No. 24-1144

In the Supreme Court of the United States

TURKIYE HALK BANKASI A.S., AKA HALKBANK,
PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
JOHN A. EISENBERG
Assistant Attorney General
JEFFREY M. SMITH
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether petitioner, a commercial bank, is entitled to absolute immunity from criminal prosecution by the United States for numerous violations of U.S. criminal laws, on the theory that the bank's majority ownership by the Turkish government compels a common-law immunity that would override the considered prosecutorial decision of the Executive Branch.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Statutes:

Statutes—Continued: Page

Miscellaneous:

In the Supreme Court of the United States

No. 24-1144

TURKIYE HALK BANKASI A.S., AKA HALKBANK,
PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-36a) is reported at 120 F.4th 41. The opinion of this Court (Pet. App. 37a-66a) is reported at 598 U.S. 264. An earlier opinion from the court of appeals (Pet. App. 67a-90a) is reported at 16 F.4th 336. The order of the district court (Pet. App. 91a-113a) is available at 2020 WL 5849512.

JURISDICTION

The judgment of the court of appeals was entered on October 22, 2024. A petition for rehearing was denied on December 6, 2024 (Pet. App. 114a-115a). On January 29, 2025, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including May 5, 2025, and the petition was filed on that

date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

A grand jury in the United States District for the Southern District of New York indicted petitioner on one count of conspiring to obstruct the lawful functions of the U.S. Department of the Treasury, in violation of 18 U.S.C. 371; one count of conspiring to violate the International Emergency Economic Powers Act (IEEPA), Pub. L. No. 95-223, Tit. II, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*), in violation of 50 U.S.C. 1705; one count of bank fraud, in violation of 18 U.S.C. 1344; one count of conspiring to commit bank fraud, in violation of 18 U.S.C. 1349; one count of money laundering, in violation of 18 U.S.C. 1956(a)(2)(A) and 2; and one count of conspiring to commit money laundering, in violation of 18 U.S.C. 1956(h). Superseding Indictment ¶¶ 66-81. The district court denied petitioner's motion to dismiss the indictment. Pet. App. 91a-113a. The court of appeals affirmed. *Id.* at 67a-90a. This Court granted certiorari, affirmed in part, and remanded to the court of appeals to consider additional arguments. 598 U.S. 264. On remand, the court of appeals again affirmed the district court's judgment. Pet. App. 1a-36a.

1. Petitioner is a commercial bank whose shares are majority-owned by the Turkish Wealth Fund, which in turn "is part of and owned by" the Turkish government. Pet. App. 42a, 69a. A federal grand jury returned an indictment alleging that petitioner participated in the largest-known conspiracy to evade the United States' economic sanctions against Iran: a multi-year scheme "intended to deceive U.S. regulators and foreign banks in order to launder approximately $1 billion in Iranian

oil and gas proceeds through the U.S. financial system." *Id.* at 8a (citation omitted).

The indictment covers a time period during which the Iranian government and numerous Iranian entities were subject to U.S. sanctions under Executive Orders and regulations issued pursuant to IEEPA and Iran-specific legislation. See Pet. App. 6a-7a. Those sanctions generally prohibited foreign financial institutions from facilitating purchases of Iranian oil and gas products but made certain exceptions where the foreign financial institution held the Iranian proceeds in an account that could not be accessed by Iran except for approved purposes such as bilateral trade and purchases of food. See 22 U.S.C. 8513a(d)(2) and (4)(C)-(D); Pet. App. 6a. The indictment alleges that while authorized to hold the proceeds of Iran's oil and gas sales to Türkiye for those limited purposes, petitioner conspired with an Iranian-Turkish businessman, Reza Zarrab, to create avenues for Iran to surreptitiously access the funds. Superseding Indictment ¶¶ 25-34.

