No. 26-442

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 UNLEASH PROSPERITY AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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Petersen Energia Inversora S.A.U. v. Argentine Republic, 172 F.4th 120 (2d Cir. 2026) 2, 4, 5, 8, 9, 16, 19

Petersen Energia Inversora S.A.U. v. Argentine Republic, 895 F.3d 194 (2d Cir. 2018) 8

Pinter v. Dahl, 486 U.S. 622 (1988) 12

Republic of Argentina v. NML Cap., Ltd.,
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Republic of Argentina v. Weltover, Inc.,
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Scherk v. Alberto-Culver Co.,
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Turkiye Halk Bankasi A.S. v. United States,
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Verlinden B.V. v. Cent. Bank of Nigeria,
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28 U.S.C. § 1603 7

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28 U.S.C. § 1607 7

Other Authorities

Anusha Chari et al., *Capital Market Integration and Wages* (Nat'l Bureau of Econ. Rsch. Working Paper No. 15204, revised July 2011), https://perma.cc/96R5-C2N4 14

Citi Depositary Receipt Servs., *Year End 2022 Report* (May 2023), https://perma.cc/BN5X-EP45 ..... 4, 19

Citi Issuer Servs., *The Role of the Depositary Bank* (2018), https://perma.cc/Y97Y-T2H7 ..... 16, 19

David P. Stewart, Fed. Jud. Ctr., *The Foreign Sovereign Immunities Act: A Guide for Judges* (2d ed. 2018), https://perma.cc/3C4E-5UM6 18

David W. Ogden et al., *Year in Review and Developments to Watch in Foreign Sovereign Litigation in U.S. Courts*, WilmerHale (Mar. 17, 2025), https://perma.cc/PJR6-93RC 4, 18, 20

Elliott Ash et al., *More Laws, More Growth? Evidence from U.S. States*, 133 J. Pol. Econ. 2139 (2025) 3, 12

EY, *EY Global IPO Trends Q2 2025* (2025), https://perma.cc/X7WF-EYUP 14, 17

Frederick Tung, *Before Competition: Origins of the Internal Affairs Doctrine* 101 (Emory Univ. Sch. of L., Pub. L. & Legal Theory Rsch. Paper No. 07-7, 2006), https://perma.cc/7MDZ-9J48 10

Jacopo Ponticelli & Leonardo S. Alencar, *Court Enforcement, Bank Loans, and Firm Investment: Evidence from a Bankruptcy Reform in Brazil*, 131 Q.J. Econ. 1365 (2016) 13

Jeffrey Wurgler, *Financial Markets and the Allocation of Capital*, 58 J. Fin. Econ. 187 (2000) 14, 19

Lingling Wei, *Xi Jinping Aims to Rein in Chinese Capitalism, Hew to Mao's Socialist Vision*, Wall St. J. (Sept. 20, 2021), https://perma.cc/H53Y-8U2E 17

Luzi Hail & Christian Leuz, *Cost of Capital Effects and Changes in Growth Expectations Around U.S. Cross-Listings* (Eur. Corp. Governance Inst. Working Paper, revised 2006), https://perma.cc/GL2J-8MGS 13, 14

Supreme Court Rule 10 5

OTC Markets, *Company Directory* (last visited Nov. 2, 2026), https://perma.cc/VPT8-KW8G 17

Press Release, Int'l Trade Admin., *America Is Back in Business: Record U.S. Contracts Won Globally Under Trump Administration* (Sept. 30, 2025), https://perma.cc/3WRP-X28J 18

Roel C. Campos, Comm'r, U.S. Sec. & Exch. Comm'n, *SEC Regulation Outside the United States*, Remarks in London, England (Mar. 8, 2007), https://perma.cc/3MQM-EVAK 3

U.S.-China Econ. & Sec. Rev. Comm'n, *Chinese Companies Listed on Major U.S. Stock Exchanges* (last updated Mar. 7, 2025), https://perma.cc/3TL4-T7V5 17

U.S. Dep't of the Treasury et al., *U.S. Portfolio Holdings of Foreign Securities as of December 31, 2024* (Nov. 2025), https://perma.cc/CT77-6TVW 18

U.S. Sec. & Exch. Comm'n, *Initial Public Offerings (IPOs)* (last updated Sept. 22, 2026), https://perma.cc/632H-XS4C 16

U.S. Sec. & Exch. Comm'n, *Investor Bulletin: American Depositary Receipts* (Aug. 2012), https://perma.cc/2HAT-QMVC 16

INTEREST OF *AMICUS CURIAE*

Unleash Prosperity is an economic advocacy and research organization committed to maximizing economic growth and prosperity in America and around the world.[1] To accomplish this nonpartisan, nonpolitical mission, Unleash Prosperity educates policymakers and the public about policies that have been proven to benefit workers and investors. In doing so, Unleash Prosperity affirms the fundamental values necessary to a flourishing economy, including the rule of law.

