

**In The
Supreme Court of the United States**



PETERSEN ENERGIA INVERSORA, S.A.U., ET AL.,

Petitioners,

v.

ARGENTINE REPUBLIC, ET AL.,

Respondents.



**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit**



**BRIEF OF REPUBLICAN ACTION FOR ARGENTINA INC.
AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS**



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INTEREST OF *AMICUS CURIAE*¹

REPUBLICAN ACTION FOR ARGENTINA INC. (“RA4ARG”) is a New York nonprofit corporation recognized as exempt from federal income taxation under §501(c)(3) of the Internal Revenue Code. Its core mission includes strengthening republican institutions and democratic participation in Argentina, fostering judicial independence and integrity in public office, and protecting individual rights and the rule of law.

RA4ARG is independent both financially and operationally. No corporation holds any participation in it. Its counsel and president appears here *pro bono*. RA4ARG has no financial interest in the outcome of this litigation. Its interest is institutional: preserving the integrity of American judicial proceedings, respecting the statutory limits Congress has placed upon jurisdiction over foreign sovereigns, protecting American commercial interests from the effects of foreign governmental corruption, and maintaining a stable international legal order in which sovereign states are treated according to generally applicable principles. The aforesaid is fully in line with the interests of the Argentine people in this lawsuit.

This overall case goes back to the expropriation of YPF S.A. by the Argentine government when controlled by the Kirchner Family last 2012. The now Petitioners were shareholders of YPF S.A. at the time, in particular the Eskenazi Family as a result of the Kirchner Family’s efforts to compel Repsol S.A. to

¹ Counsel for *amicus curiae* timely provided notice to all parties of intent to file this brief. No party’s counsel authored this brief in whole or in part, and no person or entity other than *amicus* or its counsel made a monetary contribution intended to fund its preparation or submission.

transfer a 25% interest to them, allegedly as their “unofficial partner” in such a company.

The Argentine Eskenazi Family had no prior contact with, knowledge of, or experience in the energy industry, much less concerning a company of the caliber of YPF S.A. or Repsol S.A. They did know the Kirchner Family, from whom they had received 51% of the shares of *Banco de la Provincia de Santa Cruz* in 1998 via a tailored privatization process. The Eskenazi Family’s entry into YPF S.A. was not a leverage buyout, rather a criminal scheme calling for undue enrichment paid-off with illegal dividends from YPF S.A. – draining the enterprise. This transaction followed a web of international shelf companies established solely to that effect, in particular Spain.

In their April 8, 2015 pleadings, the Eskenazi Family, via the Petitioners and while counting on the technical and financial support of U.K.’s Burford Capital – after a 70/30 financial split in favor of the latter, sued the Respondents for breach of contract and other grievances arising from the expropriation of YPF S.A. by Argentina. They argued their minority participation in YPF S.A. should have been subject to a tender offer after Argentina expropriated Repsol S.A.’s 51% stake in light of its bylaws.

The Petitioners chose to litigate in the U.S., not Argentina, and claimed Argentine law as decisive. In 2015, the Kirchner Family and associates were at the helm of the Argentine government, as they were when the \$16.1 billion judgment against Argentina was entered on September 15, 2023 (*Preska, J.*). At that time, the head of the *Procuración del Tesoro*, Argentina’s legal department defending the case, was Carlos Zannini, who designed the Eskenazi Family’s entry

into YPF S.A. as Legal Secretary to the Kirchner Presidency in 2007–2008, and later assumed that position directly from the Board of Directors of *Banco de la Provincia de Santa Cruz* after its privatization to the Eskenazi Family.

RA4ARG has a particular institutional focus on this case. Last February 17, 2025, it timely appeared in the underlying controversy seeking intervention under Rule 24, as an interested party with a concrete and cognizable interest, and pursuing the vacatur of the \$16.1 billion judgment under Rule 60(b)(4)(6) and (d)(1)—(3).² Nobody else within this entire litigation has revealed the facts outlined herein, and/or formally submitted evidence already available in court proceedings in Argentina. As indicated, all of the prior is based on allegations concerning U.S. national and strategic interests as well as the integrity of the U.S. judicial proceedings that produced such award.

