10

TABLE OF AUTHORITIES

Page(s)

CASES

Amaplat Mauritius Ltd. v. Zimbabwe Mining Development Corp., 143 F.4th 496 (D.C. Cir. 2025) 8

Blasket Renewable Investments LLC v Kingdom of Spain [2025] FCA 1028, https://tinyurl.com/4pyf7ed8 .....1, 3, 4, 5, 6, 7, 9

Blue Ridge Investments, LLC v. Republic of Argentina, 735 F.3d 72 (2d Cir. 2013) 7, 8

Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela, 863 F.3d 96 (2d Cir. 2017) 7, 8

Republic of Moldova v. Komstroy LLC, Case C-741/19, ECLI:EU:C:2021:655 (Sept. 2, 2021) 4, 5

Slovak Republic v. Achmea BV, Case C-284/16, ECLI:EU:C:2018:158 (Mar. 6, 2018).....4, 5

STATUTES, TREATY, AND CONVENTIONS

Convention on the Settlement of Investment Disputes Act of 1966, 22 U.S.C. § 1650a.....7, 11

TABLE OF AUTHORITIES
(continued)

Page(s)

Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270 ..... 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11

art. 53 3

art. 53(a) 4

art. 54(1) 4

Energy Charter Treaty, Dec. 17, 1994, 2080 U.N.T.S. 95 ..... 2, 4, 5, 6, 9

Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1605(a)(1) 2, 7, 9

28 U.S.C. § 1605(a)(6) 1, 7, 8, 9

Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 ..... 2, 4, 5

SUPPLEMENTAL BRIEF FOR RESPONDENTS

On August 29, 2025, the Federal Court of Australia held that the same ICSID awards that NextEra and 9REN seek to enforce in these cases are enforceable in Australian courts and that Spain lacks immunity against enforcement. *Blasket Renewable Investments LLC v Kingdom of Spain* [2025] FCA 1028, https://tinyurl.com/4pyf7ed8 (Op.). In an earlier decision, the High Court of Australia (Australia's apex court) had unanimously held that Spain, an ICSID Convention member, waived immunity to ICSID-award-enforcement actions in the courts of ICSID Convention members, like Australia. NextEra Opp. 27. In the Federal Court case, Spain tried to circumvent the High Court decision, arguing that it was immune from the enforcement proceedings and that the ICSID awards were not binding. The court rejected those arguments.

The Federal Court decision's reasoning applies here, too, and it helps show why this Court's review is unwarranted. The Federal Court's decision rests primarily on two rulings: that Spain waived immunity to ICSID-award-enforcement proceedings and that Spain cannot use EU law to renege on its international treaty commitments. Op. ¶¶ 87, 161-75, 365. Those holdings are correct, as NextEra and 9REN have explained (Opp. 22-28). Spain's reply contains no good response, but rather just a conclusory assertion that the Court should simply ignore those outcome-determinative issues.

The Australian rulings help show why Spain's question presented on the FSIA's arbitration exception, 28 U.S.C. § 1605(a)(6), cannot resolve these cases in Spain's favor. No matter the answer to the question,

the district court has jurisdiction to enforce NextEra's and 9REN's awards for two reasons. *First*, fundamental international law principles and the ECT's plain terms show that Spain agreed to arbitrate. Even assuming EU law conflicts with Spain's ECT obligations, Spain cannot use that internal EU law to renege on its international treaty commitments. The Vienna Convention on the Law of Treaties and elementary international law principles make clear that Spain's ECT obligations are binding. NextEra Opp. 22-25. *Second*, U.S. courts have jurisdiction under the FSIA's waiver exception, 28 U.S.C. § 1605(a)(1), because ICSID Convention members waive immunity to ICSID-award-enforcement suits in the courts of member states, like the United States—just as the Australian courts have held that Spain waived immunity before Australian courts through its ICSID Convention membership. NextEra Opp. 25-28.

These two problems—which Spain's petition and reply all but ignore—plus Spain's persistence in the Federal Court of Australia despite the High Court of Australia's ruling, confirm that Spain's cert petition reflects its intransigent refusal to pay its debts, not any need for this Court's intervention. Indeed, those problems are powerful reasons to deny Spain's petition, which seeks to avoid these fatal intra-EU and ICSID-Convention-waiver issues even after NextEra and 9REN's brief in opposition raised them (at i, 22-28). Spain's petition makes little sense without them. Put simply, the Australian decision confirms that Spain wants this Court to spend precious resources entertaining arguments that the United States should violate its own treaty commitments to help nullify Spain's. As the Australian Federal Court recognized, Spain's meritless yet still relentless arguments asked

it to disregard Australia's own ICSID Convention obligations "to recognise and enforce the awards." Op. ¶¶ 203, 213.