One scheme alleged in the indictment involved providing Iran with unfettered access to restricted funds through illicit shipments of gold: petitioner transferred Iranian oil and gas proceeds to front companies controlled by Zarrab; those companies converted the proceeds to gold, which they then exported; and the gold was then converted back to cash for Iran's unconstrained use. Superseding Indictment ¶¶ 25-45. Another such scheme involved fake food shipments: coached by petitioner's executives, Zarrab's front companies would fabricate invoices purporting to show food sales to Iran; petitioner would transfer Iranian proceeds to those companies to cover the fake debts; and the proceeds would then be available for Iran to use for whatever purposes

it chose. *Id.* ¶¶ 50-58. Altogether, the alleged schemes freed up about $20 billion of restricted Iranian funds. *Id.* ¶ 4; see Pet. App. 71a.

The indictment further alleged that petitioner helped to launder at least $1 billion of the restricted Iranian funds through the U.S. financial system. Superseding Indictment ¶ 64; Pet. App. 101a-103a. And it alleged that petitioner repeatedly lied to Treasury Department officials to conceal the true nature of its transactions—claiming, for example, that the gold transactions involved exclusively private companies and individuals, as opposed to the actual Iranian government entities. Superseding Indictment ¶¶ 25-27, 40-49, 63.

Two defendants—Zarrab, who pleaded guilty, and petitioner's former deputy general manager for international banking—have been convicted for their roles in the schemes. See Pet. App. 7a n.3; *United States* v. *Atilla*, 966 F.3d 118, 122 (2d Cir. 2020). Other indicted defendants—including petitioner's former general manager and former head of foreign operations—remain at large. See Pet. App. 43a.

2. Petitioner moved to dismiss the indictment on the theory that it was immune from criminal prosecution under the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1602 *et seq.*, and the common law. Pet. App. 99a. The district court denied the motion. *Id.* at 91a-113a.

With respect to the FSIA, the district court observed that "[n]othing in the text of FSIA suggests that it applies to criminal proceedings"; that "the 'legislative history . . . gives no hint that Congress was concerned about a foreign defendant in a criminal proceeding' "; and that "[e]ven assuming, *arguendo*, that FSIA provided immunity in this criminal case (which it does not),

FSIA's commercial activity exception[] would clearly apply and support [petitioner's] prosecution." Pet. App. 100a-101a; see *id.* at 91a-113a. In describing the commercial nature of petitioner's conduct, the court highlighted the indictment's allegations of commercial conduct that took place in the United States, such as petitioner's "business meetings, conference calls, and other interactions and communications at the U.S. Department of Treasury." *Id.* at 102a. The court further observed that those activities, "coupled with" petitioners' "'laundering of more than $1 billion through the U.S. financial system'" had a "'direct effect'" on the United States. *Id.* at 103a (brackets and citations omitted).

The district court also rejected petitioner's assertion of common-law immunity. Pet. App. 104a. The court explained that at common law, courts deferred to Executive Branch immunity determinations, and by pursuing the prosecution of petitioner, the Executive Branch has "manifested its clear sentiment that [petitioner] should be denied immunity." *Ibid.* (citation omitted).

3. The court of appeals affirmed. Pet. App. 69a. The court saw no need to decide whether the "FSIA confers immunity on foreign sovereigns in the criminal context," because "even assuming *arguendo*" that it does, "the offense conduct * * * falls within FSIA's commercial activities exception." *Id.* at 83a. The court also rejected petitioner's assertion of common-law sovereign immunity. *Id.* at 89a-90a.

The court of appeals observed that the common law itself "had an exception for a foreign state's commercial activity, just like FSIA's commercial activity exception." Pet. App. 89a (footnote omitted); see *id.* at 89a (citing *Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 487-488 (1983); Restatement (Fourth) Foreign

Relations Law of the United States § 454 cmt. h (2018)). The court also added that, "in any event, at common law, sovereign immunity determinations were the prerogative of the Executive Branch." *Id.* at 89a. And the court of appeals agreed with the district court that the "decision to bring criminal charges" "necessarily manifested the Executive Branch's view that no sovereign immunity existed." *Id.* at 89a-90a.

3. This Court affirmed in part, vacated in part, and remanded for further proceedings. 598 U.S. at 281. The Court held that the FSIA does not immunize petitioner from prosecution, because the FSIA does not apply in criminal cases. *Id.* at 272. The Court remanded the case to the court of appeals to "consider the various arguments regarding common-law immunity that the parties press[ed] in this Court," including "whether and to what extent foreign states and their instrumentalities are differently situated for purposes of common-law immunity in the criminal context." *Id.* at 280.

