No. 26-442

In the Supreme Court of the United States

PETERSEN ENERGIA INVERSORA, S.A.U., PETERSEN ENERGIA S.A.U., ETON PARK, CAPITAL MANAGEMENT, L.P., ETON PARK, MASTER FUND, LTD., ETON PARK FUND, L.P.,
Petitioners,

v.

ARGENTINE REPUBLIC, YPF S.A.,
Respondents.

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

BRIEF OF MISSOURI AND 14 OTHER STATES/TERRITORIES AS *AMICI CURIAE* IN SUPPORT OF GRANTING THE PETITION

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QUESTIONS PRESENTED

1. Whether a foreign sovereign can circumvent federal FSIA jurisdiction by requiring that certain claims against the sovereign must be brought in the sovereign's own courts.

2. Whether a foreign sovereign is entitled to deference when it presents a self-serving account of its own law for the first time on appeal, notwithstanding ordinary principles of waiver and forfeiture.

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INTEREST OF AMICI CURIAE[1]

The States' police power "springs from the obligation of the state to protect its citizens and provide for the safety and good order of society." *Panhandle E. Pipe Line Co. v. State Highway Comm'n of Kan.*, 294 U.S. 613, 622 (1935). This duty persists whenever a State's citizens suffer from a direct and substantial injury, regardless of whether it occurs domestically or abroad.

As chief law enforcement officers, State Attorneys General regularly bring suits to vindicate injuries to the States' economic and proprietary interests. *See, e.g.*, Mo. Rev. Stat. § 27.060 ("The attorney general shall institute . . . all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights . . . ."). Attorneys General accordingly have a compelling interest in any case that may prevent them from carrying out this core duty. By the same token, States have an interest in ensuring that their citizens maintain their right to access American courts to redress their injuries, including those caused by foreign sovereigns.

If permitted to stand, the Second Circuit's ruling—which permits foreign states to invoke their own law to circumvent federal jurisdiction under the Foreign Sovereign Immunities Act ("FSIA")—will jeopardize these vital functions and rights. The judicial grant of immunity seen below is antithetical

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[1] Pursuant to Rule 37.2, amici provided timely notice of their intent to file this brief to all parties.

to the FSIA's text and purpose and exposes citizens to greater risk of harm from unaccountable actors abroad.

Amici curiae are sovereign States/territories with a paramount interest in protecting their citizens from the harms Congress intended to insulate from them with the FSIA. Like the Petitioners in this case, *Amici* States have an interest in ensuring that foreign states entering U.S. markets, particularly those within *Amici* States' own borders, do not enjoy immunity when their actions fall under one of the enumerated FSIA exceptions.

Amici Curiae respectfully submit this brief to emphasize the importance, from the perspective of the States, of preserving federal-court jurisdiction under the FSIA.

SUMMARY OF ARGUMENT

The Petition seeks review of a divided Second Circuit ruling that allows foreign states to circumvent federal FSIA jurisdiction by requiring that certain claims against the sovereign be brought in the sovereign's own courts. The decision contravenes the FSIA's plain text, which requires jurisdiction over foreign states when one of several statutorily defined exceptions applies to the conduct at issue.

If left uncorrected, the Second Circuit's holding will provide an easy roadmap for foreign states to evade the judgment of U.S. courts by simply passing self-serving laws. This decision thus threatens States' and citizens' ability to protect their vital interests

when harmed by otherwise unaccountable foreign sovereigns.

This Court should grant certiorari to reverse.

ARGUMENT

I. Federal courts do not have discretion to decline the exercise of their jurisdiction under the Foreign Sovereign Immunities Act.

The FSIA provides the basis for obtaining jurisdiction over foreign states in the courts of this country. *See Argentine Republic v. Amerada Hess Shipping Corp.,* 488 U.S. 428, 443 (1989). Under the Act, a "foreign state shall be immune from the jurisdiction of the courts of the United States and of the States" unless one of several statutorily defined exceptions applies. 28 U.S.C. § 1604. When that is the case, "[a] foreign state *shall not* be immune from the jurisdiction of courts of the United States or of the States in *any* case," 28 U.S.C. § 1605(a) (emphasis added), and "the foreign state *shall* be liable in the same manner and to the same extent as a private individual under like circumstances," 28 U.S.C. § 1606 (emphasis added).

Thus, Congress, by its plain language, imposed mandatory jurisdiction on the district courts when, as relevant here, the action at issue is "an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States." 28 U.S.C. § 1605(a)(2); *see also* 28 U.S.C. § 1330(a)

("The district courts *shall* have original jurisdiction without regard to amount in controversy of *any* nonjury civil action against a foreign state . . . ." (emphasis added)). The FSIA does not contain any exceptions to its mandated jurisdiction over foreign states for commercial activities under § 1605(a)(2) and permits no discretion for district courts to decline such jurisdiction.

Given Congress's express conferral of jurisdiction under the FSIA, federal courts cannot invoke comity as a freestanding reason to refuse to hear the case. *See Fed. Deposit Ins. Corp. v. George-Howard*, 153 F.2d 591, 595 (8th Cir. 1946) ("Generally speaking, a federal court may not refuse to exercise its jurisdiction on comity considerations, 'except in special and peculiar circumstances' and on the basis of 'such limitations as traditionally justify courts in declining to exercise the jurisdiction which they possess.'" (quoting *Commonwealth Tr. Co. of Pittsburgh v. Bradford*, 297 U.S. 613, 618 (1936) and *Meredith v. City of Winter Haven*, 320 U.S. 228, 237 (1943)); *accord Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) ("With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given."); *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996) ("[F]ederal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress.").

