

No. 25-1093

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IN THE  
**Supreme Court of the United States**

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RUSSIAN FEDERATION,  
*Petitioner,*

*v.*

STABIL LLC, ET AL.,  
*Respondents.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the  
District of Columbia Circuit

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**BRIEF IN OPPOSITION**

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## QUESTION PRESENTED

The 1998 Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments (the “Investment Treaty”) is a bilateral investment treaty between the Russian Federation and Ukraine. In Article 9, Russia and Ukraine agreed that “any dispute between one Contracting Party and an investor of the other Contracting Party arising in connection with investments” may be submitted to arbitration, including arbitration under the United Nations Commission on International Trade Law (“UNCITRAL”) Rules.

The arbitration exception of the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. § 1605(a)(6), refers to “an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration,” and provides that a foreign state “shall not be immune” in an action “to confirm an award made pursuant to such an agreement to arbitrate,” where the agreement or award is or may be governed by a treaty in force for the United States calling for the recognition and enforcement of arbitral awards.

Respondents in this case are arbitral award-creditors seeking to confirm awards rendered pursuant to Article 9 of the Investment Treaty and governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”). Russia claims it is immune under the FSIA, contending that no arbitration agreement was made “with or for the benefit of” Respondents because Respondents’ investments were

initially made in Crimea when it was indisputably part of Ukraine.

The question presented is:

Whether Section 1605(a)(6) requires a court to determine—at the threshold jurisdictional stage—whether a foreign state consented to arbitrate with the particular plaintiff seeking to enforce an arbitral award, or whether it is sufficient that the foreign state entered an agreement to arbitrate “with or for the benefit of a private party” and that an award was rendered pursuant to that agreement.

## **CORPORATE DISCLOSURE STATEMENT**

Respondents Stabil LLC, Rubenor LLC, Rustel LLC, Novel-Estate LLC, PII Kirovograd-Nafta LLC, Crimea-Petrol LLC, Pirsan LLC, Trade-Trust LLC, Elefteria LLC, VKF Satek LLC and Stemv Group LLC have no parent corporation and no publicly held corporation owns 10% or more of their stock.

Respondent JSC DTEK Krymenergo is majority owned by DTEK Holdings Limited, a company incorporated under Cypriot law. Parent corporations of DTEK Krymenergo include DTEK Energy B.V., a company incorporated under Dutch law; DTEK Energy Holdings B.V., a company incorporated under Dutch law; DTEK Group B.V., a company incorporated under Dutch law; SCM (System Capital Management Limited), a company incorporated under Cypriot law; and SCM Holdings Limited, a company incorporated under Cypriot law. No publicly held corporation owns 10% or more of JSC DTEK Krymenergo's stock.

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## INTRODUCTION

The Russian Federation returns to this Court yet again seeking review of the same question it has already lost—both below and here. Russia asks the Court to revisit the D.C. Circuit’s decision holding that the Foreign Sovereign Immunities Act’s arbitration exception, 28 U.S.C. § 1605(a)(6), permits federal courts to adjudicate actions to confirm arbitral awards rendered under a bilateral investment treaty. But Russia’s petition is nothing more than a repackaged attempt to re-litigate an issue this Court has already declined to review. The D.C. Circuit’s careful and well-reasoned opinion does not conflict with any decision of this Court or of another court of appeals, would be of limited precedential value, and raises no question warranting review. That conclusion is underscored by this Court’s denial—just three months ago—of another petition by Russia raising the very same issue. *See Russian Fed’n v. Hulley Enters. Ltd.*, No. 25-549, 607 U.S. \_\_ (Jan. 12, 2026). Once again, Russia’s petition should be denied.

In the decision below, the D.C. Circuit held that jurisdiction exists under Section 1605(a)(6) where: (1) a foreign state has entered into an agreement to arbitrate “with or for the benefit of a private party,” (2) an arbitral award has been rendered pursuant to that agreement, and (3) a treaty potentially governs recognition and enforcement. Applying that framework, the court concluded that Russia’s objections—concerning whether particular investors are entitled to invoke the arbitration clause of the treaty—do not negate the existence of an arbitration agreement for FSIA purposes and therefore do not defeat jurisdiction. Instead, those objections concern the scope or enforceability of the

agreement and must be addressed, if at all, at the merits stage under the applicable enforcement regime.

Russia contends that the D.C. Circuit's analysis conflicts with decisions of the Second and Fifth Circuits. It does not. The cases on which Russia relies to allege a conflict arose in the context of private commercial contracts, not investment treaties between sovereign nations, and no court of appeals has adopted a framework inconsistent with the D.C. Circuit's approach to cases involving treaty arbitration awards. To the contrary, courts—including this Court—have consistently recognized that arbitration provisions in bilateral investment treaties operate as a sovereign's standing offer to arbitrate, which may be accepted by a private party through the initiation of arbitration.

This case is also a poor vehicle for review. Russia's petition in *Hulley*—denied earlier this Term—presented the same question, relied on the same purported circuit split, and invoked the same pending petition in *Kingdom of Spain v. Basket Renewable Investments LLC*, No. 24-1130 (May 1, 2025). Nothing has changed since that denial.

The Court should also decline Russia's request to hold this petition pending *Basket*. Holding the petition would operate as an unwarranted stay, further delaying enforcement of final arbitral awards arising from Russia's expropriation of Respondents' investments more than a decade ago.

The petition should be denied.

