ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HULLEY ENTERPRISES, LTD., YUKOS UNIVERSAL LTD., AND VETERAN PETROLEUM, LTD. *Petitioners-Appellees*, v. THE RUSSIAN FEDERATION, *Respondent-Appellant*.	Case No. 23-7174

APPELLANT'S RESPONSE
TO APPELLEES' MOTION TO EXPEDITE

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Respondent-Appellant the Russian Federation ("Appellant") respectfully opposes the Motion to Expedite Consideration of the Appeal ("Mot. to Expedite") submitted by Petitioners-Appellees Hulley Enterprises Ltd., Yukos Universal Ltd., and Veteran Petroleum Ltd. (collectively, "HVY").

INTRODUCTION

In the Motion to Expedite, HVY are seeking extraordinary relief—and, therefore, special treatment in comparison to other categories of litigants before this Court. Such relief, however, is "very rarely granted." D.C. CIRCUIT HANDBOOK OF PRACTICE AND INTERNAL PROCEDURES § VIII(B) (Amended Mar. 16, 2021) ("*D.C. Circuit Handbook*"); *see also, e.g.*, *McMillin v. Garland*, No. 22-5161 (D.C. Cir. Aug. 15, 2022) (denying motion to expedite).

In contrast to HVY, Appellant is not seeking any such extraordinary procedural relief or special treatment. Appellant is asking for only the ordinary procedural schedule applicable to other litigants before this Court. In Appellant's view, this Court should allow the parties—both HVY and Appellant—to provide competent and full briefing regarding the (undeniable) complexities of this 20-year dispute based on this Court's standard briefing schedule.

Indeed, as Appellant summarizes below and further details throughout this Response, this appeal is not suitable for expedited consideration based on three distinct categories of reasons.

First, and contrary to HVY's characterization, this case does not actually involve any issues relating to the "public interest," as further described below in **Part I**. *Vistra Corp. v. FERC*, No. 21-1214 (D.C. Cir. Dec. 15, 2021) (denying motion to expedite, including because movant failed to show "that the public interest . . . warrants expedition").

Although HVY are now presenting themselves as altruistic crusaders in a "decades-long fight for justice" (*see* Mot. at 4), the actual facts are quite different. In reality, HVY are offshore proxies for Leonid Nevzlin and five other Russian oligarchs (the "Russian Oligarchs") associated with "Bank Menatep." *See, e.g.*, *Berezovsky v. Abramovich*, [2012] EWHC 2463 (Comm.) ¶¶ 220-224, 233-235, 482 (describing the activities of "Bank Menatep" and Leonid Nevzlin, "a President of Bank Menatep," in corruptly manipulating the privatization of State-owned assets).

These same Russian Oligarchs' long history of criminal activities—including corruption, money laundering, and tax fraud—have been repeatedly confirmed by the English High Court of Justice and the European Court of Human Rights.[1]

[1] *See, e.g.*, *OAO Neftyanaya Kompaniya Yukos v. Russia*, App. No. 14902/04, Judgment ¶ 591 (ECtHR Sept. 20, 2011) (confirming the involvement of YUKOS, which the Russian Oligarchs controlled, in fraudulent tax evasion); *Khodorkovskiy and Lebedev v. Russia*, Apps. Nos. 11082/06, 13772/05, Judgment ¶ 786 (ECtHR July 25, 2013) (same); *Berezovsky v. Abramovich*, [2012] EWHC 2463 (Comm.) ¶¶ 220-224, 233-235 (describing Bank Menatep's participation in the fraudulent and corrupt manipulation of auctions concerning privatization of assets).