Unleash Prosperity has a strong interest in seeing that the law is clear, predictable, and consistent. When it is not, market participants have difficulty analyzing risk and the value of assets. Legal uncertainty thus harms economic growth. And that harm is felt not just by businesses and investors but by everyday individuals who ultimately bear the burden of uncertainty.

The novelty of the Second Circuit's decision creates such uncertainty. Unleash Prosperity takes no position on the merits of the panel's decision or the questions presented. But because of the significant economic interests at stake, it urges the Court to take up these questions without delay.

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[1] In accordance with Rule 37.6, no counsel for any party has authored this brief in whole or in part, and no person or entity other than amicus or its counsel has made a monetary contribution to the preparation or submission of this brief. Counsel of record received timely notice of the intent to file this brief pursuant to Rule 37.2.

SUMMARY OF ARGUMENT

This case directly affects businesses, investors, and markets by unsettling the predictability and the consistent rule of law they have come to expect from American courts. In 1993, Argentina privatized the state-owned oil company YPF S.A. ("YPF") by raising capital in an initial public offering ("IPO"). *Petersen Energia Inversora S.A.U. v. Argentine Republic*, 172 F.4th 120, 126 (2d Cir. 2026). As part of its IPO efforts, Argentina attracted private investment by amending YPF's bylaws to grant shareholders the right to a "cash tender offer" if Argentina were to ever "retake majority control of YPF." *Id.* The IPO raised more than $1.1 billion through NYSE-listed securities. *Id.* at 127. When Argentina regained control, it declined to provide the promised tender offer. *Id.* at 127–28. After ten years of litigation and a holding that Argentina was not immune from suit under the Foreign Sovereign Immunities Act ("FSIA"), a divided Second Circuit ultimately reversed the $16.1 billion damages award. *Id.* at 125, 128–30. The court held that petitioners' breach-of-contract claims were "not cognizable under Argentina's civil codes and public law governing expropriation," *id.* at 125, while concluding that "Argentine law did not leave YPF's minority shareholders without any remedy" because petitioners "could have sought . . . to enforce the Bylaws' protections in Argentine court." *Id.* at 125, 129, 142.

In so concluding, the Second Circuit undermined key features of U.S. capital markets by injecting doubt about, and inconsistent enforcement of, the rules

governing claims against sovereigns. Investors will account for the risk that their rights may not be enforced by, for example, either demanding more in return, or seeking other markets. *See* Elliott Ash et al., *More Laws, More Growth? Evidence from U.S. States*, 133 J. Pol. Econ. 2139, 2142, 2144 (2025); *cf. Hertz Corp. v. Friend*, 559 U.S. 77, 94–95 (2010); *First Nat'l City Bank v. Banco Para el Comercio Exterior de Cuba*, 462 U.S. 611, 625–26 (1983) ("*Bancec*"). By requiring petitioners to proceed in Argentine courts despite acknowledging that Argentina was not entitled to sovereign immunity in U.S. courts, the panel unsettled investors' longstanding expectations and precedent about how claims against a foreign sovereign proceed.

Those expectations are important. The stability and reliability of American capital markets and the laws that undergird them are what attract investors and securities issuers from around the world. This is because "most capital and investment will go to jurisdictions that have a high level of protection and redress through rule of law and an effective and fair judicial system."[2] Markets and their participants benefit from and value the predictability and enforceability of established rules governing their transactions.

And the vast majority of domestic investment in foreign assets occurs within the Second Circuit,

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[2] Roel C. Campos, Comm'r, U.S. Sec. & Exch. Comm'n, *SEC Regulation Outside the United States*, Remarks in London, England (Mar. 8, 2007), https://perma.cc/3MQM-EVAK.

including the issuance and exchange of American Depositary Receipts ("ADRs") that are the type of security at issue in this case.[3] A substantial share of global depositary-receipt trading occurs on exchanges in New York,[4] and courts in the Second Circuit are a common forum for addressing commercial disputes involving foreign sovereigns. *See, e.g.*, *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 268 (2023).[5] Despite New York's and the United States' preeminent role in capital markets, investors have options and will seek jurisdictions that provide predictability and legal certainty.