1. In its August 29 decision, the Federal Court of Australia held that NextEra's and 9REN's ICSID awards against Spain—the same awards at issue here—are enforceable in Australian courts and that Spain lacks immunity in ICSID-award-enforcement proceedings. Op. ¶¶ 1-2, 87, 265, 365. The decision addressed Spain's arguments "that the High Court was wrong" when it held in 2023 that Spain had waived immunity from ICSID-award-enforcement proceedings in Australian courts by ratifying the ICSID Convention. *Id.* ¶¶ 4-5. In Spain's telling, despite the Australian apex court's ruling, the awards were not binding. *Id.*; *see id.* ¶¶ 78-79. The Federal Court rejected those arguments.

a. The Federal Court first reaffirmed the High Court of Australia's ruling that by becoming an ICSID Convention member, Spain waived immunity to ICSID-award-enforcement proceedings in member state courts. *Id.* ¶¶ 4, 365. Spain claimed it was immune from the enforcement proceedings because its obligations to EU member states under EU treaties conflict with its ICSID Convention obligations. *Id.* ¶ 78(2)(a). That conflict, Spain argued, means that the awards are not "binding" under Article 53 of the ICSID Convention. *Id.* ¶ 78(2). According to Spain, the "primacy" of EU law should resolve the conflict. *Id.* ¶ 78(2)(a). And under those primacy principles, Spain concluded, it has "a positive obligation *not* to comply" with the awards, because paying the awards might violate the rules about "State aid" under EU law. *Id.*

The Federal Court rejected Spain's argument. It held that the case was indistinguishable from the earlier case before the High Court, and it reaffirmed that, by joining the ICSID Convention, "Spain waived its immunity" to ICSID-award-enforcement proceedings in Australian courts. *Id.* ¶¶ 175, 214. Under Article 53(a), the court explained, the awards "are 'binding' on Spain … both as a 'party' to the award and a Contracting State to the ICSID Convention." *Id.* ¶ 164. And "each Contracting State, including Australia," is obligated to "'recognise … and enforce the pecuniary obligations imposed by' the awards." *Id.* (quoting ICSID Convention art. 54(1)). What's more, the "ICSID Convention contains its own internal self-contained system of remedies." *Id.* ¶ 166. That system makes an ICSID award "binding and enforceable (subject to any stay on enforcement) unless and until it is annulled" through the Convention's annulment procedures. *Id.* ¶ 171; *see id.* ¶¶ 163-65. And there was "no dispute" that the awards "are genuine, certified and authenticated," or that Spain had exhausted its "rights of reexamination of the merits of the awards" within ICSID's "self-contained" annulment process. *Id.* ¶ 174.

b. Given Spain's waiver of immunity, the Federal Court found it unnecessary to consider on the merits Spain's arguments that the awards weren't binding because of the asserted conflict between EU law and Spain's ICSID Convention obligations. *Id.* ¶¶ 174, 180. The Federal Court nonetheless considered the arguments "for completeness," *id.* ¶ 181, and rejected them based on public international law and the Vienna Convention, *see, e.g.*, *id.* ¶¶ 170, 174-79, 209, 212, 217-22, 233-57.

According to Spain, two recent CJEU decisions require courts to interpret its longstanding ECT

commitments not to apply to disputes between EU member states and investors of other EU member states. Op. ¶ 185; *see* Case C-741/19, *Republic of Moldova v. Komstroy LLC*, ECLI:EU:C:2021:655 (Sept. 2, 2021); Case C-284/16, *Slovak Republic v. Achmea BV*, ECLI:EU:C:2018:158 (Mar. 6, 2018). Spain claimed that given those CJEU decisions, the awards are not binding or enforceable, meaning Spain has no public international law obligation to comply with them. *Id.* ¶¶ 1, 185-86.

The Federal Court disagreed, explaining that the asserted conflict "in no way" diminishes Spain's international law obligations to comply with the ICSID awards. *Id.* ¶ 222. EU law applies "only within the EU system and not on the broader international plane." *Id.* ¶ 205. Thus, the court explained, the CJEU's late-breaking rulings cannot change the meaning of the ECT and ICSID Convention—multilateral treaties that must "be interpreted in the same way for all the contracting parties," as public international law and the Vienna Convention make clear. *Id.* ¶ 209; *see id.* ¶¶ 169, 206, 216-22.