Soon after RA4ARG’s initial submission, last March 21, 2025, the United States through its Secretary of State, Mr. Marco Rubio, announced as follows:

“[T]he designation of Cristina Elisabet Fernandez de Kirchner (“CFK”), former president of Argentina, and Julio Miguel De Vido (“De Vido”), former Minister of Planning of Argentina, for their involvement in significant corruption during their time in public office. This action renders CFK, De Vido, and their immediate family members generally ineligible for entry into the United States. CFK and De Vido abused their positions by orchestrating and financially benefitting from multiple bribery

² U.S. Court of Appeals for the Second Circuit, Case No. 25-576.

schemes involving public works contracts, resulting in millions of dollars stolen from the Argentine government. Multiple courts have convicted CFK and De Vido for corruption, undermining the Argentine people's and investors' confidence in Argentina's future. The United States will continue to promote accountability for those who abuse public power for personal gain. These designations reaffirm our commitment to counter global corruption, including at the highest levels of government. *These public designations are made under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2024 (Div. F, P.L. 118-47).*"^{3 4}

On March 27, 2026, the \$16.1 billion judgment was vacated by the Second Circuit on Argentine law grounds, without formal consideration of the Rule 24 and Rule 60 issues (*Chin, Robinson, Cabranes, Js.*). Earlier, on March 3, 2025, the District Court had declined to rule on those Rule 60 issues because the appeal of the \$16.1 billion judgment remained pending,

³ Former President Cristina F. de Kirchner was convicted to 6 years in prison and not to hold public office ever again for public-driven corruption schemes, as *res judicata* after final review from the Argentine Supreme Court of Justice. One of those who shared her same fate is an individual by the name of Lázaro Báez, who acted as the Kirchner Family's figurehead and became a "tycoon" of public infrastructure projects after being an employee of many years at *Banco de la Provincia de Santa Cruz*, the institution "privatized" by then Governor Néstor Kirchner and awarded to the Eskenazi Family in their home province.

⁴ U.S. Court of Appeals for the Second Circuit, Case No. 25-576, Dkt. 36, Ex. 6; Dkt. 43.1, App. H at A-207.

denied intervention under Rule 24, and deferred the matter to the Second Circuit. *Toliver v. Cnty. of Sullivan*, 957 F.2d 47, 49 (2d Cir. 1992) (“*this [appellate] court must first give its consent so it can remand the case*”) (*Preska, J.*). Rule 62.1(A)(3)(B)(C).

On August 6, 2025, the Second Circuit kept the proceedings apart and postponed treatment of the Rule 60 issues and any remand due to RA4ARG's claims (*Robinson, Pérez, Nathan, Js.*). After reversing the \$16.1 billion ruling against Argentina and affirming YPF S.A.'s exoneration, on April 10, 2026, the Second Circuit held the Rule 24 and Rule 60 proceedings in abeyance, among others (*Chin, Lee, Nathan, Js.*).

Notwithstanding, the Rule 60 issues never turn moot because of the nature of the allegations impacting the integrity of judicial proceedings. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944). *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1373, 1374 (2010) (“*premised...on a certain type of jurisdictional error*”). *Chafin v. Chafin*, 133 S. Ct. 1017, 185 (2013); *Republic of Austria v. Altmann*, 541 U. S. 677 (2004).

Rule 60 relief does not depend upon intervention as a party; courts may also act *sua sponte* in appropriate circumstances. *Grace v. Bank Leumi Tr. Co. of NY*, 443 F.3d 180, 188 (2d Cir. 2006); *Binker v. Com. of Pa.*, 977 F.2d 738, 745 (3d Cir. 1992); *Southerland v. Irons*, 628 F.2d 978, 980 (6th Cir. 1980) (per curiam); *Judson Atkinson Candies, Inc. v. Latini-Hohberger Dhimantec*, 529 F.3d 371, 385 (7th Cir. 2008). Rule 60(d)(1)–(3) permits an *independent action* to relieve a party from a judgment and to set aside a judgment for fraud on the court.

Petitioners, through their litigation funder, U.K.’s Burford Capital, have expressly identified international investment-treaty arbitration as a potential avenue for pursuing recovery following the Second Circuit’s decision.⁵ That stated intention underscores the institutional importance of addressing RA4ARG’s Rule 60 allegations concerning the integrity of the underlying judicial proceedings, including the alleged corrupt scheme involving the Eskenazi Family’s claims. Such allegations, if substantiated through appropriate judicial proceedings, could have material implications for the factual and legal premises advanced in subsequent international proceedings. Denial of *certiorari* should not be understood as resolving those distinct allegations or as a reason to leave them indefinitely unexamined.