Petitioners ask this Court to resolve the federal questions presented here concerning the relationship between foreign-law restrictions and FSIA jurisdiction, and the treatment of a foreign sovereign's interpretations of its own law. Pet. i. Those questions matter to market participants and broadly to the U.S. economy. The Court should grant review and settle the questions presented for the whole country and, indeed, investors and businesses across the globe.

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[3] ADRs are "dollar-denominated certificates, issued by a U.S. bank, that represent ownership shares of a foreign security." *Petersen*, 172 F.4th at 126 n.3.

[4] Citi Depositary Receipt Servs., *Year End 2022 Report* 4 (May 2023), https://perma.cc/BN5X-EP45.

[5] David W. Ogden et al., *Year in Review and Developments to Watch in Foreign Sovereign Litigation in U.S. Courts*, WilmerHale (Mar. 17, 2025), https://perma.cc/PJR6-93RC.

ARGUMENT

There are "compelling reasons" to grant review of the important federal questions raised in the petition. Sup. Ct. R. 10. After a decade of litigation and the Second Circuit's holding that U.S. courts have jurisdiction over this case, a divided Second Circuit reversed the $16.1 billion judgment against Argentina. *Petersen*, 172 F.4th at 125, 137–42. The decision's significance extends beyond reversal of that substantial judgment. This Court should grant certiorari to resolve a question of critical importance to American financial markets: when foreign sovereigns may force disputes arising from their conduct in U.S. capital markets out of U.S. courts and into their own. Foreign sovereigns and the enterprises they own regularly participate in these markets, and the vast majority of that commercial activity occurs within the Second Circuit. As a result of its preeminent role in adjudicating disputes related to American capital markets, the Second Circuit's treatment of sovereign commercial commitments will have a disproportionate effect on investment decisions. *See* Pet. 34. Rather than allow a divided panel in this single Court of Appeals to have the last word, this Court should provide certainty to markets nationwide.

I. This Court's Review is Needed Because the Second Circuit's Decision Introduces Legal Uncertainty to the U.S. Market for Foreign Assets.

A. The Decision Below Increases the Risk of Foreign Interference in U.S.-Based Investments and Introduces Uncertainty for Investors and Businesses.

Foreign sovereigns' participation in American capital markets and their transacting with American businesses and investors strengthen economic growth and development, both at home and abroad. But market participants will benefit from those relationships only insofar as they can accurately calculate the risks associated with them.

1. The FSIA gives parties clear rules about when foreign sovereigns may be sued in American courts.

The FSIA was Congress's response to the "bedlam" of preexisting sovereign-immunity law. *Republic of Argentina v. NML Cap., Ltd.*, 573 U.S. 134, 141 (2014). Congress enacted the statute to clarify when sovereign immunity precludes jurisdiction in federal courts. *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 487–89 (1983). This "comprehensive set of legal standards" enables parties to know when a foreign sovereign is, and is not, amenable to suit, *NML Cap.*, 573 U.S. at 141 (citation omitted), by providing a baseline of immunity and an

exclusive list of specific exceptions. 28 U.S.C. §§ 1602–1607.

As the petition explains, the FSIA explicitly excludes commercial activities from immunity and is intended to "hold foreign sovereigns to their commercial obligations as they would any private individual." Pet. 3, 36. Its commercial-activity exception permits specified claims arising from a sovereign's commercial conduct, including conduct undertaken as a private market participant would. 28 U.S.C. § 1605(a)(2); *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 614–17 (1992). The commercial-activity exception provides particular clarity for contracting parties—private and sovereign alike—because the nature of the activities can be evaluated while the parties are deciding the terms of their business relationship. For decades, private parties have expected that, once the courts agree that an exception applies, that decision is the final word on where suit will proceed.