On remand, following an additional round of briefing and oral argument, the court of appeals again affirmed the judgment of the district court. Pet. App. 3a. The court of appeals first observed that at common law, "foreign sovereign immunity was 'a matter of grace and comity on the part of the United States,'" and that courts "'consistently . . . deferred to the decisions" of the Executive Branch "on whether to take jurisdiction over actions against foreign sovereigns and their instrumentalities.'" *Id.* at 12a (quoting *Verlinden*, 461 U.S. at 486). The court rejected petitioner's argument that deference to the Executive Branch applies only in civil cases, not criminal prosecutions. *Id.* at 17a. And the court declined to adopt petitioner's proposed rule that "courts

may only defer to the Executive's position to apply, rather than deny, foreign sovereign immunity." *Ibid.*

The court of appeals then addressed "whether the federal criminal prosecution of [petitioner] comports with" the immunity owed to foreign-state-owned corporations at common law. Pet. App. 22a-23a. Based on its analysis of the case law, the court determined that "under the common law, foreign state-owned corporations are not entitled to absolute immunity in all criminal cases." *Id.* at 29a. The court explained that although such corporations may be extended immunity "based on their governmental conduct," the "common law places no independent bar on the prosecution of state-owned corporations for their commercial activity." *Ibid.* Applying that standard to the prosecution of petitioner, the court reasoned that "the charges in the indictment concern [petitioner's] commercial activity." *Id.* at 30a. And the court emphasized that "the Executive's position that [petitioner] is not immune from prosecution based on that activity is consistent with the scope of foreign sovereign immunity recognized at common law." *Id.* at 34a.

"Because the Executive's position is consistent with the common law," the court of appeals stated that it would "defer" to the Executive's view that petitioner should not be immune from prosecution. Pet. App. 34a. The court declined to decide, however, whether it would still defer to the Executive "if, unlike here, the Executive's denial of immunity to a foreign sovereign derogated from the common law." *Id.* at 36a. Instead, the court made clear that it "need not determine the outer limits of the deference afforded in this context because the Executive Branch's position here is consistent with

the scope of immunity extended to foreign state-owned corporations at common law." *Id.* at 17a.

ARGUMENT

Petitioner contends (Pet. 24) that the court of appeals erred by affording "conclusive deference" to the Executive Branch's determination that petitioner should not be immune from criminal prosecution. But the court did not grant "conclusive deference." Instead, the court conducted its own examination of the common law, found that the common law aligned with the Executive Branch's position, and stated that it would "defer" to the Executive Branch's position because of that alignment. Pet. App. 36a. The court repeatedly refused to decide whether it would apply the same deference if the Executive Branch's position were not in fact consistent with the substance of the common law. See, *e.g.*, *id.* at 5a, 10a, 17a, 36a. And even setting any question of deference to the side, petitioner cannot identify support for its sweeping argument that foreign-state-owned corporations are entitled to absolute immunity from criminal prosecution under the common law. The decision below does not conflict with any decision of this Court or another court of appeals, and there is no sound basis for further review.

1. To the extent that petitioner asks (Pet. i) this Court to consider whether courts are "bound to defer conclusively to the Executive's" immunity determinations in criminal prosecutions of entities partially owned by foreign government, he seeks review beyond the scope of the court of appeals' decision. The court expressly declined to weigh in on the question that petitioner asks this Court to decide: whether such deference should be "conclusive" and apply even when the court's analysis of the common law points the other way.

See Pet. App. 5a, 11a, 17a, 36a. This Court is "a court of review, not of first view," *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005), and petitioner identifies no sound reason for this Court to be the first one to decide whether the Executive's immunity decision should be dispositive.

The court of appeals did not hold that Executive Branch determinations merit "conclusive" deference. See Pet. 11-17, 24-25, 31. To the contrary, the court made clear that it was simply "narrowly" finding "that common-law immunity from criminal prosecution is not afforded to a foreign, state-owned corporation for its commercial activity when," as here, "the Executive has determined, through its prosecution, that the corporation should not receive such immunity." Pet. App. 29a n.12. And the court's description of following the approach consistent with freestanding common-law immunity principles as a form of "deference" does not transform the court's decision into a holding that the Executive Branch should receive "conclusive" deference in all cases.