As a separate consideration further elaborated below, during oral arguments at the Second Circuit last October 29, 2025, Judge Cabranes—who dissented from the majority opinion of Judges Chin and Robinson—asked Argentina’s counsel whether this whole litigation of more than a decade should have been decided by Argentine courts, if it was rooted on foreign law. Counsel agreed.⁶ Yet all three judges deemed U.S. courts had jurisdiction to rule on this conflict based on foreign law. And now this Court is called to formally ponder whether a ruling that should have been rendered by Argentine courts—if any—was properly issued under U.S. law though based on Argentine law. This seems to be the ultimate policy making motivation: the complete reliance on foreign law to access U.S. jurisdiction and to rule legitimate international private law conflicts—

⁵ https://s206.q4cdn.com/737820215/files/doc_news/Burford-Capital-Further-Statement-on-YPF-Appeal-Decision-2026.pdf

⁶ <https://ww3.ca2.uscourts.gov/dtSearch/dtisapi6.dll>

never the case under analysis—, more than the true justice embedded in the ruling for the Argentine people.

RA4ARG's concerns are not conjectural. In its related proceedings, RA4ARG has submitted a confidential intelligence report of 2018 generated by *Argentina's Financial Intelligence Unit* (No. 0704/18),⁷ together with other materials from court filings, about the Eskenazi Family's entry (Petersen Energía Inversora et. al.) into YPF S.A. by the hand of the Kirchner Family.

Such evidentiary report embarks on transactions and relationships that RA4ARG contends bear directly upon the integrity of the governmental as well as financial and commercial circumstances underlying this entire litigation. RA4ARG claims that those issues warrant examination in connection with the integrity of judicial proceedings. The text of this official intelligence report, within Argentina criminal court proceedings, clarifies its final purpose:

“Ultimately, [this report] analyzes the Petersen Group's exit by giving up their holdings [at YPF], the impact of the expropriation process of Repsol YPF SA by the Argentine State, and finally a maneuver by which they attempt to collect some compensation (through the investment fund Burford Capital) due to

⁷ U.S. Court of Appeals for the Second Circuit, Case No. 25-576, Dkt. 36, Ex. 7, Dkt. 43.1, App. L, A-239 – A-283; U.S. District Court for the Southern District of New York, Case No. 1-15 cv-02739, D.Ct.Dkt. 720, Ex.1-2 to Memorandum of Law in Support of *Ex-Parte* Motion for Order Pursuant to Fed. R. Civ. P., Rule 60(b)(6), (d)(1)—(3), 2/17/2025, not uploaded to the PACER system by the District Court.

the State-expropriation that could result in additional income to the perpetrators of such maneuvers [before Courts in the United States of America].”⁸

Moreover, various criminal complaints have been submitted before Argentine Federal Criminal Courts as well as the U.S. Department of Justice, which continue their own course of investigations. Within the context of potential criminal activity of an amount that, in time, could exceed Argentina’s largest liability with the *International Monetary Fund* in the range of \$56 to \$58 billion—if the \$16.1 billion judgment were to be reinstated and adjusted in time at the same compounded interest rate used to arrive at such a figure, it is reasonable to anticipate that criminal proceedings would advance against all of those involved in this overall scheme.

Separately, it should be stated that the allegations of significant foreign government corruption, extensive to some Petitioners and past high-ranking governmental officials of Argentina as representatives of the Respondents, do not create jurisdiction. They expose why the conduct actually underlying the claims cannot simply be relabeled as commercial activity or a qualifying expropriation in order to manufacture jurisdiction, meaning an honest private law dispute between two independent parties when in fact both plaintiffs and defendants—those behind them—were on the same economic side from inception. For obvious reasons, no paid-counsel could have freely argued the aforesaid.

RA4ARG does not ask this Court, at the *certiorari* stage, to adjudicate any of those allegations

⁸ *Idem* 7.

or to treat them as established facts. Rather, those matters explain why RA4ARG has a distinctive perspective on the questions presented and the overall case.

