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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SUPPLEMENTAL BRIEF FOR RESPONDENTS

The United States' brief confirms that the Court should deny review. Its reasoning also confirms that if the Court nonetheless grants cert, it should grant review of the additional questions presented in NextEra and 9REN's brief in opposition, too—whether Spain agreed to arbitrate with investors from other Energy Charter Treaty (ECT) member states and cannot use European Union law to renege on that agreement; and whether members of 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention) "waived … immunity either explicitly or by implication" to ICSID-award-enforcement suits under the Foreign Sovereign Immunities Act's (FSIA) waiver exception, 28 U.S.C. § 1605(a)(1).

Although Respondents and the United States disagree on the merits of Spain's questions presented, they agree that "the court of appeals' holding does not warrant further review" because the questions presented are academic and further review "is unlikely to make a difference in this case." U.S. Br. 3. If Spain prevails on its question presented on the FSIA's arbitration exception, that would mean only that the courts would need to ask the next question—whether Spain agreed to arbitrate with or for the benefit of NextEra and 9REN. *See id.* And the United States' brief confirms that "[e]ven on de novo review," the clear answer to that question is yes. *See id.* That's because the ECT's "language is unequivocal: Spain gave its 'unconditional consent' to arbitrate disputes with investors" of all other ECT member states. *Id.* That question isn't difficult. As the United States observes, "Spain does not contest that the Treaty itself is best

read to establish an arbitration agreement with or for the benefit of all investors." Br. 17-18.

Spain's intra–European-Union-law argument doesn't present a hard question, either. As "the Vienna Convention on the Law of Treaties, *done* May 23, 1969, 1155 U.N.T.S. 331—to which Spain, the Netherlands, and Luxembourg are parties—provides … , with exceptions not relevant here, a state may not invoke 'internal law'"—like EU law—"to avoid a treaty obligation." U.S. Br. 3. Article 27 of the Vienna Convention is unambiguous on that point. *See* U.S. Br. 17. Article 46 of the Vienna Convention also prevents Spain from claiming any alleged incompetence to be bound by the ECT (decades after it signed and ratified the Treaty), given the "'unconditional' promise reflected in the Treaty's plain text." *Id.* The upshot is that Spain "would not be entitled to relief even if it prevailed on [its] first question presented." U.S. Br. 3; *see* U.S. Br. 17-19; NextEra Opp. 22-25.

Spain responds that it's "obvious" that EU law, not the Vienna Convention *on the Law of Treaties*, should govern whether it agreed to arbitrate in the Energy Charter *Treaty*. Spain Suppl. Br. 7 (June 8, 2026). But *U.S.* law defeats that argument. After all, when Congress makes a law that "conflict[s] with the provision of [a] treaty … the international obligation remain[s] unaffected." *Pigeon River Improvement, Slide & Boom Co. v. Charles W. Cox, Ltd.*, 291 U.S. 138, 160 (1934). Indeed, "international [treaty] obligations would remain" even if a U.S. court "were to declare [a treaty] unconstitutional for purposes of domestic law." *Made in the USA Foundation v. United States*, 242 F.3d 1300, 1310 n.23 (11th Cir. 2001) (citing Vienna Convention arts. 26, 46); *see* Restatement (Second) of Foreign Relations Law § 140 (1965). The

ECT isn't an EU-only treaty, so the international obligations are what the treaty's text says, not what special EU rules supposedly would provide.

Spain's *forum non conveniens* argument can't get it any relief, either. The United States observes that "it is unclear whether Spain's *forum non conveniens* argument could prevail in *any* circuit." Br. 21 (emphasis added). Indeed, it's clear that Spain's position would be unsustainable under any approach to *forum non conveniens*. NextEra Opp. 29-35. As the government recognizes, "[g]iven the apparently entrenched standoff between European courts and arbitrators about whether EU investors are entitled to arbitrate disputes against EU signatory states to the Treaty, it seems unlikely that respondents could get any relief in any European forum." Br. 21-22. The European Commission's (EC) position before this Court and the court of appeals states that European courts are forbidden from granting relief in ECT arbitral-award-confirmation cases involving EU investors, and Spain has gone so far here as to ask European courts to interfere with these ongoing U.S. court proceedings. NextEra CADC Br. 21-22, 57-58.