Instead, the court of appeals was simply acknowledging that the Branches' respective roles in foreign policy, and the long history of immunity determinations, make it appropriate for a court to afford deference to the Executive Branch's immunity determination, at least when its actions were consistent with the common law, as in a case like this. As the court of appeals correctly recognized, foreign sovereign immunity is "a matter of grace and comity on the part of the United States, and not a restriction imposed by the Constitution." *Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 486 (1983); see Pet. App. 12a. And out of respect for the separation of powers, "judges historically

'deferred to the decisions of the political branches—in particular, those of the Executive Branch—on whether to take jurisdiction' over particular actions against sovereigns and their instrumentalities." *CC/Devas (Mauritius) Ltd.* v. *Antrix Corp.*, 145 S. Ct. 1572, 1577 (2025) (quoting *Republic of Austria* v. *Altmann*, 541 U.S. 677, 689 (2004)).

Beginning with *The Schooner Exchange* v. *McFaddon*, 11 U.S. (7 Cranch) 116 (1812), courts in this country have long deferred to the Executive Branch's foreign-sovereign-immunity determinations. See Pet. App. 11a-12a. In that case, the Court "accept[ed] a suggestion from the Executive Branch" to extend immunity to a foreign-government-owned vessel. *Opati* v. *Republic of Sudan*, 590 U.S. 418, 420 (2020); see *Munaf* v. *Geren*, 553 U.S. 674, 701 (2008). Deference to the Executive Branch continued in the ensuing years. See *Bank Markazi* v. *Peterson*, 578 U.S. 212, 235 (2016) (describing the practice). During that time, the Court made clear that just as courts must not "deny an immunity which our government has seen fit to allow," they also must not "allow an immunity on new grounds which the government has not seen fit to recognize." *Republic of Mexico* v. *Hoffman*, 324 U.S. 30, 35 (1945).

As this Court explained, "recognition by the courts of an immunity upon principles which the political department of government has not sanctioned may be equally embarrassing to it in securing the protection of our national interests and their recognition by other nations." *Hoffman*, 324 U.S. at 36. And in "electing to bring [a] prosecution, the Executive has" had the opportunity to "assess[] th[e] prosecution's impact on this Nation's relationship with" other countries, *Pasquantino* v. *United States*, 544 U.S. 349, 369 (2005), and to

determine that the prosecution is in the national interest. The Executive Branch, which "possess[es] significant diplomatic tools and leverage the judiciary lacks," is better positioned than courts to make that determination. *Munaf*, 553 U.S. at 703 (citation omitted).

Petitioner's criticisms of the court of appeals' decision (Pet. 15-19) attack a straw man; as discussed above, the court did not hold that courts must "conclusively" defer to the Executive Branch when the Executive Branch's determination is at odds with the common law. Petitioner is also incorrect in suggesting that deferring to the Executive Branch in these circumstances would mean that petitioner's "prosecutor" would "also be [petitioner's] judge." Pet. 15. The government does not decide whether petitioner is guilty; judges and juries do. And even the initial decision to bring an indictment depends on the actions of the grand jury, which is meant to act "'independently of [the] prosecuting attorney'" and to "serv[e] as a kind of buffer or referee between the Government and the people." *United States* v. *Williams*, 504 U.S. 36, 47, 49 (1992) (citation omitted). Deference to the denial of immunity in this context simply recognizes that the judicial branch should not overstep by thwarting a prosecution with sensitive foreign-affairs implications, when the government has determined that immunity is not a bar to such an action and that determination is consistent with the common law.