2. The decision below disrupts markets' expectations that a FSIA ruling settles where a suit will proceed.

The Second Circuit's decision provides an escape valve: a foreign sovereign may engage in commercial activity excepted under the FSIA, then invoke its own sovereign acts and laws as an end-run around that restriction on immunity. Argentina's privatization of YPF through an IPO in American markets, and Argentina's conduct nineteen years later, present a cautionary tale for investors that will not end with this

case. If investors are not made whole, it will set a precedent for foreign countries to expropriate Americans' investment funds in the future.

In preparing for its 1993 IPO, Argentina amended YPF's bylaws to address later acquisitions of control. An acquisition by Argentina reaching the specified threshold would trigger a tender offer allowing minority shareholders to sell at a price determined through prescribed formulas. *Petersen*, 172 F.4th at 126–27. But when Argentina regained control in 2012 through an expropriation law, it made no tender offer to the remaining shareholders. Petitioners sued in New York for damages arising from that breach. *Id.* at 127–29.

The Second Circuit agreed that sovereign immunity did not apply and that the suit could proceed in American courts because petitioners' claims were "based on" Argentina's "breach of a commercial obligation" despite that breach being "*triggered* by its sovereign act of expropriation." *Petersen*, 172 F.4th at 137 n.12 (quoting *Petersen Energia Inversora S.A.U. v. Argentine Republic*, 895 F.3d 194, 207–11 (2d Cir. 2018)). The parties then spent nearly a decade litigating the merits, through summary judgment and a damages trial, expending significant money, time, and judicial resources. *See Petersen*, 172 F.4th at 128–30.

Yet the Second Circuit has now held that none of that litigation may yield the relief petitioners sought and are owed because Argentine law "precludes private suits brought in the wake of expropriation based on existing contractual obligations" that "would

impede, or interfere with, the expropriation" and otherwise confines any suit to Argentine corporate law remedies in Argentina—the very same alleged breach of commercial obligations "*triggered* by" the expropriation that the Second Circuit held does not immunize Argentina from suit in the U.S. *Id.* at 137–42 & n.12. And as the petition explains, the Second Circuit's holding rests on shifting and untested interpretations of Argentine law presented by respondents for the first time on appeal. Pet. 26-28; *see Petersen*, 172 F.4th at 145 (Cabranes, J., dissenting) ("[W]e have recognized that determinations of another sovereign's law 'frequently call for fact-like procedures that a district court is better situated to implement.[']" (citation omitted)). Whatever the merits of that conclusion, it is undeniably novel. The court allowed a foreign sovereign to channel a dispute against it toward its own courts, over the plaintiffs' opposition and despite the court's earlier holding that the claims could be brought in American courts. *See id.* at 142.

The petition asks this Court to clarify the federal framework surrounding that result. Petitioners contend that foreign-law restrictions cannot circumvent FSIA jurisdiction and that Argentina received improper deference for foreign-law positions first advanced on appeal. Pet. 14–34. This Court has held that a foreign government's account of its law receives "careful[]" consideration without binding American courts. *Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, 585 U.S. 33, 36, 42–43 (2018). The petition seeks guidance as to how that principle

operates alongside ordinary rules governing arguments first advanced on appeal. Pet. i, 24–34.

Nor is the Second Circuit's decision likely to be limited to this case. Federal courts apply the forum State's choice-of-law rules against a sovereign like any private party. *Cassirer v. Thyssen-Bornemisza Collection Found.*, 596 U.S. 107, 115–16 (2022); *see* 28 U.S.C. § 1606. And like New York, most States apply the internal-affairs doctrine: when a claim, like the shareholder claim here, concerns a corporation's internal affairs, the law of the State of incorporation applies.[6] Under the logic of the decision below, a foreign sovereign can invoke its own laws barring suits for its own conduct as an end-run around the FSIA's commercial-activity exception. Parties transacting with foreign sovereigns would need to account not only for the risks inherent in any suit against a private party, but also for the risk that a sovereign will change its law to favor itself, including by redirecting a claim properly brought in American courts to its own courts. Increasing that risk for transacting parties will impede the free flow of capital across international borders.

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[6] *See* Frederick Tung, *Before Competition: Origins of the Internal Affairs Doctrine* 101, 107 (Emory Univ. Sch. of L., Pub. L. & Legal Theory Rsch. Paper No. 07-7, 2006), https://perma.cc/7MDZ-9J48.

3. The decision's uncertainty affects future transactions, existing investments, and courts nationwide.

This case alone is substantial on its face. But the uncertainty caused by the decision below, if left standing, will cast a shadow over many transactions and hundreds of billions of dollars of economic activity in our economy. Indeed, the sovereign entanglement with U.S.-listed foreign assets extends beyond YPF as discussed in more detail below.