Indeed, as confirmed by the U.S. intelligence community and in testimony before the U.S. Congress, these same Russian Oligarchs comprised "one of the most powerful crime clans in Moscow." *See, e.g.*, *Washington Times*, "Most of Russia's Biggest Banks Linked to Mob, CIA Report Says" (Dec. 5, 1994) (ECF 49-10); *see also* U.S. Cong., House of Rep., Committee on Banking and Fin. Servs., Sept. 21-22, 1999, Hearing on "Russian Money Laundering," Tr. 96-97, 191 (Hearing ID: HRG-1999-BFS-0027, Doc.Y4.B22/1:106-38) (describing "Menatep" as "a gangster bank in Moscow" and recounting the CIA's investigation of criminal proceeds "being laundered through Menatep Bank").

In the Motion to Expedite, HVY strenuously attempt to identify some kind of overlap between these Russian Oligarchs and the purported "interests" of "the public generally." Mot. to Expedite 3, 11-12. Bizarrely, this has led HVY to spin this Motion to Expedite as—somehow—relating to U.S. taxpayers' interest in being "reimburse[d] . . . for the aid" given to Ukraine since 2022. *Id.* (describing various "sponsored bills in Congress" regarding these foreign policy issues).

This argument is baffling. The "sponsored bills in Congress" cited by HVY all pertain to the U.S. political branches' dialogue about U.S. foreign policy regarding events in Ukraine. None of these "sponsored bills," nor the supposedly "robust and ongoing debate" (*id.* at 11-13) about such proposed legislation, have any

connection whatsoever with reimbursing Russian Oligarchs for the predictable collapse of their money-laundering schemes and corruption.

To the contrary, HVY's economic "interests" are directly opposed to any purported interests of the U.S. taxpayer in reimbursement—as with the "other creditors" listed in the Motion to Expedite. *See id.* at 11-13. It is the explicit and unambiguous purpose of the Motion to Expedite to facilitate HVY's skipping brazenly past the U.S. taxpayer (as well as "other litigants") on their way to seizing the "few remaining non-immune assets in the United States" for the benefit of the Russian Oligarchs. Id. at 4, 11, 15. It is hard to see how the public interest is benefited by these ultrawealthy individuals' scramble for assets.

Indeed, as HVY have never denied, Nevzlin and the other Russian Oligarchs behind HVY—including Platon Lebedev, Mikhail Brudno, and Vladimir Dubov—apparently rank among the wealthiest Russian individuals on the planet. *See, e.g.*, *Forbes List of Russia's 200 Wealthiest Businessmen* (ECF 129-4). The public record shows unmistakably that these Russian Oligarchs—through their holding company, Group Menatep Limited ("GML") and other offshore entities—lead a life of excess involving multimillion-dollar superyachts and other absurd luxuries. *E.g.*, Decl. of Kevin Bromley (ECF 32-9), *Dolco Investment Ltd. (Cyprus) v. Moonriver Development Ltd., GML Ltd., and Kevin Bromley*, No. 06-CV-2876 (S.D.N.Y. Dec. 21, 2006) (testifying as one of "the three directors of GML" that GML maintains a

superyacht "approximately 290 feet in length" with "24 cabins" and "worth approximately $ 50,000,000").

Helping these Russian Oligarchs—through HVY and GML—to amass even greater wealth is hardly in the interest of the U.S. taxpayer or "the public at large," or indeed any "other creditors" listed in HVY's Motion to Expedite. This issue, and the other relevant legal issues concerning HVY's flawed "public interest" argument, are further discussed below in **Part I** of this Response.

Second, HVY also suggest that the monetary harms alleged by their ultimate beneficial owners—*i.e.*, Leonid Nevzlin and the Russian Oligarchs—somehow qualifies as "irreparable injury." This is wrong as a matter of well-established law. *E.g.*, *Doe Co. v. Cordray*, 849 F.3d 1129, 1134 (D.C. Cir. 2017) ("[E]conomic loss does not, in and of itself, constitute irreparable harm" (quoting *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

Moreover, HVY's "irreparable injury" argument must also be rejected because HVY have egregiously misstated the facts. In reality, the "other creditors" listed by HVY are not "poised" to execute upon any purported assets belonging to Appellant. Mot. to Expedite 4, 15. HVY's misrepresentations regarding this issue are further rebutted below in **Part II**.