2. To the extent that petitioner seeks further review (Pet. 19) on the theory that the common law entitles it to absolute immunity from criminal prosecution, it provides no sound basis for this Court's intervention. As this Court has explained, "government instrumentalities established as juridical entities distinct and independent from their sovereign should normally be

treated as such." *First Nat'l City Bank* v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 626-627 (1983). "A basic tenet of American corporate law is that the corporation and its shareholders are distinct entities," *Dole Food Co.* v. *Patrickson*, 538 U.S. 468, 474-475 (2003) (citing cases), and under the common law, corporations are "deemed persons" subject to their own legal liability. *United States* v. *Amedy*, 24 U.S. (11 Wheat.) 392, 412 (1826). The baseline rule of corporate liability was not materially different when a sovereign owned or controlled the relevant corporation. Even though the sovereign itself generally possessed immunity from suit, the state-owned entity generally lacked immunity, at least where the suit arose from its commercial activities.

In the domestic context, this Court has long recognized that a commercial enterprise owned or controlled by a sovereign generally lacks immunity from suit. As Chief Justice Marshall explained for the Court, "[i]t is, we think, a sound principle, that when a government becomes a partner in any trading company, it devests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen." *Bank of United States* v. *Planters' Bank*, 22 U.S. (9 Wheat.) 904, 907 (1824). An opinion for the Court by Justice Holmes similarly rejected the "notion" that a government-owned corporation would "share the immunity of the sovereign from suit," calling it "a very dangerous departure from one of the first principles of our system of law." *Sloan Shipyards Corp.* v. *United States Shipping Bd. Emergency Fleet Corp.*, 258 U.S. 549, 566 (1922). Judge Learned Hand similarly observed "that, in entering upon industrial and commercial ventures, the governmental agencies used should,

whenever it can fairly be drawn from the statutes, be subject to the same liabilities and to the same tribunals as other persons or corporations similarly employed." *Gould Coupler Co.* v. *United States Shipping Bd. Emergency Fleet Corp.*, 261 F. 716, 718 (S.D.N.Y. 1919).

Courts have long applied that principle, including to foreign-state-owned corporations. See, *e.g.*, *Coale* v. *Societe Co-Op Suisse des Charbons, Basle*, 21 F.2d 180, 181 (S.D.N.Y. 1921) (denying immunity to a corporation created, owned, and partially controlled by Swiss government); *Molina* v. *Comision Reguladora del Mercado de Henequen*, 103 A. 397, 398-399 (N.J. 1918) (denying immunity to corporate "governmental agency of the state of Yucatan" and noting "that no authority can be found in the books for the proposition that foreign corporations which happen to be governmental agencies are immune from judicial process"); see also *Nathan* v. *Virginia*, 1 U.S. (1 Dall.) 77, 79 (Pa. Ct. Comm. Pleas 1781) ("[B]y engaging in trade, [a sovereign agent] may so far divest himself of his public character, as to subject the[] goods to attachment."). And the principle accords with the British rule that had applied to the East India Company, which functioned largely as an instrumentality of the British government. See Ingrid Wuerth, *The Due Process and Other Constitutional Rights of Foreign Nations*, 88 Fordham L. Rev. 633, 687 (2019).

The same has been true in criminal cases. For at least 70 years, the federal government has been applying federal criminal jurisdiction (often through subpoenas) to foreign-government-owned corporations. See *In re Grand Jury Investigation of the Shipping Indus.*, 186 F. Supp. 298, 318-320 (D.D.C. 1960); *In re Sealed Case*, 825 F.2d 494, 495 (D.C. Cir.) (per curiam), cert.

denied, 484 U.S. 963 (1987); D. Ct. Doc. 12, *United States* v. *Aerlinte Eireann*, No. 89-cr-647 (S.D. Fla. Oct. 6, 1989); *United States* v. *Jasin*, No. 91-cr-602, 1993 WL 259436, at *1 (E.D. Pa. July 7, 1993); D. Ct. Doc. 2, *United States* v. *Statoil, ASA*, No. 06-cr-960 (S.D.N.Y. Oct. 13, 2006); *In re Grand Jury Proceeding Related to M/V Deltuva*, 752 F. Supp. 2d 173, 176-180 (D.P.R. 2010); D. Ct. Doc. 971, *United States* v. *Pangang Grp. Co.*, No. 11-cr-573 (N.D. Cal. Jan. 5, 2016); D. Ct. Doc. 3, *United States* v. *Ho*, No. 16-cr-46 (E.D. Tenn. Oct. 5, 2016); D. Ct. No. 1, *United States* v. *United Microelectronics Corp.*, No. 18-cr-465 (N.D. Cal. Sept. 27, 2018); *In re Grand Jury Subpoena*, 912 F.3d 623, 626 (D.C. Cir. 2019).