## STATEMENT

### I. Legal and Factual Background

#### A. Russia's Expropriation of Respondents' Assets in Crimea

In February 2014, the Russian Federation invaded Crimea, a Ukrainian peninsula consisting of the Autonomous Republic of Crimea and the City of Sevastopol. *See* Pet. App. 7a, 43a. The following month, the Russian-installed authorities in Crimea signed a treaty with the Russian Federation purporting to incorporate Crimea into Russia, and Russia moved quickly to consolidate control over the region's government, economy, and legal system. *See* Pet. App. 7a–8a.

Before the invasion, Respondents held substantial commercial operations and assets in Crimea. Eleven Ukrainian companies—Stabil LLC, Rubenor LLC, Rustel LLC, Novel-Estate LLC, PII Kirovograd-Nafta LLC, Crimea-Petrol LLC, Pirsan LLC, Trade-Trust LLC, Elefteria LLC, VKF Satek LLC, and Stemv Group LLC (collectively, the “Stabil Investors”)—owned, operated, and supplied a chain of thirty-one petrol stations in Crimea, as well as related real property, storage facilities, fuel inventories, vehicles, branding, and local workforces. *See* Pet. App. 8a–9a, 41a, 43a, 53a.

And DTEK Krymenergo, a subsidiary of one of Ukraine's largest privately-owned energy companies, serviced a territory of approximately 27,000 square kilometers, provided electricity to more than 780,000 customers across twenty-three regional electricity

networks, and held real and movable property, intangible assets, and cash and securities. *See* Pet. App. 59a.

Following Russia's invasion and annexation, the Russian-installed Crimean authorities initiated a campaign of mass expropriation of Ukrainian-owned businesses. In April 2014, members of a Russian paramilitary force seized and looted the Stabil Investors' petrol stations and offices and sold their fuel and other inventory. *See* Pet. App. 43a. By the end of the summer of 2014, the Russian-controlled Council of Ministers of the Republic of Crimea formally nationalized some of the Stabil Investors' properties and transferred the right of economic management of their stations to a Russian state-owned enterprise. *See* Pet. App. 43a. Over time, additional orders were issued nationalizing the remaining stations and transferring operational control to Russian state-owned entities. *See* Pet. App. 9a. By 2016, the Stabil Investors' Crimean operations had been entirely taken by the Russian authorities. *See* Pet. App. 9a, 44a.

DTEK Krymenergo's property was initially spared from the first wave of expropriation. On April 30, 2014, the Russian-controlled Crimean government issued a resolution providing for the expropriation of certain categories of property in the region, which included Ukrainian state-owned property and abandoned property, but did not include DTEK Krymenergo's assets. Pet. App. 59a. That changed on January 21, 2015, when the Crimean Parliament amended the expropriation resolution to target DTEK Krymenergo. Under the amended resolution, all of DTEK Krymenergo's tangible and intangible assets in

Crimea were transferred to the ownership of the Republic of Crimea. *See* Pet. App. 59a–60a. On the same day, uniformed men seized control of DTEK Krymenergo’s premises and denied its management entry to the property, thus taking legal title and physical control of DTEK Krymenergo’s property. *See* Pet. App. 59a–60a.

Through these coordinated actions, the Russian authorities deprived both the Stabil Investors and DTEK Krymenergo of their investments in Crimea—eliminating their ownership, control, and economic benefit in assets lawfully held prior to Russia’s invasion and annexation of the region.

### **B. The Ukraine-Russian Federation Bilateral Investment Treaty**

At the time of the expropriations, the Russian Federation and Ukraine were parties to the Investment Treaty, which was in force and binding. *See* Pet. App. 7a–8a. The Investment Treaty was designed to promote cross-border investment by guaranteeing investors of each contracting state protections against uncompensated expropriation, discriminatory treatment, and denial of due process. *See* Pet. App. 42a–43a.

To enforce those protections, Article 9 of the Investment Treaty provides that “[a]ny dispute between one Contracting Party and an investor of the other Contracting Party arising in connection with investments” may be submitted at the investor’s election to international arbitration, including arbitration under the UNCITRAL Rules. Pet. App. 61a. An arbitral award rendered pursuant to Article 9 “shall be final and binding upon both parties to the dispute.” 25-7064

C.A. App. JA236. By signing and ratifying the Investment Treaty, Russia thus agreed to submit investment disputes with Ukrainian investors to international arbitration and to be bound by the resulting awards.

### **C. The Arbitral Tribunals Award Respondents Relief**

In response to Russia's expropriation, the *Stabil* Investors accepted Russia's standing offer to arbitrate disputes with Ukrainian investors made in the Investment Treaty. *See* Pet. App. 8a–10a. They served a notice of arbitration on Russia on June 3, 2015 under the UNCITRAL Rules, commencing proceedings before a three-member tribunal seated in Geneva, Switzerland. *See* Pet. App. 10a, 44a.

Russia refused to participate in the *Stabil* arbitration, except by sending a letter stating its objections to the tribunal's jurisdiction. *See* Pet. App. 10a; 25-7005 C.A. App. JA539–40. The tribunal considered those objections in its own extensive examination of its jurisdiction to hear the dispute. *See* 25-7005 C.A. App. JA286–88. On June 26, 2017, the tribunal issued an award on jurisdiction, unanimously concluding that the *Stabil* Investors qualified as protected investors under the Investment Treaty, that their assets constituted covered investments, and that the dispute fell within the Investment Treaty's arbitration provision. *See* 25-7005 C.A. App. JA258, 335–36.