Third, there is an obvious practical reason why this case is not appropriate for expedited consideration—it is enormously complex. That is, this appeal concerns

serious legal issues within the context of a global dispute involving a major foreign sovereign State—a dispute that has spanned 20 years of arbitration and litigation across multiple jurisdictions, as District Judge Howell recounted. *Hulley Enters. Ltd. v. Russian Fed'n*, No. 14-CV-1996, 2023 U.S. Dist. LEXIS 206199, at *2 (D.D.C. Nov. 17, 2023) (describing HVY's campaign of litigation against Appellant "in multiple other countries, including Belgium, France, Germany, India, and the United Kingdom").

Given the complexity of this case, it is understandable why the District Court took "seventeen months" to decide the important legal issues arising under the Foreign Sovereign Immunities Act ("FSIA"), the 1958 U.N. Convention on the Recognition and Enforcement of Arbitral Awards ("New York Convention"), and the 1994 Energy Charter Treaty ("ECT"). *See* Mot. to Expedite 3, 10 (describing the timeline of supplemental briefing). It is also unrealistic—and irresponsible—for HVY now to expect this Court to speed artificially through the same issues that occupied the District Court for these past "seventeen months." *See* Mot. to Expedite 3, 10.

Unfairly, HVY accuse the District Court of "delays" and insinuate that Judge Howell purportedly "refused" to decide the relevant issues. *Id.* at 2, 4. This criticism is absurd. Judge Howell actually has rendered six lengthy memorandum opinions—totaling 168 pages of analysis—over the course of this case and HVY's satellite

litigation targeting Appellant's lawyers.[2] *Hulley Enters. v. Russian Fed'n*, 211 F. Supp. 3d 269, 272 (D.D.C. 2016); *Hulley Enters. v. Russian Fed'n*, 502 F. Supp. 3d 144 (D.D.C. 2020); *Hulley Enters. v. Russian Fed'n*, Civil Action No. 14-CV-1996 (BAH), 2022 U.S. Dist. LEXIS 68521, at *2 (D.D.C. Apr. 13, 2022); *Hulley Enters. Ltd. v. Russian Fed'n*, No. 14-CV-1996, 2023 U.S. Dist. LEXIS 206199, at *4 (D.D.C. Nov. 17, 2023); *see also Hulley Enters. v. Baker Botts LLP*, 286 F. Supp. 3d 1, 2 (D.D.C. 2017); *Hulley Enters. v. Baker Botts LLP*, No. 17-CV-1466 (BAH), 2017 U.S. Dist. LEXIS 142969 (D.D.C. Aug. 18, 2017).

Certainly, Appellant disagrees with several of the District Court's principal legal conclusions in this case—which should be carefully addressed at the appropriate time with clarity and full briefing. The undersigned Counsel has every confidence, however, that Judge Howell has consistently endeavored to conduct this litigation conscientiously and responsibly at every stage. HVY's manufactured outrage over "justice denied" for the Russian Oligarchs is tendentious and unfair. *Compare, e.g.*, Mot. to Expedite 4, 7, 10 (repeatedly accusing District Judge Howell of "refusing" to hear HVY's arguments) *with* Minute Order, *Hulley Enterprises Ltd.*

[2] Three other decisions by judges in New York and London have also rejected HVY's relentless claims against the undersigned Counsel's former law firm, White & Case LLP, in satellite litigation. *In re Hulley Enters*., 358 F. Supp. 3d 331, 333 (S.D.N.Y. 2019); *In re Hulley Enters.*, 400 F. Supp. 3d 62, 65 (S.D.N.Y. 2019); *Hulley Enterprises Limited v. White & Case LLP*, CL-2022-000396, (EWHC June 13, 2023).

v. Russian Fed'n, Dec. 22, 2023 (explaining that, based on binding precedent, the District Court is divested of jurisdiction to hear further arguments while the sovereign-immunity issues are appealed to this Court under the FSIA).

