No. 26-442

In the
Supreme Court of the United States

PETERSON ENERGÍA INVERSORA, S.A.U., *et al.*,
Petitioners,

v.

ARGENTINE REPUBLIC, *et al.*,
Respondents.

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

BRIEF OF FORMER VIRGINIA ATTORNEY GENERAL JASON MIYARES AND THE AMERICAN FREE ENTERPRISE CHAMBER OF COMMERCE AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

Jason Miyares was the 48th Attorney General of the Commonwealth of Virginia from 2022 to 2026. As a Cuban-American, Mr. Miyares has seen the impact that communist regimes have on families, economies, and nations. Mr. Miyares advocates for the rule of law and the fair administration of justice, two of the principles that have motivated his career in public service. He is interested in protecting the fair expectations of investors and holding authoritarian governments accountable for their unjust appropriation of economic assets.

The American Free Enterprise Chamber of Commerce ("AmFree") was formed in 2022 as a 501(c)(3) organization that represents hard-working entrepreneurs and businesses across all sectors. AmFree's members are vitally interested in the preservation of free markets, innovation, and the continued viability of the American republic.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

When Fidel Castro came to power in Cuba, his government seized Carolyn Chester's family land and $250,000 worth of telephone stock. Frances Robles, *Cuba Seizures Now Present Opportunities*, N.Y. TIMES (Dec. 21, 2014), https://perma.cc/678A-8T5V. Growing up, Carolyn's family "didn't have riches," and she

[1] Counsel provided notice to all parties at least 10 days prior to the due date of this *amicus* brief. No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief.

constantly heard the refrain "[w]hen the embargo ends, we will get paid for our losses." *Id.* But over fifty years later, her family still had received nothing.

Nor has the current communist regime shown any interest in adhering to universally recognized rules requiring the government to pay when it takes private property. As one researcher explained, "[t]he Cuban government didn't seem to get it." Frances Robles, *Will Communist Cuba Ever Pay Back the Billions It Confiscated*, N.Y. TIMES (last updated May 1, 2026), https://perma.cc/24V9-UVLU. Officials asked the researcher, "why are you making such a big deal about something that happened 50, 60 years ago?" *Id.* There was only one conclusion—this was "indicative of how little the Cuban government understood economics and capitalism . . . They didn't get private property." *Id.*

Cuba is not the only country where socialist factions have attempted to nationalize industry and seize private property, to the detriment of private investors and property owners. This case presents one such example.

In the 1990s, Argentina took advantage of U.S. capital markets to raise billions of dollars by privatizing oil company YPF, S.A. ("YPF") through public offers on the New York Stock Exchange and elsewhere. That effort would not have inspired investor confidence nor raised such significant amounts but for the inclusion of contractual obligations in YPF's by-laws, guaranteeing investors a tender offer if Argentina later re-nationalized the company. Yet when Argentina did just that in 2012, it reneged on its obligations, costing Petitioners in this case billions of dollars.

Flagrant contractual violations of this kind should have a remedy in impartial U.S. courts, and indeed, Congress intended that they would. With the Foreign Sovereign Immunities Act, Congress ensured that if foreign nations made economic decisions either in the United States or directly affecting the United States, sovereign immunity would not stop investors from holding those nations accountable in U.S. courts.

But now, the Second Circuit has created a new rule that undermines this key protection by *requiring* that communist-inspired decisions like Argentina's decision to renationalize YPF without investor compensation are adjudicated solely in self-interested Argentine courts, to the detriment of investors, including those who invested through the New York Stock Exchange. This means that, if the Second Circuit's interpretation of the FSIA stands, foreign companies may entice investors based on confidence in the American legal system's rule-of-law principles, while those promises prove to be illusory. Investors signing on to U.S. contractual commitments will be forced to rely instead on socialist and communist regimes for compensation after their investments are devalued by nationalization. Such a rule effectively blesses the widespread seizure of private property—leaving individual investors and their families with nothing. This is not what Congress intended or what the FSIA requires, and *amici* respectfully submit that this Court should grant certiorari to hear this important issue and reverse the Second Circuit's erroneous ruling.

ARGUMENT

I. Nationalization of Private Industry Without Compensation Harms Citizens and Investors

When a state decides to nationalize a private industry, its citizens and investors lose out. In some circumstances, the nationalizing sovereign pays nothing in compensation to the private citizens it is stripping of their property rights. That's exactly what happened in Cuba.

Fidel Castro's takeover of the Cuban economy is a case study in the devastating effect nationalization can have when there is no backstop to hold a sovereign accountable. After taking control of Cuba, Castro's government first confiscated property of those people it claimed had been officials in previous government regimes. Rolando Anillo-Badia, *Outstanding Claims to Expropriated Property in Cuba*, ASS'N FOR THE STUDY OF THE CUBAN ECONOMY 83, 84 (2011). Then, the takings expanded exponentially—first through the Agrarian Reform Law of 1959, which expropriated all land holdings over 1,000 acres. *Id.* at 85. The government seized any "Cuban concerns in which Americans held majority interests" in 1960, and finally outright nationalized certain industries in December 1962. *The Future of Property Rights in Cuba*, *Hearing Before the House Comm. on Foreign Affairs, Subcomm. on the W. Hemisphere*, 114th Cong. 2 (2015) (Statement of David Bradley, Former Chief Counsel, Foreign Claims Settlement Commission), https://perma.cc/R4CX-Q2SD.