Holding otherwise would undermine the FSIA's purpose "to free the Government from . . . case-by-case

diplomatic pressures." *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 488 (1983). The statute effectuates this purpose by "set[ting] forth 'the *sole* and *exclusive* standards to be used in resolving questions of sovereign immunity raised by foreign states before Federal and State courts in the United States.'" *MacArthur Area Citizens Ass'n v. Republic of Peru*, 809 F.2d 918, 919 (D.C. Cir. 1987) (emphasis added) (quoting H.R. Rep. No. 94-1487, at 12 (1976)). Thus, federal courts have no authority to override the FSIA's express exception for commercial activity. *See Usoyan v. Republic of Turkey*, 6 F.4th 31, 49 (D.C. Cir. 2021). Because the Second Circuit has done precisely that, this Court should reverse its decision.

II. The Second Circuit's decision is incompatible with the Foreign Sovereign Immunities Act's jurisdictional mandate.

The Second Circuit purports to have "decline[d] to decide whether international comity concerns warranted abstention here." *Petersen Energia Inversora S.A.U. v. Argentine Republic*, 172 F.4th 120, 133 (2d Cir. 2026). But by concluding that substantive Argentine law left Petitioners with a remedy only "in Argentine court," it did just that and effectively decided in the affirmative. *Id.* at 142.

That holding disregarded Congress's plain direction that "a foreign state [that] is not entitled to immunity . . . shall be liable in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606; *see Cassirer v. Thyssen-Bornemisza Collection Found.*, 596 U.S. 107, 114 (2022) (non-immune foreign litigant "is subject to

the same rules of liability as a private party"). This ruling also disturbs one of the only legal means of holding a foreign state accountable and undermines the structural protections Congress intended to elevate above foreign law. *See Samantar v. Yousuf*, 560 U.S. 305, 313–14 (2010).

III. The Second Circuit's decision threatens the *Amici* States' ability to protect their citizens from injury originating abroad.

A foreign state that can invoke its own law at whim to evade federal courts is effectively immune from liability, even for acts that cause direct harm in the United States. The Second Circuit's decision, if not reversed, will make it more difficult, and in some cases impossible, for both States and private litigants to redress their injuries originating abroad.

States have broad responsibilities to protect their citizens. *See, e.g.*, *Bos. Beer Co. v. Massachusetts*, 97 U.S. 25, 29 (1877). In passing the FSIA, Congress recognized that threats to the well-being of the citizenry at home do not stop at our borders and uniformly balanced that reality with the due respect the common law has extended to the laws of nations for centuries. But if a foreign state "knowing[ly] and flagrant[ly] violat[es] . . . the promises it made to [U.S.] investors," as the Second Circuit acknowledged happened in this case, *Petersen Energia*, 172 F.4th at 142, or engages in another commercial activity that causes harm in the United States, the FSIA precludes the use of foreign law as a jurisdictional shield.

Missouri and Mississippi, for example, invoked the FSIA when their Attorneys General brought actions against the People's Republic of China ("PRC") and related Chinese defendants for hoarding masks and other personal-protective equipment; selling lower-quality equipment in the United States; and employing other unfair and deceptive business practices related to the COVID-19 virus. The Eighth Circuit appropriately recognized that China's anticompetitive actions were commercial in "nature" under 28 U.S.C. § 1603(b). *See Missouri ex rel. Bailey v. People's Republic of China*, 90 F.4th 930, 938 (8th Cir. 2024); *see also Mississippi ex rel. Fitch v. People's Republic of China*, No. 20-cv-168, 2025 WL 3252405, at *11 (S.D. Miss. Nov. 14, 2025). This scheme also had a direct effect in Missouri and Mississippi because it created an immediate shortage of personal-protective equipment, resulting in healthcare providers either paying higher prices or dealing with insufficient materials to treat patients. *Bailey*, 90 F.4th at 938; *Fitch*, 2025 WL 3252405, at *11.

Because of the jurisdictional ground rules set by the FSIA, the States were able to secure judgments against China for its commercial activity that harmed their consumers. But if China were permitted to invoke Chinese law to force federal courts to channel antitrust or consumer protection claims to Chinese courts, State Attorneys General may have no viable way to bring the lawsuit the FSIA expressly allows them to bring. *See Bailey*, 90 F.4th at 934. More broadly, the Second Circuit's approach would provide an easy roadmap for nearly any foreign state to evade judgment in United States courts.

Thus, the risk of harm from the judicial grant of immunity at issue here extends beyond the severe financial injuries inflicted on Petitioners. The elevation of foreign jurisdictional rules above the FSIA's plain text would jeopardize health, property, and other crucial objects of the States' police power. This Court should accordingly reaffirm the mandatory jurisdictional framework of the FSIA.

CONCLUSION

This Court should grant *certiorari* to reverse the Second Circuit's judgment.

Respectfully submitted,

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