Russia challenged the tribunal's jurisdictional ruling in the Swiss Federal Supreme Court and lost. *See* Pet. App. 10a; 25-7005 C.A. App. JA338. The case returned to the tribunal, which proceeded to address the

merits—again without Russia’s participation. *See* Pet. App. 44a.

On April 12, 2019, the *Stabil* tribunal issued a final award unanimously finding that Russia had expropriated the Stabil Investors’ assets without compensation, in breach of Article 5 of the Investment Treaty. *See* Pet. App. 10a; 25-7005 C.A. App. JA37, 167. The tribunal awarded the Stabil Investors more than \$34 million in damages. *See id.* Russia returned to the Swiss Federal Supreme Court with an application to set aside the award, but again without success—the court dismissed Russia’s application on December 12, 2019. *See* Pet. App. 10a; 25-7005 C.A. App. JA361. Russia has not paid any part of the award.

DTEK Krymenergo also responded to Russia’s expropriation of its Crimean assets by initiating arbitration pursuant to Article 9 of the Investment Treaty and the UNCITRAL Rules. *See* Pet. App. 60a–61a. DTEK Krymenergo accepted Russia’s offer of arbitration through a notice of arbitration dated February 16, 2018, and commenced proceedings before a three-member tribunal seated in The Hague, the Netherlands. *See* Pet. App. 60a–62a; 25-7064 C.A. App. JA353. Russia initially refused to participate but later appeared in the proceedings and actively contested both jurisdiction and the merits. *See* Pet. App. 62a.

After full briefing and a multi-day evidentiary hearing, the *DTEK Krymenergo* tribunal issued its final award on November 1, 2023. 25-7064 C.A. App. JA18. The tribunal rejected Russia’s jurisdictional objections, including its arguments that DTEK Krymenergo was not a qualifying investor and had not

invested in Russian territory under the terms of the Investment Treaty. *See* Pet. App. 10a–11a, 62a. On the merits, the tribunal found that Russia had breached the Investment Treaty by expropriating DTEK Krymenergo’s investments without compensation, subjecting the company to discriminatory treatment, and denying due process. *See* Pet. App. 11a, 62a. The tribunal awarded DTEK Krymenergo approximately \$208 million in damages, plus interest and costs. *See* Pet. App. 63a.

Russia has not paid any amount of the award. Instead, it initiated set-aside proceedings in the Netherlands, which remain pending. *See* Pet. App. 60a, 63a.

## **II. The District Court Decisions**

The Stabil Investors petitioned the United States District Court for the District of Columbia on April 9, 2022, to confirm the *Stabil* final award under the New York Convention, as implemented by the Federal Arbitration Act (“FAA”). *See* Pet. App. 11a; 25-7005 C.A. App. JA9.

Russia moved to dismiss the petition, asserting sovereign immunity under the FSIA and arguing that the district court lacked both subject-matter jurisdiction and personal jurisdiction. *See* Pet. App. 11a, 46a. Russia contended that no valid agreement to arbitrate existed with the Stabil Investors because their investments were located in Crimea prior to Russia’s annexation of the territory. *See* Pet. App. 11a, 47a–48a. It also argued that exercising personal jurisdiction over Russia would violate the Fifth Amendment’s Due Process Clause. *See* Pet. App. 11a, 54a–55a.

In an opinion dated December 12, 2024, the district court rejected each of Russia’s arguments. *See* Pet. App. 46a–55a. The court held that the Stabil Investors had satisfied their burden of production under the FSIA’s arbitration exception by establishing three jurisdictional facts—(1) an arbitration agreement, (2) an arbitration award, and (3) a treaty potentially governing award enforcement—and that none of Russia’s arguments rebutted these jurisdictional facts. *See* Pet. App. 53a–54a. The district court concluded that it had subject-matter jurisdiction to hear the case under the FSIA’s arbitration exception. *See id.*

The district court further determined that Russia’s argument that it never agreed to arbitrate with the Stabil Investors concerned the scope, not the validity, of Russia’s standing offer to arbitrate in the Investment Treaty. *See* Pet. App. 49a. The court noted that Russia’s contention “may be germane to a merits defense under the New York Convention,” but concluded that the argument “does not affect the Court’s jurisdiction under the FSIA.” *Id.* (internal quotation marks omitted). As the court explained, “[n]o matter how Russia tries to repackage this argument, it still cashes out as a quarrel over arbitrability, not jurisdiction.” *Id.* The district court reserved ruling on the substance of Russia’s merits argument pending further proceedings. *See* Pet. App. 56a–57a.

The district court also rejected Russia’s personal-jurisdiction and due-process challenges, holding that personal jurisdiction exists where subject-matter jurisdiction has been established and proper service has been effected, and that binding D.C. Circuit precedent forecloses the argument that foreign sovereigns are entitled to Fifth Amendment due-process protections.

*See* Pet. App. 54a–55a. Although the court deferred confirmation of the award pending resolution of merits issues, it squarely held that it possessed jurisdiction to proceed. *See* Pet. App. 56a–57a.

On November 7, 2023, DTEK Krymenergo likewise petitioned the United States District Court for the District of Columbia to confirm its award pursuant to the New York Convention and the FAA. *See* Pet. App. 11a–12a, 63a; 25-7064 C.A. App. JA5.

As in the *Stabil Investors*’ case, Russia moved to dismiss, arguing that the district court lacked subject matter jurisdiction under the FSIA and that exercising personal jurisdiction over it would violate due process. *See* Pet. App. 63a–64a. Russia again argued that no valid arbitration agreement existed because DTEK Krymenergo allegedly did not qualify as an investor entitled to invoke the Investment Treaty’s arbitration provision because its investments purportedly fell outside the treaty’s territorial scope. *See* Pet. App. 67a–68a.

