

ORAL ARGUMENT HELD ON OCTOBER 18, 2024

No. 23-7174

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

HULLEY ENTERPRISES LTD., ET AL.,
Shareholders-Appellees.

v.

RUSSIAN FEDERATION,
Respondent-Appellant.

On Appeal from the United States District Court
For the District of Columbia,
Case No. 1:14-CV-01996 (Hon. Beryl A. Howell)

APPELLEES' EMERGENCY MOTION TO RELEASE THE MANDATE

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Appellees Hulley Enterprises, et al. (the “**Shareholders**”) respectfully make this **emergency** motion to release this Court’s mandate by **December 17, 2025**. Appellant (the Russian Federation) is opposed.

This is not the only case in this Circuit in which victims of the Russian Federation (1) seek to confirm arbitral awards rendered against it and also (2) invoke the doctrine of issue preclusion to bar the Russian Federation from re-litigating issues decided by the courts of the “primary jurisdiction.” In another such a case,¹ District Judge Reyes has now ordered the Russian Federation and another award-creditor (Oschadbank, the State Savings Bank of Ukraine) to formulate questions relating to this doctrine for her to invite the United States to answer. She issued an oral order during an argument held on December 5, 2025. She directed those parties to present her with proposed questions by December 19, 2025. Judge Reyes also indicated that she intends to submit these questions to the United States, and to invite a response, soon after that.

Judge Reyes is now doing precisely what this Court ordered *Judge Howell* to do on remand in *this* case. *Hulley Enters. Ltd. v. Russian Fed’n*, 149 F.4th 682, 692 (D.C. Cir. 2025) (“*Hulley II*”) (“[T]he district court should invite the United States

¹ *Joint Stock Company State Savings Bank of Ukraine (a/k/a JSC Oschadbank) v. Russian Federation*, Case No. 23-cv-00764-ACR (D.D.C.).

to express the government’s position on this issue” of whether the doctrine of issue preclusion may be applied).

Expeditious consideration of this request to release the mandate is therefore necessary and proper under Circuit Rule 27(e). The Government should not be put in the position of answering *seriatim* requests for its position from different judges who may frame the questions differently based on input from different award-creditors. Shareholders ought in fairness to have a say in how the questions are *first* formulated for the Government’s consideration. The Russian Federation will have a say no matter what, since it is the award-debtor in both cases. A decision by this Court to withhold its mandate would thus grant unfair litigation advantage to the Russian Federation by keeping the Shareholders on the sidelines while the Russian Federation forges ahead. And Judge Howell, too, should have the opportunity to be involved in this process of formulating the questions. But if this Court continues to hold its mandate, Judge Howell will not have jurisdiction to take the steps that this Court ordered her to take on remand and Shareholders will be severely prejudiced.

This case is currently in a *de facto* stay without any ruling from this Court. The Russian Federation filed a motion to stay the mandate “pending” the “filing” of its Petition for Certiorari. Doc. No. 2134370, at 1. Shareholders opposed. Doc. No. 2136375. This Court has not ruled on that motion to stay—but neither has it released the mandate.

I attach as Exhibit A to this motion the Shareholders' Brief in Opposition ("BIO") to the Russian Federation's Petition for Certiorari. The BIO was timely filed in the Supreme Court on December 5, 2025. The BIO further confirms that no "good cause" exists for a stay of this Court's mandate. Fed. R. App. P. 41(a)(2).

As the BIO explains, the Supreme Court almost *never* grants review of interlocutory orders like this Court's vacate-and-remand order in this case. *Bhd. of Locomotive Firemen & Enginemen v. Bangor & A. R. Co.*, 389 U.S. 327, 328 (1967) (per curiam) (denying certiorari because an interlocutory appeal "is not yet ripe for review by this Court"); *Am. Const. Co. v. Jacksonville, T. & K.W. Ry. Co.*, 148 U.S. 372, 384 (1893) (denying certiorari because the Supreme Court "should not issue a writ of certiorari to review . . . an interlocutory order," from a federal court of appeals, "unless" this Court's review "is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause"); *see also Mount Soledad Mem'l Ass'n v. Trunk*, 132 S. Ct. 2535, 2536 (2012) (Alito, J., statement respecting denial of certiorari) ("Because no final judgment has been rendered . . . I agree with the Court's decision to deny the petitions for certiorari."); *Wrotten v. New York*, 130 S. Ct. 2520, 2521 (2010) (Sotomayor, J., statement respecting denial of certiorari) ("In light of the procedural difficulties that arise from the interlocutory posture, I agree with the Court's decision to deny the petition for certiorari.").

This case would come to the Supreme Court in a *doubly* interlocutory posture, making a grant of the Petition extremely unlikely. There is no final decision from this Court as to whether the Russian Federation has sovereign immunity. And because the District Court stayed its consideration of the Russian Federation's *merits* defenses, there is also no decision yet from the District Court as to whether Shareholders are, in fact, Investors who were eligible to invoke the Energy Charter Treaty's arbitration clause. See *Hulley Enters. Ltd. v. Russian Fed'n*, No. 14-cv-1996, 2023 WL 8005099, at *23 (D.D.C. Nov. 17, 2023) ("further inquiry" into this issue "may only be addressed at the enforcement stage of these proceedings"). This is exactly the kind of case in which the Supreme Court routinely denies certiorari because the questions presented are "not yet ripe for review by this Court." *Bhd. of Locomotive Firemen*, 389 U.S. at 328.

Releasing the mandate would not cause the Russian Federation any prejudice. The District Court will have to carry out this Court's instruction, to consider and decide whether the doctrine of issue preclusion applies, *regardless* of what the Supreme Court does with the Russian Federation's Petition. The Russian Federation has *not* sought the Supreme Court's review of the *other* sovereign-immunity issue that this Court remanded for the District Court's further consideration. *Hulley II*, 149 F.4th at 690 ("On remand, the district court must decide whether provisional application of the Treaty's arbitration clause is consistent with Russian law."). And

the doctrine of issue preclusion applies in full to that issue because the Russian Federation's arguments, regarding provisional application, were thoroughly evaluated and then roundly rejected by the Hague Court of Appeal.

It is time for this Court to release its mandate and return jurisdiction to the District Court, so that Judge Howell can carry out this Court's direction to invite the views of the United States on the doctrine of issue preclusion, and so that severe prejudice to the Shareholders can be avoided. The United States should be asked this question once, by *both* District Judges, and the Shareholders must be permitted to participate in the formulation of the questions.

For the foregoing reasons, Shareholders respectfully request that this Court **release** its mandate no later than **December 17, 2025**.

Dated: December 10, 2025

Respectfully Submitted,

/s/ Steven M. Shepard

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CERTIFICATE OF COMPLIANCE

I, Steven Shepard, counsel for Appellees Hulley Enterprises Ltd. et al., and a member of the Bar of this Court, certify, pursuant to Federal Rules of Appellate Procedure 27(d) and 32(g), that the foregoing Motion is proportionally spaced, has a typeface of 14 points or more, and contains 1,179 words.

/s/ Steven M. Shepard
Steven M. Shepard

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2025, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: December 10, 2025

/s/ Steven M. Shepard
Steven M. Shepard

*Attorney for Appellees Hulley
Enterprises Ltd., et al.*