The uncertainty and injustice not only cloud future transactions but also affect past and present ones. Any party that currently holds shares of foreign assets, purchased in reliance on access to an American forum, no longer knows whether it will have that access if a foreign sovereign takes action and a dispute arises—casting uncertainty on the value of those assets. So too for any party with an ordinary commercial agreement with a foreign state containing a foreign choice-of-law clause. Investors evaluating those commitments must consider the available claim, remedy, and adjudicative process before the promised protection becomes necessary. Resolving the questions presented matters to those investments, whatever the ultimate disposition of petitioners' claims.

There is also a risk that different rules will apply in different forums, further distorting market expectations. Although many commercial disputes implicating the FSIA arise in the Second Circuit, not all do. Other courts disagree with the Second Circuit on issues raised in the petition. Pet. 20–23, 31–34. Absent review by this Court, businesses and investors

face further uncertainty as to the effect of foreign-law restrictions, including ones raised for the first time on appeal. Rather than require parties to run that risk while making investments, this Court should take up the questions presented now.

B. Predictable Rules and Legal Certainty Are Vital to the Health of U.S. Markets.

This Court has repeatedly emphasized that "[p]redictability is valuable to corporations making business and investment decisions." *Hertz*, 559 U.S. at 94–95; *see also Pinter v. Dahl*, 486 U.S. 622, 652 (1988) (describing securities law as "an area that demands certainty and predictability"). Clear legal rules let market participants know what rights they hold and estimate the odds of enforcing them. *See* Ash et al., *supra*, at 2142, 2144. As legal uncertainty grows, so does the cost of doing business. *See id.*

This Court has long recognized why predictable legal arrangements matter to cross-border commerce. In *Scherk v. Alberto-Culver Co.*, it described "orderliness and predictability" as "essential to any international business transaction." 417 U.S. 506, 516 (1974). The agreement there specified the forum for arbitration, reducing uncertainty that arose from dealing across jurisdictions. *Id.* at 508, 515–17. The Second Circuit's decision below implicates similar interests in the market for cross-listed securities.

Research demonstrates the direct economic value the U.S. provides to investors and issuers seeking cross-listed assets. Specifically, foreign assets listed on U.S. exchanges lead to lower capital costs compared

to those in countries with weaker investor protections.[7]

The concern here is prospective and could chill future economic activity in U.S. markets. If investors cannot readily assess the protections they bargained for, that uncertainty will impact their future investing decisions in U.S. markets, increasing the cost and difficulty for issuers seeking capital, including sovereigns. *Id.*; *cf. Bancec*, 462 U.S. at 625–26. Certainty thus benefits all market participants and enables substantial economic activity.

Research shows that judicial enforcement of such protections directly impacts financial markets. For example, a study of Brazil's bankruptcy reform found increased secured lending and investment activity where courts were less congested and resolved disputes faster. Jacopo Ponticelli & Leonardo S. Alencar, *Court Enforcement, Bank Loans, and Firm Investment: Evidence from a Bankruptcy Reform in Brazil*, 131 Q.J. Econ. 1365, 1365–67 (2016). Although this is not a bankruptcy case, judicial resolution of disputes and the enforcement of the rule of law contribute to increased economic activity and the flow of capital.

The predictability and consistent rule of law not only promote economic activity generally but also enable the efficient allocation of capital. Stronger

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[7] *See* Luzi Hail & Christian Leuz, *Cost of Capital Effects and Changes in Growth Expectations Around U.S. Cross-Listings* 2-3 (Eur. Corp. Governance Inst. Working Paper, revised 2006), https://perma.cc/GL2J-8MGS.

minority-investor protections are associated with more efficient investment patterns, including reducing overinvestment in declining industries. Jeffrey Wurgler, *Financial Markets and the Allocation of Capital*, 58 J. Fin. Econ. 187, 189 (2000). The Second Circuit's decision below thus introduces uncertainty that may affect investors' assessment of the risk and value of their rights, reducing the number of profitable investing opportunities. *See* Hail & Leuz, *supra* note 7, at 7–8.