In an opinion dated April 17, 2025, the *DTEK Krymenergo* district court rejected Russia’s arguments and affirmed its jurisdiction. The court held that the FSIA’s arbitration exception applied because DTEK Krymenergo had demonstrated the same three jurisdictional facts identified in *Stabil*: (1) an agreement to arbitrate contained in the Investment Treaty, (2) a qualifying arbitral award, and (3) a treaty—the New York Convention—potentially governing enforcement of the award. *See* Pet. App. 67a.

The district court further held that Russia’s challenges relating to DTEK Krymenergo’s status as a

qualifying investor and the territorial scope of the Investment Treaty did not negate the existence of an arbitration agreement for FSIA jurisdictional purposes. Rather, those arguments went to the merits or arbitrability of the dispute, not subject-matter jurisdiction. *See* Pet. App. 69a. As in *Stabil*, the court concluded that such objections must be addressed, if at all, at the merits stage of the confirmation proceedings and did not deprive the court of jurisdiction. *See* Pet. App. 69a, 76a.

### **III. The D.C. Circuit Opinion**

Rather than proceed to its merits defenses under the New York Convention, Russia took interlocutory appeals of both cases to the United States Court of Appeals for the District of Columbia Circuit.

The D.C. Circuit issued a consolidated opinion affirming the district court's jurisdictional rulings under the FSIA's arbitration exception. The court began by emphasizing the limited nature of the jurisdictional inquiry under the FSIA's arbitration exception. To establish jurisdiction, a plaintiff need only demonstrate three "jurisdictional facts": "(1) an arbitration agreement, (2) an arbitration award, and (3) a treaty potentially governing award enforcement." Pet. App. 16a–18a. Respondents satisfied each requirement by pointing to the Investment Treaty, the final arbitral awards, and the New York Convention. *Id.*

The court squarely rejected Russia's attempt to repackage merits and arbitrability objections as jurisdictional defects. It explained that Russia "does not deny that the Investment Treaty exists or that it contains an agreement to arbitrate," but instead challenges whether that agreement applies to "this

*particular* dispute.” Pet. App. 17a–18a. Under settled circuit precedent, the court held, “[d]isputes about the scope of an arbitration agreement . . . are not jurisdictional questions under the FSIA.” Pet. App. 18a–19a.

Applying that principle, the court held that it was sufficient for FSIA purposes that “the arbitral tribunal purported to make an award pursuant to the [Investment Treaty], not that it in fact did so.” Pet. App. 18a (internal quotation marks omitted). Because the arbitral tribunals had concluded that the Investment Treaty conferred jurisdiction and issued awards on that basis, Russia’s objections were “a merits defense—one dressed up as a challenge to the court’s jurisdiction to hear the case.” Pet. App. 19a.

### **REASONS FOR DENYING THE PETITION**

This petition should be denied for several independent reasons. First, Russia’s asserted circuit split does not exist: no court of appeals has adopted a framework that conflicts with the D.C. Circuit’s application of the FSIA’s arbitration exception to investment treaty awards. Second, this case is a poor vehicle for review, as demonstrated by this Court’s recent denial of Russia’s nearly identical petition in *Hulley* presenting the same question and the same purported split. Third, the decision below is correct: the D.C. Circuit faithfully applied the text and structure of 28 U.S.C. § 1605(a)(6). Finally, the Court should deny review—rather than hold this petition pending *Blasket*—because a hold would operate as an unwarranted stay, serve no useful purpose, and prejudice Respondents, while offering no potential benefit that could justify delay.

## I. There Is No Circuit Split Warranting Review.

Russia contends that the D.C. Circuit’s decision below is “irreconcilable” with the approaches of the Second and Fifth Circuits to evaluating subject-matter jurisdiction under the FSIA’s arbitration exception and that there is consequently a circuit split on that subject. Pet. 15–16. It is mistaken. The two cases that Russia claims are “irreconcilable”—*Cargill International S.A. v. M/T Pavel Dybenko*, 991 F.2d 1012 (2d Cir. 1993) and *Al-Qarqani v. Saudi Arabian Oil Co.*, 19 F.4th 794 (5th Cir. 2021)—both arose in the private commercial contract context, as opposed to the investment treaty context in which these cases arise. Neither is inconsistent with the decisions of the D.C. Circuit.

Russia ignores the fact that the circuits agree that private commercial cases like *Cargill* and *Al-Qarqani* are fundamentally distinct from cases that involve an investment treaty. That is because an “investment treaty is [] ‘a contract . . . between nations,’” and so, by definition, a private party cannot be a signatory to a treaty. *NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain*, 112 F.4th 1088, 1101 (D.C. Cir. 2024) (quoting *BG Grp., PLC v. Republic of Argentina*, 572 U.S. 25, 37 (2014)). That does not mean, however, that a private party cannot invoke a sovereign’s standing offer to arbitrate made in an investment treaty. Otherwise, such arbitration clauses in investment treaties would have no purpose. “An arbitration provision in an investment treaty can both (1) constitute an agreement ‘for the benefit’ of a private party; and (2) give rise to a separate agreement ‘with’ a private

party,” both of which can provide the basis for the exercise of jurisdiction over a foreign sovereign under the statutory text of the FSIA’s arbitration exception. *Id.* (quoting 28 U.S.C. § 1605(a)(6)).