In its effort to avoid the implications of longstanding practice, petitioner inappositely relies (Pet. 27-29) on a "few" cases where courts have extended immunity to a foreign-state-owned corporation that performed "governmental functions." Pet. App. 25a-26a. For example, in *Dunlap* v. *Banco Central Del Ecuador*, 41 N.Y.S.2d 650 (Sup. Ct. 1943), a court accorded immunity to a corporation partly owned by the Ecuadorean government, because it stood in the shoes of the government itself "in the performance of its governmental function of minting and circulating its fractional money." *Id.* at 651-652; see *In re Investigation of World Arrangements*, 13 F.R.D. 280, 290-291 (D.D.C. 1952) (immunity for foreign entity engaging in "a fundamental government function serving a public purpose," rather than a "commercial venture"). Similarly inapposite are cases granting immunity to an entity that was deemed "not a corporation," *Mason* v. *Intercolonial Ry.*, 83 N.E. 876, 876-877 (Mass. 1908), or deferring to an *executive* determination that a corporation was "a governmental

instrumentality * * * with an attendant right to sovereign immunity" from a *civil* suit, *F.W. Stone Eng'r Co.* v. *Petroleos Mexicanos of Mexico, D.F.*, 42 A.2d 57, 58 (Pa. 1945); see *United States* v. *Pangang Grp. Co.*, 135 F.4th 1142, 1154 (9th Cir. 2025) (explaining that *Mason* treated the railway as "an actual agency of government rather than a separate corporation").

Petitioner's attempts to rely on decisions of this Court are similarly misplaced. Petitioner quotes (Pet. 29) a sentence fragment from *Biden* v. *Nebraska*, 600 U.S. 477 (2023), in which the Court treated a State's "nonprofit government corporation" that was "created and operated to fulfill a public function," as "'part of the Government itself'" for purposes of the State's standing to sue for the nonprofit's injuries. *Id.* at 489, 492 (quoting *Lebron* v. *National R.R. Passenger Corp.*, 513 U.S. 374, 397 (1995)). The Court did not purport to address the status of state-owned entities, domestic or foreign, in the distinct context of common-law sovereign immunity. And in fact, the Court emphasized that "a public corporation can count as part of the State for some but not 'other purposes.'" *Id.* at 493 n.3 (citation omitted).

Petitioner otherwise focuses (Pet. 27-28) on a single case, *Berizzi Bros. Co.* v. *Steamship Pesaro*, 271 U.S. 562 (1926), a civil suit in which this Court "allowed the immunity, for the first time, to a merchant vessel owned by a foreign government and in its possession and service," *Hoffman*, 324 U.S. at 35 n.1. But the Court later recognized that decision as a poorly reasoned aberration, in which the "propriety of thus extending the immunity" in the absence of an endorsement from the Executive Branch "was not considered." *Ibid.*

In recognizing that, at the least, the Executive Branch's refusal should have made a difference, the Court necessarily rejected the proposition that *Berizzi Brothers* stood for any bedrock principle of law that would preclude the federal prosecution of a foreign-state-owned corporation for its commercial activities. See *Hoffman*, 324 U.S. at 39-40 (Frankfurter, J., concurring) ("heartily welcom[ing]" the Court's "implied recession from the decision in *Berizzi Bros.*," which rested on "considerations [that] have steadily lost whatever validity they may then have had"); *Alfred Dunhill of London, Inc.* v. *Republic of Cuba*, 425 U.S. 682, 699 (1976) (observing that *Berizzi Brothers* was "severely diminished" by later cases). It would also be quite anomalous for such a principle to persist in light of the FSIA, which allows even private civil suits against foreign-state-owned corporations for their commercial activities. 28 U.S.C. 1603(a) and (b), 1605(a)(2). Surely, the congressional abolition of immunity in that context would not leave room for a unique judicially created bar against a considered Executive decision to prosecute such a foreign-state-owned corporation for such commercial acts.