Those benefits flowing from the predictability of parties' access to their rights in transactions can also extend beyond the parties to cross-border transactions. Research shows that real manufacturing wages in emerging economies increase as those markets seek foreign investments.[8]

American courts have long offered businesses and investors stability as a forum for resolving commercial disputes with foreign sovereigns. But competition among financial centers is strong, and the United States is not the only place investors and companies can go to do business.[9] Reducing predictability increases the incentives for investors and businesses to take their business elsewhere. After all, "[u]nnecessary risks and avoidable uncertainties are

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[8] Anusha Chari et al., *Capital Market Integration and Wages* abstract, 3 (Nat'l Bureau of Econ. Rsch. Working Paper No. 15204, revised July 2011), https://perma.cc/96R5-C2N4.

[9] *See, e.g.*, EY, *EY Global IPO Trends Q2 2025*, at 12 (2025), https://perma.cc/X7WF-EYUP (noting that "Hong Kong, European and Asian markets [are trying to] position themselves as viable alternatives to traditional US dominance").

hostile to economic progress and fiscal stability." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 699 (2012) (Scalia, Kennedy, Thomas & Alito, JJ., dissenting).

These studies do not purport to measure the effect of the Second Circuit's decision below. But they do demonstrate why this case deserves prompt attention. Congress enacted the FSIA to clarify when sovereign immunity precludes jurisdiction in federal courts. *Verlinden*, 461 U.S. at 488–89. As the petition explains, the FSIA explicitly excludes commercial activities. Its commercial-activity exception permits specified claims arising from a sovereign's commercial conduct. 28 U.S.C. § 1605(a)(2); *Weltover*, 504 U.S. at 614–15. This Court's review is warranted to clarify the boundaries of the FSIA exception. Otherwise, the very protections that give U.S.-listed securities their value may be undermined by foreign sovereign nullification.

Perhaps Congress did tolerate exposing investors and businesses to that risk. But whether it did should have a swift, national answer, one that only this Court can provide.

II. This Court's Review is Needed Because the Second Circuit's Decision Affects a Critical Component of American Capital Markets: Domestically-Listed Foreign Assets.

Foreign asset securitization in U.S. markets is a significant component of financial markets. Foreign sovereigns and issuers regularly turn to American capital markets. They borrow from private investors through instruments resembling ordinary commercial

debt. *See, e.g.*, *Weltover*, 504 U.S. at 615. They also use depositary receipts to privatize state enterprises and raise capital overseas.[10] Governments have employed those programs for utilities, airlines, telecommunications companies, and petrochemical businesses.[11] ADRs make that participation practical for American investors.[12] Issued by U.S. depositary banks, ADRs represent interests in foreign-company shares and trade in dollars through American settlement systems. *Petersen*, 172 F.4th at 126 n.3. They give American investors access to foreign companies while providing those companies easier access to American capital markets.[13]

Argentina is far from alone in looking to American exchanges for capital. Non-U.S. issuers completed 146 IPOs in 2025, raising more than $9 billion, and thirty more non-U.S. issuers raised nearly that much in just the first half of this year.[14] Foreign operating companies represented "62% of all US listings" during the first half of 2025. EY, *supra* note 9, at 11.

The appeal of U.S. markets has only increased in the last decade, "with 93% of global cross-border IPOs

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[10] Citi Issuer Servs., *The Role of the Depositary Bank* 7 (2018), https://perma.cc/Y97Y-T2H7.

[11] *Id.*

[12] *Id.* at 4, 9.

[13] U.S. Sec. & Exch. Comm'n, *Investor Bulletin: American Depositary Receipts* 1 (Aug. 2012), https://perma.cc/2HAT-QMVC.

[14] U.S. Sec. & Exch. Comm'n, *Initial Public Offerings (IPOs)* (last updated Sept. 22, 2026), https://perma.cc/632H-XS4C.

choosing to list in the US [in the first half of 2025], a dramatic surge from just 30% in 2016." *Id.* at 3. This "fundamental rewiring of global capital flows" has been driven in part by listings from Chinese companies. *See id.* at 3. These listings are often "deliberately . . . smaller deal sizes and [in] less politically sensitive sectors." *Id.* at 11. But those companies are still at risk of coming under the state's control.[15] And although tension with U.S. regulators over audit compliance led Chinese state-owned enterprises to delist several years ago, these companies can still be traded over the counter.[16]

Investor confidence that ownership rules will not be violated or diminished is critical to this free flow of capital to its highest and best use. This is one major reason why U.S. capital markets are considered supreme and why property rights to shareholders are upheld.