Within this framework, “an investment treaty’s arbitration provision operates as ‘a unilateral offer to arbitrate’ by each sovereign to investors of the other signatory countries.” *Id.* at 1102 (quoting *BG Grp.*, 572 U.S. at 50 (Roberts, C.J., dissenting)). Thereafter, “[a] foreign investor seeking to take advantage of the investment treaty’s arbitration agreement”—such as Respondents here—“may accept the offer by ‘filing . . . a notice of arbitration.’” *Id.* (quoting *BG Grp.*, 572 U.S. at 42 (majority op.)).

*Cargill* and *Al-Qarqani* do not contradict this framework. In *Cargill*, the Second Circuit examined whether a non-party could claim third-party-beneficiary status in a purely private commercial contractual dispute, a question not present here. The Second Circuit ultimately remanded the case for the district court to consider the plaintiff’s third-party beneficiary allegations and did not rule on jurisdiction under the FSIA. *See Cargill*, 991 F.2d at 1019–20. In other words, *Cargill* decided an issue unique to that case. The Second Circuit expressly noted that the issue had not been adequately briefed and declined to resolve it. *See id.* at 1020 (“Because the parties have not adequately addressed [third-party beneficiary status] in their briefs, however, we leave the arguments to them and the district court.”). Any jurisdictional language in *Cargill* was therefore case specific, assumption laden, and tied to a private contract context far removed from treaty-based arbitration.

In *Al-Qarqani*, the Fifth Circuit held that no arbitration agreement existed because the private commercial contracts at issue either did not bind the defendant or did not contain arbitration clauses. See *Al-Qarqani*, 19 F.4th at 801–02. The court in *Al-Qarqani* thus similarly decided a unique issue that arose in a private contract context far removed from treaty-based arbitration at issue here.

This fundamental distinction between private commercial contract cases and investment treaty cases is further demonstrated by multiple Second Circuit cases, as well as a case from this Court, which apply the same framework for analyzing agreement formation in the investment treaty context that the D.C. Circuit applied here. For example, in *Olin Holdings Ltd. v. State of Libya*, the Second Circuit explained how it has “consistently recognized that when one party is a signatory to a bilateral investment treaty containing a provision for arbitration, the treaty ‘constitutes a standing offer to arbitrate disputes covered by the [t]reaty,’” and “a foreign investor’s written demand for arbitration completes the agreement in writing to submit the dispute to arbitration.” 73 F.4th 92, 102 (2d Cir. 2023) (quoting *Republic of Ecuador v. Chevron Corp.*, 638 F.3d 384, 392–93 (2d Cir. 2011)); see also *Schneider v. Kingdom of Thailand*, 688 F.3d 68, 71–72 (2d Cir. 2012) (same); *Beijing Shougang Mining Inv. Co. v. Mongolia*, 11 F.4th 144, 155 (2d Cir. 2021) (same).<sup>1</sup> This Court has also applied this framework. See *ZF Auto. US, Inc. v.*

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<sup>1</sup> Respondents have not found a decision of the Fifth Circuit addressing the application of the FSIA to an action arising out of an arbitration award rendered under an investment treaty.

*Luxshare, Ltd.*, 596 U.S. 619, 636 (2022) (“Russia and Lithuania each agreed in the treaty to submit to ad hoc arbitration if an investor chose it. The [investor] took Lithuania up on that offer by initiating such an arbitration, thereby triggering the formation of an ad hoc panel with the authority to resolve the parties’ dispute.”). Tellingly, Russia’s petition fails to mention any of these cases.

No circuit applies a framework that differs from that applied by the D.C. Circuit for evaluating whether an arbitration agreement was formed under an investment treaty. At bottom, Russia’s claimed circuit split does not exist.

## **II. The Court’s Recent Denial of Russia’s Nearly Identical Petition in *Hulley* Confirms that This Case Does Not Warrant Review.**

The Court’s recent denial of Russia’s nearly identical petition for certiorari in *Hulley* underscores that review is not warranted here.

In *Hulley*, Russia petitioned for review of the D.C. Circuit’s decision assessing the FSIA’s arbitration exception in a suit to enforce an arbitral award rendered against Russia under the Energy Charter Treaty. *See Hulley Enters. Ltd. v. Russian Fed’n*, 149 F.4th 682 (D.C. Cir. 2025). The dispute concerned Russia’s expropriation of Yukos Oil Company, the largest private Russian oil company at the time, and resulted in an arbitral award of over \$50 billion in favor of the Yukos shareholders. *Id.* at 686. After the shareholders initiated confirmation proceedings in federal court, Russia moved to dismiss, asserting immunity under the FSIA. *See id.* at 686–87.

As relevant here, Russia argued that the FSIA’s arbitration exception did not apply because the shareholders were “not proper beneficiaries” of the treaty’s arbitration clause. *Id.* at 690. The D.C. Circuit rejected that argument, holding that the question “is not jurisdictional.” *Id.* The court explained that “[w]hether the Shareholders are investors within the meaning of the arbitration clause ‘is an argument regarding the *scope* of the [treaty], not its *existence*.’” *Id.* (quoting *NextEra*, 112 F.4th at 1103). Russia thus could not challenge the court’s jurisdiction by arguing that the shareholders “d[id] not qualify as investors within the meaning of the [t]reaty.” *Id.* Although the D.C. Circuit remanded the case to the district court to decide additional questions relevant to jurisdiction—including whether provisional application of the Energy Charter Treaty, which Russia had signed but not ratified, reflected an offer to arbitrate at all—the court squarely considered and rejected Russia’s contention that whether the shareholders are covered investors under the treaty is a jurisdictional question. *See id.* at 689–91.