Federal jurisdiction over a foreign sovereign implicates the integrity of the American judicial system, Congress's statutory limits, reciprocal sovereign interests, and the ability of American enterprises to compete without foreign governmental corruption distorting markets.

For the reasons further elaborated below, RA4ARG submits that the petition should be denied, yet highlighting the need for the pending Rule 60 proceedings to advance.

SUMMARY OF ARGUMENT

The petition seeks to transform a highly particularized dispute—resolved by the Second Circuit principally through the application of Argentine law—into a broad question concerning the reach of American judicial power over a foreign sovereign. That transformation is unwarranted.

Congress established the *Foreign Sovereign Immunities Act* (FSIA) as the governing framework for jurisdiction over foreign states. 28 U.S.C. §§1602–1611. Section 1604 begins with immunity; jurisdiction exists only where Congress has provided an applicable exception. *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434–35 (1989). Section 1605(a)(2), in turn, requires that the action be “based upon” specified commercial activity, while §1605(a)(3) establishes a distinct and carefully delimited exception for rights in property taken in violation of international law. 28 U.S.C. §1605(a)(2), (3).

The distinction matters here. RA4ARG does not contend that corruption is itself an independent FSIA exception—or that the mere presence of corruption automatically converts commercial conduct into sovereign conduct. *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607 (1992), makes clear that commercial character is determined by the nature of the particular act rather than the government's subjective purpose.

The point is narrower and more fundamental. Where substantial government-related corruption infects the governmental conduct from which a private claimant's asserted entitlement derives, corruption can become a critical obstacle to treating the resulting claim as an ordinary commercial dispute deserving of the extraordinary jurisdictional consequence of overcoming sovereign immunity. The statutory exceptions cannot legitimately be transformed into vehicles for judicial enforcement of rights whose asserted foundation lies in corrupt governmental conduct rather than in an independently cognizable commercial obligation.

That concern is particularly serious where the alleged corruption is connected to the procurement, creation, enforcement, or judicial presentation of the asserted entitlement. At that point, the issue is no longer simply whether a foreign sovereign once engaged in an act that had commercial consequences. It is whether American judicial power is being invoked to confer the authority and legitimacy of a United States judgment upon an entitlement allegedly intertwined with corruption in the governmental process from which it arose.

The principle is reinforced by this Court's decision in *Federal Republic of Germany v. Philipp*, 592 U.S. 169 (2021). *Philipp* did not create a broad judicial

power to adjudicate extraordinary foreign governmental misconduct. To the contrary, the Court carefully interpreted the statutory expropriation exception according to the text Congress enacted and declined to resolve the broader question of international comity and exhaustion that had been urged upon it.

The same restraint is appropriate here. The *principle of comity* cannot sensibly depend upon whether the foreign sovereign is Germany, Argentina, or another nation. If this Court declined in *Philipp* to transform extraordinary historical misconduct by a foreign government into a generalized expansion of American jurisdiction, the Court should likewise decline to transform this highly particularized Argentine investment dispute into a general doctrine authorizing expanded judicial supervision of foreign governmental conduct.

There are also substantial American interests at stake. Foreign governmental corruption does not merely injure foreign citizens or foreign institutions. It can disadvantage American companies competing for investments, concessions, contracts, energy resources, and other commercial opportunities.⁹ And when an American court is asked to enforce an entitlement

⁹ Arbastkaya, Maria; Mialon, Hugo, “The Impact of Foreign Corrupt Practices Act on Competitiveness, Bribery, and Investment”, 22(1) *American Law and Economics Association*, April 2020, 105-126. Please note the *Foreign Corrupt Practices Act* (FCPA) is only a burden to American companies when foreign governments disregard it in their own legal frames and courts. When the competition field is leveled up with transparency, American companies, statistically speaking, succeed even more. Thus, the U.S. judicial policy must deter foreign government corruption, never condone it and much less reward it with the largest damages award in the entire history of the U.S. judiciary, like in this case.

allegedly connected to substantial governmental corruption, the injury is compounded: the American judicial system itself may become the mechanism by which the consequences of that corruption are converted into an enforceable judgment.

That institutional risk counsels restraint. The petition should therefore be denied. Doing so would leave the Second Circuit's decision intact without requiring this Court to prejudge RA4ARG's separate proceedings or to establish a sweeping rule governing the jurisdiction of American courts over foreign sovereigns.