American participation in sovereign finance is substantial and is not limited to equities markets. At year-end 2024, U.S. investors held $693 billion in long-term foreign government debt, including $330 billion held by mutual funds and $69 billion held by pension

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[15] *Cf.* Lingling Wei, *Xi Jinping Aims to Rein in Chinese Capitalism, Hew to Mao's Socialist Vision*, Wall St. J. (Sept. 20, 2021), https://perma.cc/H53Y-8U2E.

[16] U.S.-China Econ. & Sec. Rev. Comm'n, *Chinese Companies Listed on Major U.S. Stock Exchanges* 3–4 (last updated Mar. 7, 2025), https://perma.cc/3TL4-T7V5; *see* OTC Markets, *Company Directory* (last visited Nov. 2, 2026), https://perma.cc/VPT8-KW8G (showing Chinese over-the-counter assets).

funds.[17] Treasury's government category includes central, local, and provincial governments, as well as government-sponsored or guaranteed corporations. *Id.* at 33. These holdings illustrate how sovereign commercial relationships reach funds investing Americans' savings, beyond investors who purchase foreign securities directly.[18]

After all, cross-border investment expands the opportunities available to both American investors and businesses seeking funds. Foreign issuers can reach capital beyond their home markets, while American investors can diversify their holdings through interests in foreign companies. Citi Issuer Servs., *The Role of the Depositary Bank*, *supra* note 10, at 4, 7. Financial markets also serve a broader purpose

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[17] U.S. Dep't of the Treasury et al., *U.S. Portfolio Holdings of Foreign Securities as of December 31, 2024* 33, 40 (Nov. 2025), https://perma.cc/CT77-6TVW.

[18] Equities and bonds are not the only way foreign states engage in commercial activity in the United States. In the first nine months of 2025, American companies signed contracts worth $170 billion with foreign governments, covering industries including aerospace, energy, and information technology. Press Release, Int'l Trade Admin., *America Is Back in Business: Record U.S. Contracts Won Globally Under Trump Administration* (Sept. 30, 2025), https://perma.cc/3WRP-X28J. Those commercial activities are also concentrated within the Second Circuit. And "[t]he most common FSIA cases involve claims . . . for breach of commercial contracts for the purchase and sale of goods or services." David P. Stewart, Fed. Jud. Ctr., *The Foreign Sovereign Immunities Act: A Guide for Judges* 3 (2d ed. 2018), https://perma.cc/3C4E-5UM6; *cf.* Ogden et al., *supra* note 5 (finding only terror-related claims outpaced commercial-activity suits in 2024).

by helping capital reach productive uses. Wurgler, *supra*, at 188–89. Researchers surveying 65 countries determined that developed financial markets function efficiently by allocating more investment toward growing, productive industries and less toward underperforming ones. *Id.* at 187-89.

New York's prominence in the financial industry enhances the importance of this decision. In 2022, the NYSE and Nasdaq accounted for approximately 92 percent of global depositary-receipt trading value. Citi Depositary Receipt Servs., *Year End 2022 Report*, *supra* note 4, at 4. This case illustrates how foreign sovereigns use those markets: Argentina raised more than $1.1 billion through NYSE-listed securities and incorporated New York procedures into the protections offered to investors. *Petersen*, 172 F.4th at 126–27. As the Second Circuit itself has recognized, "[t]he United States has an interest in maintaining New York's status as one of the foremost commercial centers in the world." *Allied Bank Int'l v. Banco Credito Agricola de Cartago*, 757 F.2d 516, 521 (2d Cir. 1985).

This Court has also observed that courts defer to the Second Circuit because of its "preeminence in the field of securities law." *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 260 (2010) (citation omitted). Thus, its decisions are likely to impact future cases well beyond the parties before it. Perhaps unsurprisingly, the Second Circuit is also one of "the two most active jurisdictions" in FSIA litigation. Ogden et al., *supra* note 5. As the natural home for commercial-activity suits involving foreign-owned companies that trade on

American markets, the Second Circuit's decision below will likely have a significant effect on parties' conduct and will affect future litigation.

Without this Court's intervention, the Second Circuit's 2–1 decision casts a shadow over a multitude of commercial transactions and those that are yet to form. This would be damaging to future U.S. economic conditions. The question therefore deserves a swift, national answer from this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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