Unsatisfied with the D.C. Circuit’s decision, Russia petitioned this Court for a writ of certiorari. *See* Petition for a Writ of Certiorari, *Russian Fed’n v. Hulley Enters. Ltd.*, No. 25-549 (Nov. 3, 2025). The question presented in the *Hulley* petition was functionally the same as the question presented here: whether the FSIA’s arbitration exception allows a U.S. court “to exercise jurisdiction without first determining whether the foreign-state defendant agreed to arbitrate ‘differences . . . between’ itself and the plaintiff.” *Id.* at i. In other words, Russia’s core contention

was the same as it is here: that the investors (the Yukos shareholders) were “not proper beneficiaries” of the treaty’s arbitration provision, and that an investor’s eligibility to arbitrate under a treaty is a threshold jurisdictional question under the FSIA. *See id.* at 1–2.

To support its petition in *Hulley*, Russia relied heavily on the pending petition in *Blasket* and argued that its positions were “closely analogous to Spain’s argument in *Blasket*” because both petitions raise whether “the eligibility of specific plaintiffs to bring claims against specific foreign states implicates a jurisdictional question.” *Id.* at 3–4. Russia further contended that the “circuits are split” regarding “whether a plaintiff’s ‘beneficiary’ status is ‘jurisdictional’ under the FSIA.” *Id.* at 15. It suggested that the D.C. Circuit’s approach “cannot be reconciled” with the same decisions it points to in its petition—the Second Circuit’s decision in *Cargill* and the Fifth Circuit’s decision in *Al-Qarqani*. *Id.* at 15–18. And it argued that the D.C. Circuit’s decision was wrong. *Id.* at 23–33. Russia advances these same arguments in its petition in this case.

This Court denied Russia’s petition in *Hulley*. The Court also did not hold the *Hulley* petition while it considered the *Blasket* petition, nor did it take any other action suggesting that the *Hulley* petition raised a question that this Court should review before the case moved forward in the district court.

The Court can follow that same path here. As in *Hulley*, Respondents in this case are arbitral award-creditors of Russia seeking to confirm their awards in district court. As in *Hulley*, Russia challenged the

court's jurisdiction by claiming that the FSIA's arbitration exception does not apply because the specific plaintiffs were not eligible to arbitrate, or were not proper beneficiaries of the arbitration clause, under the treaty. As in *Hulley*, the D.C. Circuit considered and rejected Russia's arguments because they implicated the *scope* of the treaty's arbitration agreement rather than its *existence* and thus did not raise jurisdictional questions. As in *Hulley*, Russia petitioned this Court for a writ of certiorari, presenting the same question to the Court: asking it to review the treaty in question and determine whether the agreement to arbitrate with these particular plaintiffs is a threshold jurisdictional question under the FSIA. And as in *Hulley*, Russia supported its petition by raising the identical illusory circuit split, and by attempting to attach its disputes to the pending *Blasket* petition.

The similarities need not end there. Russia's petition should once again be denied.

If the question did not warrant review in *Hulley*—where Russia pressed the same jurisdictional theory, the same purported split, and the same *Blasket*-based rationale—it is even less compelling here. The legal landscape has not changed, and Russia has not identified any new conflict or doctrinal development to indicate that this Court should depart from its decision to deny review in *Hulley*. To the contrary, the D.C. Circuit's reasoning here largely mirrors its decision in *Hulley*, and this Court can also rely on its past decision.

This case is also a poor vehicle for review because a decision from this Court on these cases would have limited precedential value. The Court's review would

be tethered to the specific text and structure of the Investment Treaty and its application to investments in occupied territory like Crimea. Indeed, there is no dispute that Russia entered into and was bound by the Investment Treaty, that the Investment Treaty contains an arbitration clause, and that Respondents' arbitral awards were issued pursuant to the arbitration agreement in the Investment Treaty. To reverse the D.C. Circuit's judgment, this Court would have to interpret the Investment Treaty itself and consider whether Respondents are "investors of a Contracting Party." *See* Pet. App. 21a. And because of the unique circumstances here, to resolve Russia's question, the Court would also need to address the fact-specific inquiry of whether "Crimea is Russian territory" for purposes of applying the Investment Treaty. Pet. 31. The Investment Treaty's arbitration clause applies to "investments" made "by an investor of one Contracting Party in the territory of the other Contracting Party," 25-7064 C.A. App. JA233; 25-7005 C.A. App. JA171, and the ultimate question presented by Russia is whether the Investment Treaty's arbitration clause "extended to [Respondents'] investments" in Crimea. Pet. App. 17a, 21a. Any decision the Court rendered would thus have limited impact beyond interpretations of the Investment Treaty itself, particularly in cases involving investments in occupied territory.

### **III. The D.C. Circuit's Decision Is Correct.**

The D.C. Circuit correctly held that the district court has subject-matter jurisdiction over these actions under the FSIA's arbitration exception, 28 U.S.C. § 1605(a)(6). *See* Pet. App. 17a–36a. Russia's petition rests on a fundamental mischaracterization of both the statute and the D.C. Circuit's decision. *See*

Pet. 27–34. The D.C. Circuit did not disregard contract-formation principles, but rather faithfully applied the FSIA’s text and structure and this Court’s precedent distinguishing jurisdictional prerequisites from merits-based objections to enforcement of arbitral awards.