ARGUMENT

I. The petition does not present a compelling reason for *certiorari* under Rule 10.

The petition should be denied under the ordinary principles governing discretionary review.

The Second Circuit did not announce the sweeping FSIA rule that Petitioners now attribute to it. The court resolved the claims before it by concluding that Petitioners' breach-of-contract damages claims were not cognizable under Argentine law and that their remaining claims lacked merit. *Petersen Energía Inversora S.A.U. v. Argentine Republic*, Nos. 23-7370 et al. (2d Cir. Mar. 27, 2026).

The court's decision therefore does not present the kind of clean, recurring federal question ordinarily warranting this Court's intervention.

The petition substantially reframes the dispute, characterizing the Second Circuit's decision as requiring private parties to litigate in Argentina and presenting

a major question concerning FSIA jurisdiction and foreign sovereign legal systems.

But the decision rested upon the particular claims and its interpretation of Argentine civil and public law. The petition thus extracts a broad federal jurisdictional question from a critically narrower disposition.

That is not a compelling basis for *certiorari*.

II. The FSIA does not permit judicial expansion of jurisdiction beyond the statutory exceptions.

The starting point is Congress's statutory framework. Section 1604 establishes the general rule: a foreign state is immune from the jurisdiction of United States courts except as provided by the FSIA or applicable international agreements.

This Court has repeatedly treated the FSIA as the governing source of jurisdiction over foreign sovereigns. *Amerada Hess*, 488 U.S. at 434–39; *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 493 (1983).

The question is not whether an American court has a generalized interest in an economically significant dispute, but whether Congress has authorized jurisdiction over the foreign sovereign under an applicable statutory exception.

Section 1605(a)(2) provides an exception for an action “based upon” specified commercial activity. Section 1605(a)(3) provides a distinct exception where rights in property taken in violation of international law are in

issue and the statutory territorial and commercial-activity conditions are satisfied.

Neither provision authorizes a free-floating inquiry based simply upon economic significance, investor nationality, or the desirability of a domestic forum.

III. *Weltover* does not authorize commercial characterization of sovereign conduct merely because private commercial consequences follow.

Republic of Argentina v. Weltover is particularly instructive because it involved Argentina itself. There, this Court emphasized that §1605(a)(2) requires an action to be “based upon” the particular commercial activity specified by the statute. 504 U.S. at 611–12. The Court further explained that an activity is commercial when the foreign government acts in the manner of a private participant in the market, rather than exercising powers that are uniquely sovereign. *Id.* at 614.

RA4ARG does not dispute that rule. It submits, however, that *Weltover* must be applied to the actual foundation of the asserted claim rather than to its commercial consequences. The fact that a sovereign act produces commercial consequences does not, standing alone, establish that the sovereign act itself is commercial. Nor may the existence of an otherwise commercial obligation become a mechanism for transforming every governmental dispute into one over which American courts possess jurisdiction.

That distinction becomes especially important where substantial governmental corruption is alleged. Corruption is not a new FSIA exception. Rather, where

it is integral to the governmental conduct from which an asserted entitlement arises, it can undermine the premise that the claimant presents an ordinary commercial claim independent of sovereign conduct.

Corruption may therefore poison the jurisdictional predicate, not create an independent exception. The question is whether commercial characterization remains legitimate when the asserted entitlement is substantially intertwined with allegedly corrupt governmental conduct and American judicial power is invoked to enforce it.

Congress did not enact §1605(a)(2) to create such a generalized jurisdictional power deviating justice against U.S. national and strategic interests worldwide.

IV. The expropriation exception provides no basis for *generalizing* this dispute into a broader theory of American judicial power.

The same caution applies to §1605(a)(3). This provision is not a general exception for disputes involving foreign governmental takings. It applies only where “rights in property taken in violation of international law are in issue” and the additional statutory conditions are satisfied.

28 U.S.C. §1605(a)(3). This Court has insisted upon such statutory limitation. In *Bolivarian Republic of Venezuela v. Helmerich & Payne International Drilling Co.*, 581 U.S. 170 (2017), the Court emphasized the threshold nature of the statutory requirement that the property at issue have been taken in violation of international law.