The Federal Court also explained that whether paying the awards could violate the European Union's rules on state aid is irrelevant, because those rules don't affect "the respective obligations of Spain and Australia in public international law." *Id.* ¶ 222. Spain could withdraw from the ICSID Convention to avoid violating EU law, the court observed, but any such violation doesn't nullify Spain's ICSID Convention obligations retroactively. *Id.* ¶ 212.

c. Stepping back, the Federal Court recognized that Spain was arguing, at bottom, that Australia should violate its own treaty obligations to help Spain

evade Spain's treaty commitments. The Federal Court explained that EU law could not nullify Australia's obligation, as an ICSID Convention member that is not bound by EU law, to enforce ICSID awards in Australian courts. *Id.* ¶ 213. Excusing Spain from complying with the awards, the court continued, would undermine all member states' shared interest in and commitment to "each other's observance of their obligations under the Convention," *id.* ¶¶ 244, 249, and threaten "the efficacy" and "viability of the whole ICSID system," *id.* ¶ 252.

2. The Federal Court's decision confirms the Court's intervention isn't warranted here. Apart from the meritlessness of Spain's arguments, Spain's arbitration-exception question presented can't resolve these cases in Spain's favor anyway. That's because EU law doesn't alter Spain's ECT and ICSID Convention obligations, and Spain waived immunity to ICSID-award-enforcement proceedings in member state courts. Rather than confront those points, which NextEra and 9REN raised in their brief in opposition, Spain's reply whistles past them.

First, the Federal Court's decision confirms that Spain cannot use internal EU law to renege on its treaty obligations to comply with NextEra and 9REN's ICSID awards. *See* NextEra Opp. 22-25. Even if the FSIA's arbitration exception requires showing that Spain agreed to arbitrate with NextEra and 9REN specifically, Spain remains bound by its consent in ECT Article 26 to arbitrate with investors from ECT member states, including NextEra and 9REN. NextEra Opp. 23. Spain is also bound by its ICSID Convention obligations to treat the ICSID awards as binding. *Supra* pp. 3-5. And as the Federal Court explained, EU law operates within the European Union

only, and courts must interpret multilateral treaties uniformly for all treaty members. *Supra* p. 5. Spain thus cannot use EU law to escape its ECT and ICSID Convention obligations. Nor does EU law override Congress's directive in 22 U.S.C. § 1650a that U.S. courts must enforce ICSID awards as if they are final state court judgments. NextEra Opp. 28.

Second, the Federal Court decision reaffirms that Spain, as an ICSID Convention member, waived immunity to ICSID-award-enforcement suits in member state courts. No matter whether there is jurisdiction under the arbitration exception, 28 U.S.C. § 1605(a)(6)—Spain's myopic question presented—U.S. courts have jurisdiction under the waiver exception, *id.* § 1605(a)(1), because the United States is an ICSID Convention member, too. NextEra Opp. 22.

That waiver problem makes clear that this case isn't certworthy. Spain claims conflict between the court of appeals' decision here and the Second Circuit. But the Second Circuit holds that ICSID Convention members waive immunity to ICSID-award-enforcement proceedings under § 1605(a)(1). *Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela*, 863 F.3d 96, 104-05 (2d Cir. 2017); *Blue Ridge Investments, LLC v. Republic of Argentina*, 735 F.3d 72, 83-84, 86 (2d Cir. 2013); NextEra Opp. 25-27. The Federal Court's opinion reinforces that point. The court cited *Mobil Cerro* to explain that ICSID awards can be annulled only through ICSID Convention procedures, and that member states must enforce the awards in their courts. Op. ¶ 168. The bottom line is that the Second Circuit, if presented with NextEra's and 9REN's ICSID awards, would likewise find that Spain lacks immunity from enforcement. Reviewing Spain's question presented about the arbitration exception is

unwarranted—especially as it doesn't account for Spain's ICSID Convention waiver problem.

