No. 24A___

In the Supreme Court of the United States

KINGDOM OF SPAIN,

Applicant,

v.

BLASKET RENEWABLE INVESTMENTS LLC *ET AL.*,

Respondents.

APPLICATION DIRECTED TO THE HONORABLE CHIEF JUSTICE JOHN G. ROBERTS, JR. FOR AN EXTENSION OF TIME WITHIN WHICH TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE D.C. CIRCUIT

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APPLICATION FOR EXTENSION OF TIME

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the United States Court of Appeals for the D.C. Circuit:

1. The Kingdom of Spain respectfully requests a 60-day extension, up to and including May 2, 2025, to petition for a writ of certiorari. See 28 U.S.C. § 2101(c); Sup. Ct. R. 13.5. The D.C. Circuit issued its opinion and entered judgment on August 16, 2024. The opinion is available at 112 F.4th 1088, and a copy is attached (See Attachment 1). The D.C. Circuit denied Spain's timely petition for rehearing *en banc* on December 2, 2024 (See Attachment 2). Spain's cert petition is currently due March 3, 2025. See Sup. Ct. R. 13.3. This application has been filed on February 21, 2025, ten days before the time for filing the petition is set to expire. This Court has jurisdiction to review the decision of the D.C. Circuit under 28 U.S.C. § 1254(1).

2. This case warrants review because the D.C. Circuit's opinion creates a circuit split over the Foreign Sovereign Immunities Act's arbitration exception and further entrenches an acknowledged conflict over the availability of *forum non conveniens*. Both holdings implicate critically important foreign-relations concerns.

a. The decision below creates a circuit split over the Foreign Sovereign Immunities Act's arbitration exception. See 28 U.S.C. § 1605(a)(6).

This case began when several European Union-based energy companies sought to arbitrate a dispute with Spain over Spanish energy subsidies the companies believed that Spain owed them. Citing Article 26 of the Energy Charter Treaty, a multilateral treaty ratified by both EU and non-EU countries that governs bilateral

relations between any two contracting parties, the companies argued that Spain had issued a valid offer to arbitrate, which they had later accepted, thereby forming a valid arbitration agreement. The companies ultimately obtained favorable awards and moved to enforce them in the United States, invoking the FSIA's arbitration exception.

Spain objected that it had never agreed—and *could never* agree—to arbitrate with the companies. The European Court of Justice (the EU's Supreme Court) has held that Article 26 is not a valid offer to arbitrate between EU Member States (like Spain) and EU nationals (like the energy companies). Recognizing this, one of the district courts below found that "there was no valid offer to arbitrate" and thus "no arbitration agreement, which is required to establish subject matter jurisdiction" under the FSIA. *Blasket Renewable Invs., LLC* v. *Kingdom of Spain*, 665 F. Supp. 3d 1, 13 (D.D.C. 2023). The other district court disagreed, holding that Spain's lack of "authority to agree" to arbitrate was "not a challenge to the jurisdictional fact of that agreement's existence." *NextEra Energy Glob. Holdings B.V.* v. *Kingdom of Spain*, 656 F. Supp. 3d 201, 210, 213 (D.D.C. 2023); accord *9REN Holding S.À.R.L.* v. *Kingdom of Spain*, 2023 WL 2016933, at *6 (D.D.C. Feb. 15, 2023). Instead, it involved only "the merits of an award." *NextEra*, 656 F. Supp. 3d at 213.

The D.C. Circuit treated Spain's objection as a merits question for arbitrators—not a jurisdictional question for courts. In its view, Spain's argument went to "the *scope*" of the arbitration agreement, "not its *existence*." Attachment 1 at 25. And because Spain's objection was not "jurisdictional," the court deferred to the

arbitration panel's resolution of the issue, rather than independently assessing whether Spain agreed to arbitrate "with or for the benefit of" the claimant companies. 28 U.S.C. §1605(a)(6). The panel thus "d[id] not address … whether Spain ultimately entered into legally valid agreements with the [energy companies]." Attachment 1 at 25, 28.