In addition, the Argentine Eskenazi Family and their Spanish shelf-companies, utilized by the U.K.'s Burford Capital to ignite this more than a decade-long conflict, are not American; they are unrelated to core U.S. legitimate interests as their main engine.¹⁰ In this regard, domestic takings are not included in the expropriation exception to sovereign immunity under FSIA, if assumed such a taking process in the present case was conducted against international law. And the Second Circuit deemed it did not. *Luxepress 2016 Corp. v. Government of Ukraine*, No. 18-V-812, 2020 WL 1308357 at *3 (D.D.C. Mar. 19, 2020).

And in *Philipp*, the Court further interpreted the expropriation exception according to international law principles rather than transforming the provision into a generalized vehicle for adjudicating every extraordinary wrong committed by a foreign government. 592 U.S. at 169.

The lesson for this case is not that foreign governmental corruption categorically defeats §1605(a)(3), rather that neither courts nor litigants may enlarge the exception beyond the statutory elements Congress enacted. Nor can the presence of American investment substitute for those elements. The fact that an American investor, American financial institution, American market, or American commercial interest is affected does not itself establish that property was taken in violation of international law within the meaning of §1605(a)(3).

¹⁰ Restatement (Fourth) of Foreign Relations Law § 455, Reporter's Note 15, at 374 (2018); Fox, Hazel; Webb, Phillipa, *The Law of State Immunity*, 430-1 (3rd. ed, 2015).

The statutory inquiry must remain the statutory inquiry.

V. *Philipp* supports judicial restraint, not expansion of American jurisdiction.

Philipp provides the most useful doctrinal analogy. The underlying allegations in *Philipp* concerned one of the most extraordinary episodes in modern history: the coercive taking of property from German Jewish art dealers during the Nazi period.

Yet the Court did not respond to the gravity of those allegations by expanding American judicial jurisdiction over foreign sovereigns. Instead, the Court carefully examined what Congress had enacted in §1605(a)(3), held that the phrase “rights in property taken in violation of international law” referred to international law governing takings of property, and applied the domestic-takings rule. 592 U.S. at 180–93.

Equally important, the Court expressly declined to resolve the broader question concerning international comity and exhaustion that had been presented in the case.

That restraint is instructive here. If the extraordinary facts of *Philipp* did not warrant judicial creation of a broader jurisdictional doctrine, the present case should not become the occasion for one. The principle of comity cannot sensibly depend upon whether the foreign sovereign is Germany, Argentina, or another nation.

RA4ARG does not equate the historical circumstances of the two cases. It invokes *Philipp* for a more modest proposition: the Court should apply the statutory limits of the FSIA even when the underlying

allegations are serious, and should not convert the gravity of a dispute into an invitation to expand American judicial authority over a foreign sovereign.

That principle is especially compelling where the present controversy concerns private investment claims arising from governmental conduct in Argentina and where the Second Circuit has now determined that the asserted damages claims are unavailable under Argentine law.

VI. Substantial foreign government corruption creates an institutional reason for caution, not a new jurisdictional exception.

RA4ARG's distinctive concern is what happens when allegations of substantial governmental corruption intersect with the American judicial process.

Corruption can distort the underlying governmental decision. It can distort the economic opportunity available to private actors; and it can distort the rights subsequently asserted by private claimants. And, most seriously for purposes of this Court's institutional responsibilities, it can create the possibility that an American judgment becomes the final instrument through which the consequences of that corruption are monetized and enforced.

A claim derived from significant government-related corruption provides as much good title as the one claimed by the holders of a stolen wallet passed onto them by the thief or fraudster himself. It is not something misleading, rather willfully false at the core. *Thompson v. United States*, 604 U.S. ____ (2025).

The concern is therefore not merely whether corruption occurred. It is whether the American judicial

system should be employed to confer the authority of a United States judgment upon an entitlement whose asserted foundation is materially intertwined with seriously alleged governmental corruption.

That concern is heightened where the allegations are not merely abstract accusations but have been presented through formal proceedings, records and evidence that RA4ARG has sought to place before the courts within this overall litigation.

RA4ARG does not ask this Court to adjudicate those allegations here. It asks the Court to recognize their institutional significance.