Section 1605(a)(6) abrogates sovereign immunity where an action is brought to confirm an award made pursuant to “an agreement made by the foreign state *with or for the benefit of a private party* to submit to arbitration . . . differences . . . between the parties.” 28 U.S.C. § 1605(a)(6) (emphasis added). The statute does not require courts, at the threshold jurisdictional stage, to determine whether the particular plaintiff is ultimately entitled to prevail under that agreement.

The text of the arbitration exception requires only that the foreign state entered into an arbitration agreement “with or for the benefit of a private party,” that an award was rendered pursuant to it, and that a treaty governing recognition and enforcement may apply. *Id.* As the D.C. Circuit correctly recognized, bilateral investment treaties squarely meet the first requirement: they are agreements between sovereigns that extend a standing offer to arbitrate disputes with private investors of the other contracting state and therefore constitute agreements made “with or for the benefit of a private party” within the meaning of the FSIA. *See* Pet. App. 7a–8a; *NextEra*, 112 F.4th at 1101–02.

Congress’s decision to leave questions about which particular private parties may enforce an arbitration agreement to the merits phase also accords with the arbitration exception’s design. Section 1605(a)(6) expressly contemplates enforcement under a range of

treaties or other international agreements “in force for the United States calling for the recognition and enforcement of arbitral awards.” Each such treaty establishes its own, and sometimes sharply different, rules governing the finality and reviewability of arbitral awards—confirming that Congress did not intend courts to resolve treaty-specific enforcement questions at the threshold immunity stage.

Russia’s contrary reading would rewrite the statute. In the context of a bilateral investment treaty, the relevant “agreement” is the agreement between the sovereigns, made *for the benefit of* private investors. Requiring an additional agreement made “with” a particular investor, as Russia urges, would read the phrase “or for the benefit of” out of § 1605(a)(6), contrary to settled principles of statutory interpretation. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001). Russia’s own petition underscores the point, acknowledging that Article 9 of the treaty provides that “Russia and Ukraine agreed between themselves to resolve disputes with each other’s nationals.” Pet. 30. That sovereign-to-sovereign agreement, made for the benefit of private parties, is precisely the type of agreement Congress contemplated when it enacted the arbitration exception.

Consistent with the statutory text, the D.C. Circuit has held that the jurisdictional inquiry under § 1605(a)(6) turns on three objective predicates: (1) the existence of an arbitration agreement; (2) the issuance of an arbitral award; and (3) the potential applicability of an enforcement treaty such as the New York Convention. *See* Pet. App. 16a–17a (citation omitted). Once those elements are satisfied, immunity falls away; disputes about the scope or application of the

arbitration agreement are not jurisdictional. *See id.* That approach reflects the text of the FSIA’s arbitration exception and accords with this Court’s recent reaffirmation that courts may not impose atextual limitations on the FSIA’s jurisdictional provisions and that jurisdiction “shall exist” once Congress’s enumerated requirements are met. *See CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 605 U.S. 223, 232–33 (2025).

Russia’s attempt to repackage treaty-scope objections as defects in contract formation fares no better. *See* Pet. 29–30. Russia does not dispute that it entered into the Investment Treaty with Ukraine, that the Investment Treaty contains an arbitration clause, or that arbitral tribunals rendered awards pursuant to that clause. *See* Pet. App. 17a–18a. Its objection instead concerns treaty interpretation—whether Crimea qualifies as “territory” of the Russian Federation under the Investment Treaty and therefore whether Respondents are covered by it. Pet. 31. As the D.C. Circuit correctly explained, that argument does not challenge the existence of an agreement to arbitrate; it challenges whether Respondents are entitled to enforce it. *See* Pet. App. 17a–24a.

That distinction is critical. This Court has distinguished between whether a sovereign consented to arbitration at all and how that consent applies in a particular factual setting. *See BG Grp.*, 572 U.S. at 41–43; *see also Chevron Corp. v. Republic of Ecuador*, 795 F.3d 200, 206 (D.C. Cir. 2015). Treating the latter as a jurisdictional question would collapse that settled distinction and convert ordinary treaty-interpretation disputes into threshold immunity questions.

The domestic arbitration cases Russia cites do not alter that conclusion. *See* Pet. 33. As with Russia’s invocation of *Cargill* and *Al-Qarqani*, none of Russia’s cited cases here involved arbitration agreements formed under investment treaties between sovereign nations, and none suggests that disputes concerning the reach of a sovereign’s consent must be resolved as threshold questions of sovereign immunity. *See Granite Rock Co. v. Int’l Bhd. of Teamsters*, 561 U.S. 287, 299–301 (2010) (collective-bargaining agreement; holding only that courts decide whether parties formed agreement to arbitrate dispute in question); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 n.1 (2006) (domestic commercial contract; distinguishing challenges to whether an agreement “was ever concluded” from disputes over validity or enforceability); *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69 (2019) (domestic commercial contract; reiterating that courts “may not decide an arbitrability question that the parties have delegated to an arbitrator”). None of these cases supports Russia’s effort to recharacterize treaty-scope objections as jurisdictional questions under the FSIA.

Nor does the decision below produce the consequences Russia predicts. *See* Pet. 4, 19–20. The D.C. Circuit did not hold that any investor may enforce any arbitration award. It held only that FSIA jurisdiction exists where a foreign state entered into a qualifying arbitration agreement and the award at issue was rendered pursuant to it. Whether a particular award is ultimately enforceable remains governed by the New York Convention’s defenses and ordinary enforcement principles. *See* Pet. App. 19a. Those merits

proceedings still have not taken place before the district court in either the *Stabil* or *DTEK Krymenergo* cases. And Russia’s hypothetical ignores the role of arbitral tribunals, which must first determine their own jurisdiction under the treaty in question before rendering any award. The existence of such award is an additional jurisdictional fact that must be established under the FSIA’s arbitration exception. *See* Pet. App. 16a–17a.