The court of appeals accordingly did not deviate from any common-law rule, let alone a well-established one, when it declined to recognize petitioner's claim "to absolute immunity in all criminal cases" that would bar "the prosecution of state-owned corporations for their commercial activity." Pet. App. 29a. As the court observed, the indictment here focuses on banking "transactions [that] were conducted via private, commercial banking channels" and that are "'of the character of a private commercial act.'" *Id.* at 32a-33a (citation omitted); see *id.* at 84a-89a; *id.* at 102a-104a; see also 598

U.S. at 283 (Gorsuch, J., concurring in part and dissenting in part) (explaining that the indictment "sufficiently alleges * * * commercial activities"). The petition does not dispute that those are private, commercial acts and not sovereign, public acts.[1]

3. Petitioner errs in suggesting (Pet. 12-15) that the court of appeals' decision implicates a conflict in the circuits. Petitioner identifies no circuit that has recognized an absolute common-law bar to criminal prosecution of a foreign-state-owned corporation for its commercial acts.

The Fourth Circuit's decision in *Yousuf* v. *Samantar*, 699 F.3d 763 (2012), cert. denied, 571 U.S. 1156 (2014), concerned immunity for foreign officials from civil suit. *Id.* at 766. In that context, the Fourth Circuit reasoned that for claims of "status-based immunities" (immunity for foreign officials based on their position) "the views of the Executive Branch control," while for claims of immunity based on the official's conduct, the Executive's determination "is not controlling, but it carries substantial weight in [judicial] analysis." *Id.* at 773. The Fourth Circuit in *Yousuf* expressly distinguished between foreign state immunity and foreign official immunity, reasoning that the FSIA displaced the

[1] As a fallback, petitioner contends (Pet. 30-31) that the court of appeals should have at least granted it immunity for acts conducted in Türkiye. That argument was not addressed below, and it is not presented here because the crimes charged in this case are based on cross-border activities that took place in and affected the United States. As the district court explained, the case is based on petitioner's "alleged laundering of more than $1 billion through the U.S. financial system" coupled with "business meetings, conference calls, and other interactions and communications with the U.S. Department of Treasury (in and outside the U.S.)." Pet. App. 103a (brackets and internal quotation marks omitted).

common-law regime for the former but not the latter. *Id.* at 768. But even assuming that the approach to official immunity in *Yousuf* had any bearing here, the Fourth Circuit would apply deference because the immunity that petitioner claims *is* based on its status: petitioner contends that it is entitled to absolute immunity from all criminal prosecutions because it is a foreign-state-owned company, regardless of the conduct alleged. See Pet. 3 ("Instrumentalities are therefore, like their sovereigns, entitled to absolute immunity at common law."). And even if the claim were not status-based, petitioner cannot demonstrate that the Fourth Circuit's otherwise "substantial" deference would be absent where the government's view of immunity is consistent with the common law.

The only other circuit decision that petitioner appears to view as supportive is the Ninth Circuit's decision in *United States* v. *Pangang Group Co.*, 135 F.4th 1142, 1152 (2025). See Pet. 14. But petitioner asserts (*ibid.*) only that the Ninth Circuit "reserved on the question" of deference, rather than deciding the question in its favor. In any event, the decision in *Pangang*, consistent with the decision below, *denied* claims of immunity by corporations "ultimately owned and controlled" by a foreign government. *Id.* at 1145. In doing so, it repeatedly cited the decision below with approval, see *id.* at 1151-1152, 1155-1156, 1158, 1160. And while its order of operations differed from the one in the decision below—it first examined the common law, and then discussed deference—it expressly made clear that "*[l]ike the Second Circuit*," it was "'leav[ing] for another day whether deference to the Executive in this context should be cabined if, unlike here, the Executive's denial of immunity to a foreign sovereign

derogated from the common law." *Id.* at 1161 n.8 (emphasis added) (quoting Pet. App. 36a). This Court "reviews judgments, not opinions," *Bowen* v. *American Hosp. Ass'n*, 476 U.S. 610, 625 n.11 (1986) (plurality opinion) (citation omitted), and certainly not differences in the structuring of opinions whose reasoning and results are in accord.[2]

