

No. 25-1093

IN THE
Supreme Court of the United States

RUSSIAN FEDERATION,
Petitioner,

v.

STABIL LLC, ET AL.,
Respondents.

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

SUPPLEMENTAL BRIEF OF RESPONDENTS

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INTRODUCTION

In *Kingdom of Spain v. Blasket Renewable Investments, LLC* (No. 24-1130), the Solicitor General filed an amicus brief at the Court’s invitation and recommended that “the petition for a writ of certiorari should be denied.” U.S. Br. 1. The Russian Federation filed a supplemental brief in this case on June 22, asking the Court to treat the Solicitor General’s recommendation to *deny* certiorari in *Blasket* as a reason to *grant* review here. That inversion is untenable—and irreconcilable with Russia’s own prior position, which expressly premised certiorari in this case on joint review with *Blasket*. Russia told the Court that its petition and *Blasket* “present[] the same question,” and urged the Court to “grant both petitions . . . and hear the cases together.” Pet. i; Reply Br. 6. Having staked its certiorari request on that alignment, Russia cannot now distance itself from the very case it previously characterized as indispensable. The Solicitor General’s brief in *Blasket* confirms what Respondents have already demonstrated: this case does not warrant the Court’s review.

I. Russia Has Linked Its Petition With *Blasket*.

In both its petition for certiorari and its reply brief, Russia repeatedly anchored this case to *Blasket*. Indeed, Russia told the Court that this case and *Blasket* are “mirror images of each other.” Pet. 3. Russia argued that this case “presents the same threshold sovereign immunity question . . . that is pending” in *Blasket*, and that the “dispositive statutory question” is the same in both cases. *Id.* at 1, 2. In Russia’s own words, “the question presented in *Blasket* is essentially the same as here.” *Id.* at 26.

Relying on these similarities, Russia urged the Court that this case should be “[h]eard with *Blasket*,” and that the Court should conduct “[j]oint [r]eview” of the petitions. *Id.* at 15, 22. Russia further insisted that the petitions should be “consider[ed] ... together,” and it referenced the Court’s invitation to the Solicitor General in *Blasket* as evidence of the purported “significance of the question presented.” *Id.* at 25. Because *Blasket* “presents the same question as here,” Russia argued, “the certworthiness of th[e] issue will be established as to both cases” if the Court granted review in *Blasket*. *Id.*

In its reply brief, Russia doubled down. It repeated its arguments that its petition here “[i]s a [m]irror [i]mage of the [p]etition in *Blasket*” and that the cases “present[] the same legal question,” Reply Br. 6, and went further still: stating that a decision on the merits in *Blasket* “would be dispositive of the question presented here.” *Id.* at 11. In Russia’s own telling, there is no daylight between its petition and the petition in *Blasket*.

The necessary corollary of Russia’s position is that if *Blasket* is *not* certworthy—as the Solicitor General concluded—then this case is not either. *See also infra* Section II.

Having previously emphasized the Solicitor General’s pending brief as support for review, Russia now reverses course to attempt to escape the consequences of its own position. For instance, Russia points to factual differences between this case and *Blasket*, including that this case involves alleged “domestic investments in Ukraine” rather than foreign investments, and the interpretation of a bilateral treaty rather than a multilateral treaty. Russia Supp.

Br. 1–2. But these are the same distinctions that Russia previously dismissed as differences which “may ultimately turn out to be immaterial.” Pet. 26. Russia cannot have it both ways. The Court should not countenance Russia’s attempt to treat these differences as “immaterial” when arguing for joint review with *Blasket*—and suddenly decisive once the Solicitor General recommended denying certiorari in *Blasket*.

II. The Solicitor General’s Brief in *Blasket* Confirms That This Case Does Not Warrant Review.

The Solicitor General’s amicus brief in *Blasket* states unequivocally: “In the view of the United States, the petition for a writ of certiorari should be denied.” U.S. Br. 1. Both the United States and the *Blasket* respondents “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.’” *Blasket* Respondents’ Supp. Br. 1 (quoting U.S. Br. 3). Russia’s effort to recast the Solicitor General’s brief as supporting certiorari in this case fundamentally misrepresents the Solicitor General’s position. The Solicitor General considered the very legal question Russia raises—whether the existence of an arbitration agreement between the particular parties must be resolved as a threshold jurisdictional matter—and concluded that review is unwarranted. That conclusion holds equally here.

Far from charting a path towards certiorari, the Solicitor General’s brief confirms the vehicle defects that Respondents previously identified in this case. It reinforces—not undermines—the conclusion that this case does not warrant the Court’s review.

First, as Respondents previously noted, “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.” Opp. Br. 12, 13–16. The Solicitor General agrees, noting that any tension between the Second and Fifth Circuits’ decisions and the D.C. Circuit’s approach is “shallow and underdeveloped,” and “tenuous at best.” U.S. Br. 15–16. Russia’s supplemental brief offers nothing to alter this assessment.

Second, the Court already denied review of the same question in Russia’s petition in *Russian Federation v. Hulley Enterprises Ltd.*, No. 25-549. That petition presented the same question, relied on the same alleged circuit split, invoked the same *Blasket* petition, and—notably—was denied without even being held pending *Blasket*. Nothing in the legal landscape has changed since that denial. See Opp. Br. 12, 16–20.

Finally, the Solicitor General’s brief confirms that this case is a poor vehicle for certiorari. As Respondents already noted, resolving it would require the Court to interpret the specific text of the Ukraine-Russia Bilateral Investment Treaty and decide whether, as a matter of international law, Crimea constituted Russian territory for the purposes of that treaty in and after March 2014—a highly fact-bound, treaty-specific inquiry with little precedential value beyond this case. See Opp. Br. 19–20.

Moreover, the Solicitor General’s conclusion that *Blasket* is “a poor vehicle” because “even on de novo review, the courts below would likely agree with the arbitrators,” U.S. Br. 8, applies with equal force here.

Russia would not be entitled to relief on remand unless the court of appeals revisited this technical treaty-interpretation question and reached the exact opposite conclusion from the two arbitral tribunals that have already—independently—rejected Russia’s position. *See* Opp. Br. 6–8. Thus, like in *Blasket*, “the questions presented are academic and further review ‘is unlikely to make a difference in this case.’” *Blasket* Respondents’ Supp. Br. 1 (quoting U.S. Br. 3).

Russia claims that the Solicitor General “agrees in substance” with its position, Russia Supp. Br. 1. But the Solicitor General recommended *denying* certiorari in *Blasket*—the very case Russia repeatedly linked to its own petition—and nothing in the Solicitor General’s brief cures the defects that make this case a poor vehicle for review.

CONCLUSION

For the foregoing reasons, and the reasons in Respondents’ Brief in Opposition, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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