"Nor is it clear whether and to what extent Spain has attachable assets in any plausibly available non-European forum—even assuming that the public- and private-interest factors would favor such a forum over the United States." U.S. Br. 22; *see* NextEra Opp. 30-31. And Spain has only itself to blame for its failure to make a record, *see* NextEra Opp. 4, 29, 35—though, of course, the reason is that there's no record to make. No matter how one looks at the issue, Spain's proposed alternative forum simply would not afford a fair process or satisfactory remedy to NextEra and 9REN, as *forum non conveniens* requires. Indeed, Spain and

the EU have made it an express point of policy to deny NextEra and 9REN any judicial remedy.

There is every reason to deny review. But if the Court nonetheless chooses to grant, the discussion in the government's brief makes clear that the Court should add the intra-EU and ICSID Convention waiver questions noted in NextEra and 9REN's brief in opposition. *See* NextEra Opp. i, 22-28; NextEra Suppl. Br. 9-10 (Sept. 12, 2025). Further percolation of either question would only cause needless delay, seven years after the awards were rendered. The parties have briefed the issues extensively before the court of appeals and this Court (including in this round of supplemental briefing), and would do so again on the merits. And the United States has joined the intra-EU issue here and found the question straightforward. Both questions are questions of law, and the court of appeals, while not resolving either, "appeared to favor [NextEra and 9REN's] view" on the intra-EU question, as the government observes. U.S. Br. 18. The court of appeals likewise observed that, "had the Treaty's drafters 'intended to exempt intra-EU disputes' from [ECT] article 26's otherwise unequivocal command, 'they could have done so through a "disconnection clause,"' such as the one that the EU (unsuccessfully) proposed during treaty negotiations." *Id.* (quoting Pet. App. 21a). There is no reason the Court should commit its limited resources to resolving an academic question, much less do so while depriving itself of the opportunity to decide the very issue that makes the question academic.

NextEra and 9REN have waited long enough to enforce their arbitration awards, which, as the United States recognizes, it has "an obligation to confirm." Br. 5. Spain first reneged on the long-term tariff

stability it promised NextEra and 9REN, violating the Energy Charter Treaty, NextEra Opp. 1, 7-8, and now wants to renege on its promise to arbitrate the resulting dispute under that same treaty, if it can just get the U.S. courts to play along. But Spain has had ample opportunity to make its intra-EU argument, and "the arbitral panels here (like nearly all arbitral panels to have addressed the issue) rejected Spain's argument." U.S. Br. 5.

The dozens of arbitral panels were correct to do so. The United States recognizes that Spain's intra-EU argument "is precisely what the Vienna Convention forbids," Br. 18, and doesn't question "that Spain does have valid arbitration agreements with or for the benefit of respondents in particular," U.S. Br. 19. And for good reason: The plain text of the arbitration agreement in Article 26 of the ECT is "unequivocal," and "[t]he United States is a party … to the ICSID Convention" and thus must honor its own treaty "obligation to confirm international arbitral awards." U.S. Br. 3, 5.

The Court should deny review, as the United States correctly recommends. The Court shouldn't spend its limited time and energy entertaining the academic arguments Spain has devised in an effort to avoid its treaty commitments. Recognizing that treaties must be interpreted in good faith and according to their text, U.S. Br. 17-18 (citing *Medellín v. Texas*, 552 U.S. 491, 506 (2008)), the United States here has forcefully rejected Spain's argument that it can escape from its ECT commitments, in violation of international law, Br. 3, 17-19. There is no serious contrary legal argument, much less any reason to revisit the United States' stated views about international law and lack of merit of Spain's (and the EC's) intra-EU-

law argument. Nor can Spain escape the fact that its arguments rest, at bottom, on the notion that the United States should violate its own treaty commitments under the ICSID Convention to enforce arbitral awards. U.S. Br. 3; NextEra Opp. 28; NextEra Suppl. Br. 2 (Sept. 12, 2025).

Respectfully submitted.

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