Spain doesn't dispute that NextEra's and 9REN's ICSID awards would be enforceable in the Second Circuit. Its only answer is that the D.C. Circuit split from the Second Circuit on a *different* waiver question in *Amaplat Mauritius Ltd. v. Zimbabwe Mining Development Corp.*, 143 F.4th 496 (D.C. Cir. 2025). Reply Br. 8. *Amaplat* held that a foreign sovereign's ratification of "a treaty that governs only the recognition and enforcement of arbitral awards" isn't also a waiver of immunity to proceedings to enforce *court judgments* confirming arbitral awards. 143 F.4th at 499. The court was addressing an attempt to enforce a foreign court judgment—not any arbitral award—under the District of Columbia Uniform Foreign-Country Money Judgments Recognition Act. *Id.* at 500. But this case doesn't involve any question about enforcing a foreign court judgment.

Spain's desperate attempt to distract with *Amaplat* gets it nowhere. On the ICSID Convention waiver question actually at issue (*see* NextEra Opp. at i, 22-28), neither the D.C. Circuit nor any other court of appeals has disagreed with the Second Circuit's rulings in *Blue Ridge* and *Mobil Cerro* that ICSID Convention members waive immunity to ICSID-award-enforcement proceedings in U.S. courts.

3. Rather than engage with these serious problems in its reply, Spain merely doubles down on its contention that the D.C. Circuit split from the Second and Fifth Circuits on the FSIA's arbitration exception. But, again, there is no conflict, and not just because the Second Circuit would reach the same result under the waiver exception as the D.C. Circuit under the

arbitration exception. As NextEra and 9REN explained (Opp. 17-22), neither the Second nor the Fifth Circuit has held that a multilateral investment treaty, like the ECT, is "for the benefit of a private party," 28 U.S.C. § 1605(a)(6), only if the foreign sovereign agreed to arbitrate disputes with the particular plaintiff involved in the case. Nor has either circuit articulated a general rule for how to show that an arbitration agreement is "for the benefit of a private party." For all that Spain squints at the Second and Fifth Circuits' decisions, neither court addressed the arbitration exception question Spain asks the Court to decide here. And, again, as the Australian Federal Court's decision underscores, the Second Circuit's binding precedent makes clear that Spain would have no immunity in that circuit, and the strength of the waiver reasoning (which Spain doesn't confront) means the Fifth Circuit likely would reach the same conclusion.

4. For all these reasons, Spain's petition isn't certworthy. But if the Court nonetheless grants review, it should also grant review on the intra-EU and ICSID Convention waiver questions in NextEra and 9REN's brief in opposition (at i): (1) whether Spain agreed to arbitrate with investors from other ECT member states and cannot use EU law to renege on that agreement; and (2) whether ICSID Convention members "waived … immunity either explicitly or by implication" to ICSID-award-enforcement suits under the waiver exception, 28 U.S.C. § 1605(a)(1). Spain's logic is that its threshold jurisdictional arguments warrant review. If so, then the intra-EU and waiver questions warrant review, too, as both the Federal Court of Australia and High Court of Australia decisions make clear. Failing to simultaneously address

the intra-EU and ICSID Convention waiver questions and considering only the arbitration exception question would only prolong these proceedings and further delay the long-awaited justice Respondents are due.

5. Spain's intransigence before the Australian courts also confirms the meritlessness of its forum non conveniens argument and the pointlessness of its question presented. As NextEra and 9REN explained (Opp. 29-34), forum non conveniens is unavailable in ICSID-award-enforcement proceedings, and there is no split on that question. But even if the doctrine were available, there is no adequate alternative forum, as the Australian decision confirms. Spain is unwilling to be sued for its assets anywhere in the world. It simply doesn't want to pay or to honor its international treaty obligations. So Australian courts must enforce the awards in Australia just as U.S. courts must enforce the awards in the United States. There is no other way to ensure that NextEra and 9REN can fully collect the money Spain owes them. *See* NextEra Opp. 30-31. NextEra and 9REN seek recovery from Spain's assets in the United States, and only U.S. courts can attach assets located in the United States. NextEra Opp. 32, 34-35.

CONCLUSION

The Australian Federal Court's decision confirms that these cases don't warrant this Court's review. The decision exposes Spain's litigation strategy for what it is: a seemingly endless effort to repackage arguments that awards issued and enforceable under international treaties have no meaning, and treaty members' courts—whether in Australia or the United States—should excuse Spain from its international obligations at the cost of breaking member states' own

treaty obligations. Congress directed U.S. courts to enforce ICSID Convention awards. 22 U.S.C. §1650a. The entire point of the ICSID Convention is to definitively resolve investor–state disputes. This Court should put an end to Spain's delay and deny the petition. If it nonetheless grants review, the Court should grant NextEra and 9REN's two additional questions presented and put an end to Spain's gamesmanship at the merits stage.

Respectfully submitted.

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