Finally, the D.C. Circuit’s approach aligns with the structure and purpose of the arbitration exception. Investment treaties routinely assign arbitral tribunals the authority to resolve treaty-interpretation questions of jurisdiction and admissibility that determine whether a particular dispute is arbitrable. Russia’s proposed rule would invite duplicative review and re-litigation by requiring courts to revisit those same questions at the very outset of enforcement—regardless of which substantive enforcement standards govern the award. Nothing in the FSIA suggests Congress intended that result. The decision below avoids those consequences by applying the statute as written and respecting the allocation of authority Congress adopted.

#### **IV. The Court Should Not Hold This Petition Pending *Blasket*.**

As a last resort, Russia requests that its “petition be held in abeyance pending disposition of *Blasket* and then resolved through a grant-vacate-remand (GVR) so that the D.C. Circuit can reconsider its judgment in light of this Court’s decision in *Blasket*.” Pet. 6. The Court should deny this petition rather than hold it pending disposition of *Blasket*. A hold would serve no useful purpose, would function as an unwarranted

stay, and would prejudice Respondents—particularly where this Court has already denied certiorari on the same theory in *Hulley*.

The harm to the Stabil Investors and DTEK Krymenergo arising from the continuing delay in these cases is manifest. Respondents are award creditors seeking to enforce final arbitral awards over a decade after the Russian Federation’s expropriation of their investments. Absent Russia’s voluntary payment of the awards, Respondents’ ability to secure the compensation they are owed depends on obtaining judicial recognition of its awards and proceeding to attach Russian commercial assets in the United States and elsewhere. That is why, as the *Stabil* district court noted, these “confirmation petitions are meant to be ‘summary’ proceedings, not multi-year slugfests.” Pet. App. 56a (quoting *Argentine Republic v. Nat’l Grid PLC*, 637 F.3d 365, 369 (D.C. Cir. 2011)).

Russia’s request here is consistent with its strategy to seek delays by claiming that other cases must be fully resolved before these cases against it can proceed. Russia sought stays in both cases in the district court pending resolution of the *en banc* petition to the D.C. Circuit in *Blasket*, as well as three other unrelated appeals. See Pet. App. 55a–56a, 75a–80a. Russia also asked the D.C. Circuit to stay issuance of the mandate in this case, which the court denied.

As the *DTEK Krymenergo* district court rightfully pointed out when denying Russia’s motion to stay the district court proceedings, any “delay could itself affect the likelihood of recovery, since other Russian creditors are proceeding with similar confirmation actions in this District and could deplete the same American-held assets that DTEK Krymenergo hopes

to attach.” Pet. App. 78a; *see also* Pet. App. 55a–56a (*Stabil* district court rejecting Russia’s motion to stay on similar grounds). The costs of continuing delay to Respondents will only continue to grow.

The dilatory purpose of Russia’s proposed course is further demonstrated by Russia’s request that the Court resolve this case through a GVR order after it disposes of *Blasket*. Pet. 6. As this Court has explained, “[w]hether a GVR order is ultimately appropriate depends further on the equities of the case.” *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 167–68 (1996). “[I]f the delay and further cost entailed in a remand are not justified by the potential benefits of further consideration by the lower court, a GVR order is inappropriate.” *Id.* at 168; *see also* 28 U.S.C. § 2106 (GVR order is appropriate in order to “require such further proceedings to be had as may be just under the circumstances”).

Russia’s request here is premised on its hope that this Court will grant the *Blasket* petition and ultimately hold that a district court must—as part of its jurisdiction analysis under the FSIA’s arbitration exception—make an independent determination of whether the investor is eligible to invoke an investment treaty’s arbitration clause. But neither the D.C. Circuit nor the district court has made any ruling with respect to the substance of Russia’s claim that Respondents are not proper “investors” under Article 9 of the Investment Treaty. Instead, those courts have rejected Russia’s contention that this argument is jurisdictional and have held that it is instead a merits-based defense to confirmation, the substance of which must be resolved in the merits-stage to come in the district court. *See* Pet. App. 12a (D.C. Circuit noting

that both the *Stabil* and *DTEK Krymenergo* district court opinions “concluded that [the court] possessed jurisdiction to adjudicate the Companies’ petitions” but “[t]he merits of enforcement remained unresolved”).

If the *Blasket* petition were to be granted and this Court were to hold that this question should be addressed at the jurisdictional stage, it would still be for the district court to make that determination. *See, e.g., Bolivarian Republic of Venezuela v. Helmerich & Payne Int’l Drilling Co.*, 581 U.S. 170, 174 (2017) (“[W]here jurisdictional questions turn upon further factual development, the trial judge may take evidence and resolve relevant factual disputes.”); *see also Hulley*, 149 F.4th at 692 (noting unresolved questions regarding jurisdictional facts under the FSIA, and “leav[ing] these questions for the district court to consider in the first instance.”). *Blasket* will not change the fact that it will be the district court’s task in the first instance to address the substance of Russia’s argument. Further, regardless of this Court’s disposition of *Blasket*, the district court is best-placed to assess how and when to conduct whatever further proceedings may be necessary in light of that outcome. This non-existent “potential benefit[]” of Russia’s proposed GVR does not justify “the delay and further cost” that Respondents will suffer, which as explained above, are significant. *Lawrence*, 516 U.S. at 168.

**CONCLUSION**

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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