In other words, HVY have identified no reason for this Court to approach this case any less responsibly and conscientiously than District Judge Howell has done over the past seventeen months. The time-consuming litigation in the District Court has resulted inevitably from the complexity, scope, and context of this case, as further explained below in **Part III** of this Response. Those same factors render expedited consideration of this specific appeal uniquely inappropriate.

As further detailed below, therefore, this Court should deny HVY's Motion to Expedite and allow the parties to litigate this appeal pursuant to the ordinary procedural schedule for briefing and argument.

ARGUMENT

"When expedition is not required by statute," this Court may entertain "a motion for expedition." D.C. CIR. HANDBOOK, § VIII(B). It is well established, however, that this Court only "grants expedited consideration very rarely." *Id.* (emphasis added).

To prevail, "the movant must demonstrate" either **(1)** that "the public generally, or . . . persons not before the Court, have an unusual interest in prompt disposition" or **(2)** that "the delay will cause irreparable injury" to the movant. *Id.*

(emphasis added); *see also McMillin v. Garland*, No. 22-5161 (D.C. Cir. Aug. 15, 2022); *Vistra Corp. v. FERC*, No. 21-1214 (D.C. Cir. Dec. 15, 2021).

Here, HVY cannot satisfy either of these two requirements. Moreover, the complexity, scope, and context of this case present additional compelling reasons why artificially expediting this proceeding is neither advisable nor practical.

I. HVY Are Explicitly Trying to Thwart, and Not to "Aid," the "Persons Not Before the Court" Listed in HVY's Motion

In their first argument, HVY purport to be allied with "persons not before the Court" and "the public generally," whom HVY characterize as having "an unusually strong interest" in this case. Mot. to Expedite 2-3, 11-13. According to HVY, expediting this appeal somehow "will aid . . . other litigants" before the District Court and will also benefit "[t]he public at large." *Id.*

This argument is wrong, however, and must be rejected for multiple reasons. In reality, HVY's economic interests are directly opposed to the interests of the listed "persons not before the Court," including the U.S. taxpayer. Moreover, there is virtually no overlap between the central legal questions arising in the different cases before the District Court, as set forth below in further detail.

First, HVY's economic interests—and the interests of the Russian Oligarchs, who are HVY's ultimate beneficial owners—are directly in conflict with the other categories of "persons not before the Court" listed in the Motion to Expedite. As HVY openly concede in other parts of their submission, the explicit goal of the

Motion to Expedite is for HVY to gain advantage over any purported "other creditors" pursuing rival claims against Appellant's supposed assets in U.S. territory. *See id.* at 4, 11, 15 (explaining that HVY plan to seize the "few remaining non-immune assets in the United States," before any other purported creditor would have "the opportunity to do so").

HVY's Motion to Expedite, therefore, is not motivated by altruistic concern for "persons not before the Court," but merely reflects the classic "race to the courthouse" observed when rival claimants bring competing claims against foreign States under the FSIA exceptions. *See, e.g.*, *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 124 & n.51 (D.D.C. 2009) (recognizing "inherent and unseemly unfairness" where rival claimants "race to this federal courthouse in these civil actions" under the FSIA exceptions in order to "compete against each other for what limited assets might be available"); *Estate of LeVin v. Wells Fargo Bank, N.A.*, No. 21-CV-420, 2023 U.S. Dist. LEXIS 95746, at *35 (D.D.C. June 1, 2023) (expressing "heavy doubt that it was Congress's intent to encourage a race to the courthouse" by enacting exceptions to sovereign immunity under the FSIA).

In other words, the "other litigants" cited by HVY do not have any interest in HVY's request to litigate on an expedited basis. Those rival claimants actually have an interest in precisely the opposite result.