The judiciary's authority depends upon the premise that relief is being sought through legitimate legal claims and legitimate judicial processes. Where substantial allegations of significant foreign government corruption bear directly upon the genesis or presentation of the asserted entitlement, the federal court system has an institutional interest in proceeding with circumspection before converting that entitlement into an American judgment.

That concern reinforces, rather than replaces, the statutory limits of the FSIA. There is a category of cases that U.S. courts ought to reject on jurisdictional grounds for a variety of policy making considerations. This is one of them.

VII. Comity and reciprocity provide an additional reason not to expand American judicial authority.

The same principle has international consequences. The United States has a profound interest in maintaining a legal order in which sovereign states are

treated according to generally applicable rules rather than according to the political identity of the particular foreign government involved.¹¹

Reciprocal restraint matters. The United States expects foreign courts to respect the sovereign governmental and judicial functions of the United States. American companies likewise depend upon a stable international environment in which foreign courts do not casually assume authority to supervise the internal governmental affairs of the United States. The possibility of criminal courts in Argentina, with ongoing proceedings related to this overall legal conflict, is tangible.

A doctrine under which American courts could broadly convert disputes concerning foreign governmental conduct into federal litigation would create the possibility of reciprocal judicial intervention abroad. That is not a desirable development. Nor is this argument inconsistent with the statutory exceptions Congress enacted.

The question is whether courts should enlarge those circumstances through expansive characterization of particular disputes. *Philipp* counsels against doing so. The better approach is reciprocal: where Congress has authorized jurisdiction, courts may exercise it within the statutory framework; where Congress has not, the judiciary should not create an additional jurisdictional route merely because the dispute is

¹¹ Bleimaier, John Kuhn, "The Doctrine of Comity In Private International Law", 24 *The Catholic Lawyer* 4, 5, Autumn 1979, 327-332. It must be highlighted that the comity principle's ultimate goal is to bring peace, harmony and concord among peoples –it is to bring people together. In this case, from the opposing extremes of the American continent: the people of the United States and the people of Argentina.

economically significant or the underlying allegations are serious.

VIII. Protecting American companies from foreign government corruption does not require turning American courts into a general forum for foreign governmental disputes.

There is an important American interest on the other side of the equation. American companies can be among the principal victims of foreign governmental corruption.¹²

When governmental corruption determines who receives concessions, contracts, licenses, privatization opportunities, energy assets, regulatory benefits, or other economic advantages, American companies may lose legitimate opportunities to compete. The injury is not confined to the foreign country in which the corruption occurs. It can affect American investment, American employment, American market access, and American competitiveness. Back then, the Eskenazi Family became a “core strategic shareholder” of YPF S.A., not an American energy company able to fuel the growth potential of this dormant energy giant from Patagonia.

Protecting those interests does not require converting American courts into general tribunals for foreign governmental conduct. The United States protects its economic interests most effectively when its courts remain institutions of principled adjudication rather than instruments for enforcing contested foreign governmental entitlements.

¹² *Idem* 9.

A judgment obtained through an American court carries an authority that private arbitration, foreign litigation, or informal commercial pressure does not. It can be enforced against assets, affect negotiations, influence sovereign behavior, and alter the international bargaining position of the parties.

The integrity of that judgment therefore matters independently of the amount at stake. The \$16.1 billion judgment previously entered in this litigation illustrates the magnitude of that institutional concern. The Second Circuit itself noted that the award was extraordinarily large in relation to Argentina's national fiscal budget. *Petersen*, slip op. at 6–7.

Where a judgment of such magnitude is sought against a sovereign state, the interest in maintaining strict statutory and institutional discipline is correspondingly strong.

IX. The Second Circuit's decision does not warrant creation of a new rule governing foreign sovereigns.

The petition should also be denied because this case is a poor vehicle for announcing any broad rule concerning FSIA jurisdiction.

The Second Circuit did not announce that foreign sovereigns may evade federal jurisdiction merely by invoking their own domestic courts. Nor did it establish a categorical rule that American courts lack authority whenever a foreign sovereign asserts that its own law governs.

Instead, the court addressed the claims before it, as framed by the Petitioners and answered by the Respondents, and determined that the damages claims

were not cognizable under Argentine law. Both parties agreed, and the U.S. legal system conceded, the core issue was of Argentine law. That holding should be left intact without converting the case into a vehicle for a broad pronouncement concerning foreign sovereign immunity.