The Cuban government had now "seized and [taken] into state ownership most of the property in

that country owned by the United States and its nationals," without making any provision "for the payment of compensation for such property." *Completion of the Cuban Claims Program Under Title V of the International Claims Settlement Act of 1949* at 69, U.S. FOREIGN CLAIMS SETTLEMENT COMM. (1979), https://perma.cc/CYY5-EK5A. In response, the United States amended the International Claims Settlement Act. 22 U.S.C. § 1643. This law allowed the Foreign Claims Settlement Commission to "compile a record of the claims" against the Cuban government. Bradley, *supra*, at 3. In just under five years, the commission certified 5,911 claims, totaling over $1.8 billion of losses. *Id.* at 4. Nationalization had not revitalized an economy, it had instead robbed people of their investments and left them with no true remedy. While the Cuban Claims Program certified and accounted for the various losses, there was no way to actually make any of the investors whole.

Since the program concluded, nothing has changed to allow investors to vindicate their losses in Cuba. *See* Robles, *Will Communist Cuba Ever Pay*, *supra*. Some descendants of the families who fled "ha[ve] never been to Cuba." *Id.* But if the government returned their seized property—including sugar mills, cattle ranches, and a wholesale food distribution company, "the family will put them back into production." *Id.* As of 10 years ago, there was still no "official source for accessing the most current consolidated versions of Cuban statutory codes and regulations." Julienne E. Grant, et al., *Guide to Cuban Law & Legal Research*, 45.2 INT'L J. LEGAL INFO. 76, 81 (2017). And, regardless of what the law says, the Communist Party of Cuba "operates as a parallel authority of sorts" with

blurred lines "between Cuba's government" and the party. *Id.* Without clear-cut rules or any independent judiciary to enforce the rules that do exist, investors remain wary of building economic assets in Cuba. *See* Natalia Delgado, *A Lesson from Recent Developments in Venezuela*, CUBA CAPACITY BUILDING PROJ., COLUMBIA L. SCH. (Jan. 31, 2026), https://perma.cc/35ZM-WVUF (noting that independent courts "reduce risk and create certainty for the economic actors in the country"). Investors cannot assess risk when they are worried there is "a hidden finger being placed on the scales of justice." *Id.*

Even in nations where some compensation is expected, laws may require "foreign investors to sell their shares of the nationalized enterprise in the local stock market and accept the proceeds of the sale as compensation." Lianlian Lin, John R. Allison, *An Analysis of Expropriation & Nationalization Risk in China*, 19 YALE J. OF INT'L L., 135, 153 (1994). But because these sales must happen quickly and "local capital is often inadequate," these investors rarely "recover the actual value of their business." *Id.* This has happened across the globe—like when Egypt nationalized the Suez Canal in 1956, according to some. *Id.* at 154. Or when Peru nationalized the Marcona Mining Company, then valued at $100 million. David A. Gantz, *The Marcona Settlement: New Forms of Negotiation and Compensation for Nationalized Property*, 71 AM. J. INT'L L. 474, 482 (1977). After long negotiations, the U.S. based company received only $37 million in cash and a payout significantly below the company's valuation. *Id.* at 486 n.36.

II. United States Law Recognizes That Countries Must Be Liable For Economic Injury

With nations around the world regularly nationalizing industries or seizing individuals' assets without compensation, investors might be hesitant to participate in economic ventures in those countries. But the United States offers a layer of protection in some circumstances: if sovereign nations are doing business in the United States or in ways that directly affect our country, investors may hold those countries accountable in U.S. courts.

It wasn't always this way. Throughout history, two "conflicting concepts" of sovereign immunity existed. One held that there were no circumstances where a sovereign could be haled into the courts of another sovereign. The other theory agreed that this was generally true but that the principle did not apply when the sovereign undertook private acts. *See Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 485 (1983); *see also Alfred Dunhill of London, Inc. v. Republic of Cuba,* 425 U.S. 682, 698 (1976) (the "Tate Letter").

Because "foreign sovereign immunity is a matter of grace and comity," "not a restriction imposed by the Constitution," this Court has "deferred to the decisions of the political branches" on whether it should take jurisdiction over actions against "foreign sovereigns." *Verlinden*, 461 U.S. at 486 (citing *Ex parte Peru*, 318 U.S. 578, 586–90 (1943); *Republic of Mexico v. Hoffman*, 324 U.S. 30, 33–36 (1945)). That meant that for over 150 years, U.S. courts rarely accepted jurisdiction over a foreign sovereign because "the State

Department ordinarily requested immunity in all actions against friendly foreign sovereigns." *Id.*

That changed in 1952. In the so-called "Tate Letter," the State Department announced that it was adopting the restrictive theory of foreign sovereign immunity. *Alfred Dunhill of London, Inc.*, 425 U.S. at 711. The State Department would now no longer extend sovereign immunity to a foreign sovereign's "strictly commercial acts." *Verlinden*, 461 U.S. at 487. But this decision led to its own complications because the new policy was not codified anywhere, forcing courts to make case-by-case determinations that were "neither clear nor uniformly applied." *Id.* at 488.

The Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, brought clarity in this area. It explicitly stated that foreign states "shall not be immune" in actions based "upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere" or "upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and [where] that act causes a direct effect in the United States." *Id.* § 1605(a)(2). So, if a foreign sovereign "availed itself of the privilege of conducting" business in the United States, including by using U.S. dollars and New York financial agents, it could be held accountable in U.S. courts. *See Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 620 (1992) (affirming jurisdiction over Argentina's default on certain bonds).

After *Weltover*, investors could count on at least one thing. Even if a nation had an unstable government or a corrupt judicial system, if investors did business with that nation through the United States,

sovereign immunity would not bar holding that nation accountable through the United States courts.

III. The Second Circuit's Ruling Allows Communist Regimes To Punish Investors Who Relied On U.S. Courts

The Second Circuit's ruling below is inconsistent with Congress's FSIA directive, allowing communist regimes to bait-and-switch U.S. investors. A foreign sovereign can entice U.S. investors into stock purchases based on the backstop of American rule of law to enforce contractual guarantees, but under the Second Circuit's holding, a communist regime can subsequently pull the rug out and renationalize the same company without compensation and without acquiescing to a U.S. forum to adjudicate any investor claims. That is exactly what took place in this case.

Here, Argentina privatized its state-owned oil company, YPF, in 1993. App-4. It listed the company on the New York Stock Exchange, but investors were wary. Pet.5. To encourage them to accept the risk of investing, the company amended its bylaws, promising that if Argentina ever re-nationalized its oil companies, the parties would not suffer the fate of those who had lost money in Venezuela, Cuba, or even Argentina in the past. The bylaws were amended to include a formula price that would protect investors if anyone sought to acquire over 15% of the company. App.4–6. The IPO was successful, raising "billions of dollars from private investors." App.6.

As YPF continued to grow and thrive, Argentina repeated the same playbook it had run before. In 2012, the government "seized control of YPF's facilities" replaced management with "government officials," and

then declared that it had "no intention of complying with the tender offer provisions of YPF's bylaws." *Petersen Energía Inversora S.A.U. v. Argentine Republic*, 895 F.3d 194, 202 (2d Cir. 2018). Argentinian officials stated that everyone who thought the State "has to be stupid and buy everything according to the law of YPF itself" were "fools." Pet.7.

This should be exactly the situation in which investors may seek recourse in U.S. courts. YPF had lured investors in with a promise that its bylaws would be enforced. Knowing that YPF was listed on the NYSE and protected by the impartial U.S. court system, investors were willing to hand over billions of dollars, hopeful for a reasonable return on investment.

Those investors should have been protected when the Argentine government decided to nationalize YPF in 2012. And on the first go-round, the Second Circuit agreed. *Petersen*, 895 F.3d at 207. Investors could hold Argentina accountable for the agreements it had entered into when it started purchasing shares in YPF. Not only that, but the investors could do so in a legitimate court proceeding where impartial judges would actually consider the merits of their claims. Judge Preska did so, carefully parsing the various claims, bylaws, and evidence presented by the parties. After over a decade, she awarded a $16.1 billion verdict to the investors. App-14. But the Second Circuit reversed, positing that only Argentinian courts could hear this dispute.

The Second Circuit's opinion obliterates the stability that Congress meant for the U.S. judiciary to provide in this circumstance. The idea that investors

could have meaningfully sought "to enforce the Bylaws' protections in Argentine court through causes of action recognized under Argentine law," App-39, strains credulity. As the U.S. State Department recognized in 2022, "government officials [in Argentina] at all levels did not always respect judicial independence and impartiality." *2022 Country Reports on Human Rights Practices: Argentina* at 6, U.S. DEP'T OF STATE (2022), https://perma.cc/J8SM-ULD6. Police will "on occasion, arrest[] and detain[] citizens arbitrarily." *Id.* And once arrested, judges are "subject to political manipulation at times." *Id.* Furthermore, "[a]llegations of corruption in provincial and federal courts [are] frequent." *Id.* at 11.

In this case, Argentinian officials had already told attorneys and paralegals from King and Spalding that they would be subject to criminal investigation for merely participating in an arbitration on behalf of international investors. App-147–48. Given the state of the legal system in Argentina, it is no wonder that investors had no confidence that an Argentine court would fairly adjudicate claims against the state—or that their attorneys would even stay out of jail long enough to pursue those claims.

Allowing the Second Circuit's opinion to stand here would create the unthinkable: U.S. courts enabling anti-capitalist regimes to nationalize entire industries while trampling the individual property rights of investors. This Court should not allow foreign sovereigns to use impartial U.S. courts as a smoke screen to build up investment in a private company and then seize all those gains for themselves. U.S. courts should not force investors who purchased stock in New York to instead go to Argentina to press

their claims—where their attorneys may be arrested for the mere fact of representing them.

CONCLUSION

This Court should grant certiorari.

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