Indeed, granting the Motion to Expedite would give an extra advantage to HVY and the wealthy Russian Oligarchs standing behind HVY. As HVY have done previously, HVY will undoubtedly transmit any collected proceeds to the Russian Oligarchs through GML, their offshore holding company. *See* Email from Alan Sipols, Feb. 17, 2004 (ECF 244-9) (documenting HVY's transmittal of more than US$ 4.3 billion to GML and the Russian Oligarchs). Granting the Motion to Expedite would not benefit "persons not before the Court," therefore, but would merely facilitate HVY's goal of enriching the Russian Oligarchs to the detriment of other purported claimants.

Second, HVY attempt to distract from the (obvious) clash of economic interests by suggesting—vaguely—that HVY and the "other litigants" perhaps are litigating some kind of overlapping legal issue. HVY describe this purported overlap at the broadest level of generality: "the Russian Federation's claim to have immunity." *See* Mot. 12-13. In these ambiguous terms, HVY thus suggest that expediting the appeal will "aid . . . the district court . . . in disposing of the Russian Federation's FSIA defenses." *Id.*

This argument is also wrong. In the present case, Judge Howell concluded that the District Court was precluded from analyzing the FSIA-related issues in this case based on exactly three elements:

> "First, the ECT, to which the Russian Federation was a signatory, provided for the arbitration proceeding in which both parties vigorously participated for a decade; second, the parties' chose to delegate questions related to jurisdiction under the ECT to the Tribunal; and, finally, the Tribunal's determination that an arbitration agreement existed here is binding on this Court."

Mem. Op. 24 (ECF 276), *Hulley Enters. Ltd. v. Russian Fed'n*, No. 14-CV-1996, 2023 U.S. Dist. LEXIS 206199 (D.D.C. Nov. 17, 2023).

Despite HVY's suggestions to the contrary, all three of these elements are unique to the YUKOS-related litigation against Appellant. Expediting this appeal, therefore, would not affect three of the four arbitration-related cases listed by HVY. *See generally Stabil LLC et al. v. Russian Federation*, 22-cv-00983-TNM (D.D.C. filed Apr. 9, 2022); *NJSC Naftogaz of Ukraine v. Russian Federation*, 23-cv-01828-JDB (D.D.C. filed June 22, 2023); *Joint Stock Co. State Savings Bank of Ukraine v. Russian Federation*, 23-cv-00764-ACR (D.D.C. filed March 21, 2023). All three of those cases are distinguishable. This is because: (1) Appellant did not "participate[]" in the jurisdictional phases of those three arbitrations; (2) those cases do not involve any equivalent to the "2005 letter" (*see* ECF 63-5) in which Appellant purportedly "delegated" exclusive authority to the arbitral tribunal; and (3) none of those three arose under the ECT—but rather involved a distinct, bilateral treaty between Appellant and Ukraine. HVY's suggestion that this appeal will have some kind of legal impact on those "other litigants" must therefore be rejected as well.

Finally, the only other case actually involving the ECT cited in HVY's Motion—ironically—is yet another case brought by an offshore entity on behalf of the same Russian Oligarchs standing behind HVY. *See Yukos Capital Ltd. v. Russian Federation*, 22-cv00798-CJN (D.D.C. filed March 23, 2022). The collusive relationship between the so-called "Yukos Capital" structure is evident from the sworn testimony of the relevant executive, Mr. David Godfrey (*see* Transcript ECF 202-6), and from a secret agreement between the "Yukos Capital" executives and the Russian Oligarchs' holding company, GML (ECF 202-13) (referencing "Yukos Universal Ltd" and "Veteran" by name).