Other circuits would have treated Spain's objection as a threshold jurisdictional issue under the FSIA. In the Second Circuit, deciding whether there is an arbitration agreement "with or for the benefit of" a claimant is part of "determin[ing] whether subject matter jurisdiction exist[s]." *Cargill Int'l S.A.* v. *M/T Pavel Dybenko*, 991 F.2d 1012, 1019 (2d Cir. 1993). Thus, a district court must itself "review the pleadings and any evidence before it" and, "if necessary, may proceed to trial" to determine whether an arbitration agreement formed by a foreign sovereign was "intended to benefit" the petitioner. *Id.* The Fifth Circuit takes a similar approach. For example, when the claimants in *Al-Qarqani* v. *Saudi Arabian Oil Co.*, 19 F.4th 794 (5th Cir. 2021), sought to confirm an arbitral award against a Saudi instrumentality, the instrumentality objected that it had never agreed to arbitrate "with or for the benefit of" those particular claimants. *See id.* at 801–02. Like the Second Circuit—but unlike the D.C. Circuit—the Fifth Circuit treated that objection as jurisdictional. Finding "no arbitration agreement *among the parties*," it held that the FSIA's arbitration exception didn't apply. *Id.* at 802.

b. Certiorari is independently warranted because the decision below further entrenches an acknowledged circuit split over whether district courts may

consider a *forum non conveniens* defense in cases brought to confirm a foreign arbitral award. The D.C. Circuit has taken *forum non conveniens* off the table in such cases, reasoning that "only U.S. courts can attach foreign commercial assets found within the United States." *LLC SPC Stileks* v. *Republic of Moldova*, 985 F.3d 871, 876 n.1 (D.C. Cir. 2021) (citing *TMR Energy Ltd.* v. *State Prop. Fund of Ukraine*, 411 F.3d 296, 303–04 (D.C. Cir. 2005). On that basis, the decision below declined to consider Spain's *forum non conveniens* defense at all. See Attachment 1 at 29. But courts in other circuits would have reached Spain's arguments. The Second Circuit has carefully considered the D.C. Circuit's categorical ban and "respectfully disagree[d]" with its sister circuit. *Figueiredo Ferraz e Engenharia de Projecto Ltda.* v. *Republic of Peru*, 665 F.3d 384, 391 (2d Cir. 2011). In its view, the D.C. Circuit's holding is a non sequitur: "the adequacy of [an] alternate forum depends on whether there are some assets of the defendant *in the alternate forum*, not whether the precise asset located here can be executed upon there." *Id.* (emphasis added). See also *Melton* v. *Oy Nauror Ab*, 1998 WL 613798, at *1 (9th Cir. Sept. 4, 1998) (unpublished).

c. Both issues are exceptionally important. "Actions against foreign sovereigns in our courts raise sensitive issues" of "foreign relations." *Verlinden B.V.* v. *Cent. Bank of Nigeria*, 461 U.S. 480, 493 (1983). That's especially true here, since an order enforcing the awards may compel Spain to violate EU law. The European Commission—the EU's executive branch—has "determined that … award[s] like the one[s] here constitute 'State Aid,' *i.e.*, a public subsidy, that Spain may not pay absent the Commission's approval." EU Comm'n C.A. Amicus Br. 11. Were a court to issue a

judgment enforcing the award, Spain may be put in a position of "violat[ing] its EU-law obligations," *id.*, thereby exposing itself to EU sanctions. This Court should have the final word on an issue that sensitive.