The Court can therefore deny certiorari without prejudging the important but separate institutional questions raised by RA4ARG's related proceedings, while stressing the need for them to be properly substantiated.

X. RA4ARG's related judicial-integrity proceedings further counsel against review.

RA4ARG's separate proceedings under Rule 60 provide an additional reason for restraint.

RA4ARG has sought judicial consideration of allegations concerning the integrity of the proceedings and the circumstances surrounding the underlying dispute. Those allegations are not before this Court as adjudicated facts, and RA4ARG does not ask the Court to decide them. But they demonstrate why the petition should not be used to convert this particular controversy into a broad pronouncement on the jurisdiction of American courts over foreign sovereigns.

Federal courts possess authority to protect the integrity of their proceedings in appropriate circumstances. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944). The Second Circuit has likewise recognized the exceptional character of relief directed at fraud upon the court.

The existence of those separate proceedings means that the institutional consequences of this litigation

cannot be reduced to the Petitioners' characterization of the case as an ordinary commercial dispute, rather a potential criminal scheme of unprecedented proportions damaging the integrity of the US judiciary, if it were not for the vacatur of the judgment under scrutiny by the Second Circuit.

The Court need not decide the allegations. It need only recognize that they provide an additional reason not to use discretionary review to enlarge federal judicial authority in a case whose substantive claims have already been rejected by the Court of Appeals.

XI. Denial of *certiorari* would preserve the proper balance between sovereign immunity, accountability and judicial integrity.

The position advanced by RA4ARG is not one of absolute sovereign immunity. Congress has deliberately created exceptions to sovereign immunity, and American courts must apply those exceptions when their statutory requirements are satisfied.

Nor is RA4ARG asking the Court to disregard legitimate claims merely because a foreign sovereign is involved. The point is one of statutory and institutional discipline. The FSIA establishes the rule and the exceptions.

Amerada Hess establishes that the FSIA provides the jurisdictional framework. *Weltover* explains that commercial character depends upon the nature of the particular activity and that an action must actually be “based upon” qualifying commercial activity. *Hazel-Atlas* addresses the timeless possibility and duty to tackle situations impacting the integrity of judicial proceedings. *Philipp* demonstrates that even extra-

ordinary allegations concerning foreign governmental misconduct do not authorize courts to enlarge the statutory exceptions beyond their terms.

That framework protects both sides of the equation. It protects foreign sovereigns from unauthorized judicial intervention; and it protects American courts from being transformed into general tribunals for disputes concerning foreign governmental affairs.

It also protects American businesses from the destabilizing effects of reciprocal judicial intervention; and it protects the American judicial system from becoming the mechanism through which allegedly corrupt governmental arrangements are converted into judicially enforceable economic entitlements.

Those interests all point in the same direction here: denial of *certiorari*.

CONCLUSION

The petition presents a highly particularized dispute that the Second Circuit resolved principally under Argentine law. It does not warrant transforming that dispute into a broad pronouncement concerning the authority of American courts over foreign sovereigns.

The FSIA provides the governing framework. Its exceptions must be applied according to their statutory elements, not expanded through generalized appeals to economic consequence or the presence of American interests—in fact, foreign ones in this case. Alleged governmental corruption is not itself an FSIA exception; but where substantial corruption is alleged to infect the governmental conduct from which an asserted commercial entitlement derives, that circumstance is highly relevant to whether the statutory characterization advanced by a claimant should be accepted and, independently, to the institutional propriety of allowing the American judicial system to become the instrument of enforcement.

Philipp counsels restraint. *Weltover* requires attention to the actual basis of the claim. *Amerada Hess* requires adherence to the statutory framework established by Congress. *Hazel-Atlas* vouches for further proceedings pursuant to Rule 60 claims, in particular upon the eventuality of Petitioners circumventing the U.S. legal system through subsequent international arbitration.

The United States has a strong interest in protecting its companies from foreign corruption, but it has an equally strong interest in preserving the integrity of its courts and avoiding reciprocal judicial

intrusion into the governmental affairs of other sovereign nations.

For these reasons, and without prejudging rather affirming the need for RA4ARG's separate judicial-integrity proceedings, the petition for a *writ of certiorari* should be denied.

Respectfully submitted on October 20, 2026.

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