Another offshore proxy bringing claims on behalf of the same Russian Oligarchs does not show HVY's alignment with "public interest."[3]

Third, and finally, HVY fail to show any connection between this appeal and the "robust and ongoing debate" regarding means for the U.S. taxpayer to be "reimburse[d] . . . for the aid" given to Ukraine since 2022. to Expedite 11-13 (describing various "sponsored bills in Congress" regarding these foreign policy issues). The "sponsored bills" have nothing to do with arbitration or with the ECT, which is an international treaty sponsored primarily by the European Union and to

[3] In any event, that case also involves a significantly different and distinguishable procedural record, as Appellant has explained in the relevant Motion to Dismiss. See Mot. to Dismiss 44-45 (ECF 61-1), *Yukos Capital Ltd. v. Russian Federation*, 22-cv00798-CJN (D.D.C. Dec. 11, 2023).

which the United States is not even a party. *See, e.g.*, Mem. Op. 6; *Blasket Renewable Investments, LLC v. Kingdom of Spain*, No. 21-cv-3249 (RJL), 2023 WL 2682013 (Mar. 29, 2023)).

Indeed, if HVY are permitted to expedite this appeal artificially, this will only impair the U.S. taxpayer's ability to obtain reimbursement. This is not only contrary to the public interest, but also involves U.S. foreign policy—an area in which, respectfully, the political branches, rather than the judicial branch, play "the lead role." *See, e.g., Medellín v. Texas*, 552 U. S. 491, 524 (2008).

Accordingly, HVY have manifestly failed to demonstrate any connection between this appeal and the interests of any "persons not before the Court" or "the "public at large."

II. HVY Cannot Show "Irreparable" Harm

According to HVY, this Court should also "expedite this appeal because further delay will cause 'irreparable injury'" to HVY. Mot. 14. This argument is incorrect, however, for multiple reasons.

First, in the present case, HVY are seeking only monetary relief—in compensation for alleged economic losses. The background principle is that "economic loss does not, in and of itself, constitute irreparable harm," as this Court and other courts have held many times. *Doe Co. v. Cordray*, 849 F.3d 1129, 1134

(D.C. Cir. 2017) (quoting *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

Moreover, the traditional exception to this principle does not apply here. "Recoverable monetary loss may constitute irreparable harm only where the loss threatens the very existence of the movant's business." *Wisconsin Gas*, 758 F.2d at 674. There is no such threat in the present case because, indeed, HVY do not actually have any "business" at all. To the contrary, HVY are merely offshore shell companies without any operations, employees, or even physical premises. Nor is there any threat of injury to the HVY's ultimate beneficial owners, given the documented wealth of these Russian Oligarchs. *See, e.g.*, *Forbes List of Russia's 200 Wealthiest Businessmen* (ECF 129-4).

As a matter of law, therefore, HVY have failed to allege any harm that would qualify as "irreparable injury," as required to justify expedited proceeding in this Court.

Second, even if the monetary harm alleged by HVY could legally qualify as irreparable injury (which it cannot), all of the factual premises of HVY's argument are significantly overstated, exaggerated, and wrong. The core anxiety underlying HVY's argument is that other purported claimants will seize Appellant's (supposed) assets before HVY can do so. As HVY have elsewhere conceded, however, nearly all of these "other creditors" are actually nowhere close to executing on any

supposed assets in the United States. *See* HVY's Opp'n Br. 2-3 & n.1 (ECF 280) (explaining that those litigants will not finish briefing even the jurisdictional issues pertaining to the initial sovereign-immunity questions during "the next three months" or until approximately March 2024).

Fully aware of this, HVY have put particular emphasis on the activities of "one" specific creditor, whom HVY characterize as supposedly "poised to execute" on Appellant's assets. Mot. 3, 15 (citing *Agudas Chasidei Chabad of U.S. v. Russian Fed'n*, Mem. Op. No. 05-cv-01548-RCL (D.D.C. Feb. 27, 2023). In reality, however, the claimant in that case has not yet even identified any assets that actually belong to Appellant or can be subjected to attachment—nor are there any actual execution proceedings now "poised to take place." To the contrary, the claimant in that case has only brought claims against the property of third-party entities with separate legal personality. *See, e.g.*, Mem. Order 2-3 (ECF 198), Agudas Chasidei Chabad v. Russian Federation, No. 1:05-cv-1548-RCL (D.D.C. Dec. 20, 2019) (describing the several "corporate tiers" separating a third-party entity from Respondent and finding that plaintiffs' characterization of this entity as "an 'instrumentality' of Russia" was "a stretch"). Accordingly, no court anywhere in the United States has entered any findings as to whether these entities' assets could lawfully be attached by Appellant's creditors.