3. There is good cause for a 60-day extension.

Ever since the D.C. Circuit denied rehearing *en banc*, counsel have been engaged in defending Spain on remand, where one of the district courts has declined to stay summary-judgment proceedings pending this Court's review. See *NextEra Energy Global Holdings* v. *Kingdom of Spain*, No. 19-cv-01618 (D.D.C.), January 30, 2025 Minute Order. Because Spain first retained Sidley Austin LLP to handle *en banc* proceedings, counsel have had to divert their attention from researching and preparing Spain's petition to reviewing the factual record and becoming familiar with the legal issues relevant to opposing summary judgment.

At the same time, counsel have also been addressing, and must continue to address, numerous deadlines stretching from December to April—including merits briefing and oral argument in two cases before this Court. These deadlines have made and will continue to make it difficult to seek this Court's review by March 3, 2025.

Counsel's competing deadlines and argument dates include and have included:

- December 6, 2024: oral argument in *U.S. Anesthesia Partners* v. *HHS*, No. 24-10384) (5th Cir.);
- December 10, 2024: cert-stage brief in opposition filed in *Nantucket Residents Against Turbines* v. *Bureau of Ocean Energy Management*, No. 24-337 (U.S.);
- December 19, 2024: brief of *amicus curiae* Pharmaceutical Research and Manufacturers of America filed in *In re Novartis Pharm. Corp.*, No. 24-0239 (Tex.);

- December 23, 2024: cert-stage reply brief filed in *FS Credit Opportunities Corp.* v. *Saba Capital Master Fund, Ltd.*, No. 24-345 (U.S.);

- December 30, 2024: motion to stay filed in *NextEra Energy Global Holdings* v. *Kingdom of Spain*, No. 19-cv-01618 (D.D.C.);

- January 17, 2025: respondent's brief filed in *CC/Devas (Mauritius) Ltd.* v. *Antrix Corp.*, No. 23-1201 (U.S.);

- January 21, 2025: opening brief and joint appendix filed in *Rivers* v. *Guerrero*, No. 23-1345 (U.S.);

- January 21, 2025: reply in support of motion to stay filed in *NextEra Energy Global Holdings* v. *Kingdom of Spain*, No. 19-cv-01618 (D.D.C.);

- January 24, 2025: *Daubert* motion filed in *Steiner* v. *eBay, Inc.*, No. 21-cv-11181 (D. Mass.);

- January 31, 2025: opening brief and joint appendix filed in *Jazz Pharmaceuticals, Inc.* v. *Becerra*, No. 24-05262 (D.C. Cir.);

- February 14, 2025: summary-judgment opposition and statement of material facts filed in *NextEra Energy Global Holdings* v. *Kingdom of Spain*, No. 19-cv-01618 (D.D.C.);

- February 14, 2025: reply in support of summary judgment filed in *Steiner* v. *eBay, Inc.*, No. 21-cv-11181 (D. Mass.);

- February 18, 2025: appellees' briefs in *Powers* v. *McDonough*, Nos. 24-6576, 24-6578, 24-6338, 24-6888 (9th Cir.);

- February 24, 2025: petition for rehearing in *Davis* v. *Sig Sauer, Inc.*, No. 24-5210 (6th Cir.)

- March 3, 2025: oral argument in *CC/Devas (Mauritius) Ltd.* v. *Antrix Corp.*, No. 23-1201 (U.S.);

- March 12, 2025: cert petition due in *Missouri Higher Education Loan Authority* v. *Good*, No. 24A750 (U.S.);

- March 31, 2025: oral argument in *Rivers* v. *Guerrero*, No. 23-1345 (U.S.); and

- April 7, 2025: reply brief due in *Jazz Pharmaceuticals, Inc.* v. *Becerra*, No. 24-05262 (D.C. Cir.).

Given this press of existing business—and the need for additional time to translate drafts from English to Spanish—an extension is necessary to ensure that counsel have adequate time to craft a petition that will best assist this Court in determining whether to grant review.

CONCLUSION

The Court should extend the deadline for Spain's petition by 60 days, up to and including May 2, 2025.

February 21, 2025

Respectfully submitted,

/s/ Carter Phillips

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