Finally, even if the circuits did disagree on the amount of deference owed to an Executive immunity determination in a case like this, a decision by this Court on that issue alone would have no practical effect on the disposition of this case. Unless petitioner could establish the existence of a common-law rule in its favor, there is no reason why it should be entitled to prevail. And no circuit has endorsed that position. Petitioner quotes *Arango* v. *Guzman Travel Advisors*, 761 F.2d 1527, 1534 (11th Cir.), cert. denied, 474 U.S. 995 (1985), for the proposition that "the same immunity owed sovereigns extended to commercial entities owned by foreign governments." Pet. 27 (brackets and internal quotation marks omitted). The Eleventh Circuit made that assertion in the inapposite context of considering whether a foreign-state-owned corporation has a right to a jury trial in a private civil suit, and its only support for the proposition was *Berizzi Bros.* See *Arango*, 761 F.2d at 1534.

---

[2] Petitioner asserts that the defendants in *Pangang* "were not instrumentalities of a foreign sovereign." Pet. 19 n.5 (emphasis omitted). But the Ninth Circuit found only that the defendants did not meet the definition of an "instrumentality" *under the FSIA*. *Pangang*, 135 F.4th at 1148. An entity's "status under the FSIA * * * is not instructive in determining its status under the common law." Pet. App. 23a n.9. And the Ninth Circuit's opinion in *Pangang* analyzed the common law under the assumption that the defendants were "foreign state-owned entities." 135 F.4th at 1152.

4. In the absence of a circuit conflict, petitioner presents no sound reason for this Court's intervention. Petitioner asserts (Pet. 5) that the decision below will authorize "the first criminal trial of a foreign sovereign instrumentality in world history." But that is not true. See D. Ct. Doc. 650, *United States* v. *United Microelectronics Corp.*, No. 18-cr-465 (N.D. Cal. Feb. 28, 2024) (judgment of acquittal, after trial, of corporation owned by the Chinese government through state-owned enterprises). And petitioner's assertions that the decision below will have outsized negative consequences (Pet. 21, 29), disregards the substantial history of applying the federal criminal process to foreign-state-owned entities, see pp. 13-14, *supra*; elevates its own foreign-policy preferences above those of the Executive Branch when it decided to pursue and maintain this prosecution; and lacks meaningful foundation.

Petitioner asserts (Pet. 21, 29) that the decision below would put the United States out of step with the international approach to foreign sovereign immunity. It points (Pet. 29) to a French case that granted immunity to the "Malta Maritime Authority." But in that case, the immunity was not for commercial acts but rather for acts "relat[ing] to the sovereignty of the State concerned." *Agent judiciare du Trésor* v. *Malta Maritime Authority & Carmel X*, Cour de cassation [Cass.] [supreme court for judicial matters] crim., Nov. 23, 2004, No. 04-84.265, Bull. crim., 1096. Moreover, to the extent that criminal prosecutions of foreign-government-owned commercial entities have occurred infrequently in other nations, that likely stems from the fact that "[m]ost countries in Europe and the world lack corporate criminal liability generally and only recently have enacted a handful of specific corporate crime statutes,"

Brandon L. Garrett, *Globalized Corporate Prosecutions*, 97 Va. L. Rev. 1775, 1778 (2011)—not from any international-law principle.

Petitioner also asserts (Pet. 17-18) that the decision below would invite criminal prosecutions by state or local authorities. But petitioner has advanced the same argument to this Court before, and the Court has already observed that "it is not evident that [petitioner's] consequentialist argument is correct." 598 U.S. at 279. As the Court observed, "if such a state prosecution were brought, the United States could file a suggestion of immunity." *Ibid.* Moreover, such a decision "might be reviewable by this Court," or "might be preempted under principles of foreign affairs preemption." *Ibid.*; see *American Ins. Ass'n* v. *Garamendi*, 539 U.S. 396, 414-420 (2003). In all events, any clarification of the law necessary to preclude those prosecutions would in no way suggest that the *federal* government should itself be precluded from prosecuting foreign-state-owned corporations for their commercial acts—as petitioner's position would unjustifiably do.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
JOHN A. EISENBERG
Assistant Attorney General
JEFFREY M. SMITH
Attorney

AUGUST 2025