Even in the 2023 decision cited by HVY, the District Court explicitly declined to "reach the merits of whether there is property that can be attached and executed on, or for which judicial liens may be recorded." *Agudas Chasidei Chabad of United States v. Russian Fed'n*, 659 F. Supp. 3d 1, 7 n.2 (D.D.C. 2023). After that decision was issued, several of the separate legal entities have appealed to this Court—based on credible challenges to subject-matter jurisdiction under the FSIA. *See, Agudas Chasidei Chabad of United States v. Russian Federation*, No. 23-7037, Br. of Tenex-USA (D.C. Cir. Jan. 5, 2024) (explaining why the FSIA does not provide subject-matter jurisdiction in that litigation).

HVY therefore need not be concerned with any imminent attachments or execution procedures, inasmuch as the lower court will be divested of jurisdiction to take any further action with respect to any entity's property so long as that appeal remains pending in the D.C. Circuit. *See, e.g.*, *Bombardier Corp. v. National R.R. Passenger Corp.*, No. 02-7125 (D.C. Cir. Dec. 12, 2002) (explaining that any "appeal from denial of motion to dismiss on grounds of sovereign immunity divests" the lower court of jurisdiction over the "entire case").

From a factual perspective, therefore, HVY therefore have manifestly failed to demonstrate that any rival claimants are actually "poised" to seize any assets.

III. This Case Is Uniquely Inappropriate for Expedited Consideration Because of Its Complexity, Scope, and Context

Finally, this case is not appropriate for expedited consideration for a range of additional reasons.

First, this is undeniably a complex case, both legally and procedurally—which, indeed, is why the District Court took "seventeen months" to decide the Motion to Dismiss. Mot. 10 (complaining that "another *seventeen months* went by" between the date when the "supplemental briefs were filed" and the District Court's ruling on the FSIA issues). These legal and procedural complexities are evident on the face of the District Court's ruling. Mem. Op. 15, 61 n.26 (recounting the parties' submission of "over 400 pages of briefing," "more than 1,000 pages of supplemental authorities," and "in excess of 100,000 pages of exhibits").

Although HVY attempt to blame Appellant for this complexity, HVY's own litigation tactics have significantly contributed to the size and scope of the issues for this Court's decision. *See, e.g.*, Appellant's Reply (ECF 253) (detailing HVY's "4,000-page submission" to the District Court at the last possible minute, which "completely transformed the arguments they had raised previously in 2015 and 2016—and even contradicted many . . . previous legal positions").

Given this undeniable complexity, it would not assist this Court's assessment of the issues to establish artificially short deadlines for briefing in this appeal. To

the contrary, the fair approach would be to allow the parties the ordinary time periods applicable in litigation before this Court.

Second, it is well-established that governments—including the governments of foreign States—take more time to make decisions than private litigants, including because of interagency deliberation and other similar procedures. The explicit practice in the District Court, therefore, has consistently been to grant extensions of filing deadlines in order to permit foreign States "adequate time to confer with counsel" and "a full opportunity to present its arguments to the Court." Min. Order, *Teco Guatemala Holdings, LLC v. Republic of Guatemala*, No. 17-cv-0102 (D.D.C. Jan. 22, 2020) (granting extension of a filing deadline over the objection of the opposing party).[4]

This is the sensible and prudent approach, which fully accords with international practice. As multiple former lawyers of the U.S. State Department have acknowledged, "it may be much more time-consuming for a State to prepare its pleadings and have them reviewed and approved by relevant government

[4] *E.g., Min. Order, Deutsche Telekom AG v. Republic of India*, No. 1:21-cv01070 (D.D.C. Oct. 26, 2021) (granting a two-week extension over the objection of the opposing party); *Min. Order, Stati v. Republic of Kazakhstan*, No. 1:14-CV-01638 (D.D.C. Feb. 11, 2015) (granting 15-day extension over the objection of the opposing party); Min. Order, Chevron Corp. v. Republic of Ecuador, No. 1:12-CV-01247 (D.D.C. Dec. 10, 2012) (granting 45-day extension over the objection of the opposing party).

entities." *E.g.*, Jeremy Sharpe, Representing a Respondent State in Investment Arbitration in Litigating International Investment Disputes 43, 73 (C. Giorgetti ed., 2014); *see also* Rocío Digón & Marek Krasula, *The ICC's Role in Administering Investment Arbitration Disputes* in CONTEMPORARY ISSUES IN INTERNATIONAL ARBITRATION AND MEDIATION, 58, 67 n.27 (Arthur W. Rovine ed., 2014) (quoting a 2001 statement by Barton Legum that intra-governmental coordination with "interested agencies" is frequently "an unusually complex and time-consuming exercise," which "doubles the normal preparation time for government counsel"); Lucy Reed & Lucy Martinez, *The Convenient Myth of David and Goliath in Treaty Arbitration*, 3 WORLD ARB. & MED. REV. 443, 460 (2009) (confirming that foreign governments may "need more time" to prepare briefs and other submissions).

Here, notably, Appellant is not requesting any extension of the ordinary deadlines for the appeal (even though these unusual circumstances would likely justify such an extension). To the contrary, Appellant—and undersigned Counsel—is asking merely for the ordinary rules and ordinary deadlines to apply so that the unavoidably complicated issues in this appeal can be explained clearly and competently.

Third, as the District Court also acknowledged, this is a multijurisdictional dispute—involving HVY's commencement of parallel litigation "in multiple other countries." Mem. Op. 1. At the present stage of this case, undersigned Counsel has

been informed that HVY's parallel litigation is particularly active in the Netherlands, Luxembourg, and the United Kingdom. The necessary coordination amongst teams of lawyers in parallel litigation is necessarily time-consuming and labor-intensive. *See, e.g.*, Fifth Decl. of Prof. Albert Jan van den Berg & Annex B (ECF 180) (describing "the extensive overlap between the legal issues and applicable standards in . . . most—if not all—of the parallel litigation" in multiple jurisdictions around the world).

Indeed, HVY have routinely sought to proliferate the complexity of such proceedings, including by commencing satellite litigation against the "current and past attorneys associated with the Russian Federation's U.S. counsel, Baker Botts LLP and White & Case LLP." *See id.* ¶ 29. The routine deployment of such tactics by HVY have necessitated extensive coordination amongst legal teams across multiple jurisdictions—working in multiple different foreign languages—in order to ensure that "attorneys and court officials in relevant jurisdictions" are provided with accurate and up-to-date information. *Id.* ¶ 30.

Accordingly, in light of the unmistakable complexity, scope, and full context of this dispute, the present appeal is uniquely unsuitable for expedited consideration.

CONCLUSION

For the reasons set forth above, this Court should deny HVY's Motion to Expedite and allow the parties the adequate and appropriate time periods for briefing the complex and important legal questions in this case.

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CERTIFICATE OF COMPLIANCE

The undersigned Counsel certifies pursuant to Federal Rules of Appellate Procedure 27(d) and 32(g), that the foregoing submission is proportionally, spaced, has a typeface of 14 points or more, and contains 4,791 words.

January 26, 2024

Respectfully submitted,

/s/ David P. Riesenberg
David P. Riesenberg

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed using the CM/ECF system, which will send notification of the filing to counsel of record who are registered CM/ECF users.

January 26, 2024

Respectfully submitted,

/s/ David P. Riesenberg
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