No.

IN THE
Supreme Court of the United States

CC/DEVAS (MAURITIUS) LIMITED; DEVAS MULTIMEDIA AMERICA, INC.; DEVAS EMPLOYEES MAURITIUS PRIVATE LIMITED; TELCOM DEVAS MAURITIUS LIMITED,

Petitioners,

v.

ANTRIX CORP. LTD.;
DEVAS MULTIMEDIA PRIVATE LIMITED,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

ANNE CHAMPION
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166

MATTHEW D. MCGILL
Counsel of Record
JACOB T. SPENCER
DAVID W. CASAZZA
BRIAN C. MCCARTY
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 887-3680
mmcgill@gibsondunn.com

Counsel for Petitioners

QUESTION PRESENTED

Whether plaintiffs must prove minimum contacts before federal courts may assert personal jurisdiction over foreign states sued under the Foreign Sovereign Immunities Act.

PARTIES TO THE PROCEEDING AND RULE 29.6 DISCLOSURE STATEMENT

1. Petitioners are CC/Devas (Mauritius) Limited; Devas Multimedia America, Inc.; Devas Employees Mauritius Private Limited; and Telcom Devas Mauritius Limited. Petitioners were Intervenors-Plaintiffs in the district court, Appellees-Intervenors in Ninth Circuit No. 20-36024, and Intervenors-Plaintiffs-Appellees in Ninth Circuit Nos. 22-35085 and 22-35103.

2. Respondents are Antrix Corp. Ltd. and Devas Multimedia Private Limited. Respondent Antrix Corp. Ltd. was a Respondent in the district court, a Respondent-Appellant in Ninth Circuit Nos. 20-36024 and 22-35103, and a non-appearing Respondent in Ninth Circuit No. 22-35085. Respondent Devas Multimedia Private Limited was a Petitioner in the district court, a Petitioner-Appellee in Ninth Circuit No. 20-36024, a Petitioner-Appellant in Ninth Circuit No. 22-35085, and a non-appearing Petitioner in Ninth Circuit No. 22-35103.

3. Petitioner CC/Devas (Mauritius) Ltd. is substantially owned by Columbia Equity Partners IV (QP), L.P.; Columbia Capital Equity Partners IV (QPCO), L.P.; and Columbia Capital Employee Investors IV, L.P. Petitioner Devas Multimedia America, Inc. is a wholly owned subsidiary of Respondent Devas Multimedia Private Ltd. Petitioner Devas Employees Mauritius Private Limited is a wholly owned subsidiary of Devas Employees Fund US LLC. Petitioner Telcom Devas Mauritius Limited is a wholly owned subsidiary of Telcom Devas LLC.

RELATED PROCEEDINGS

United States District Court (W.D. Wash.):

Devas Multimedia Private Ltd. v. *Antrix Corp. Ltd.*,
No. 2:18-cv-01360-TSZ (Nov. 4, 2020)
(judgment confirming arbitral award)

Devas Multimedia Private Ltd. v. *Antrix Corp. Ltd.*,
No. 2:18-cv-01360-TSZ (Jan. 3, 2022)
(order granting leave to register the judgment in the Eastern District of Virginia)

United States Court of Appeals (9th Cir.):

Devas Multimedia Private Limited v. *Antrix Corp. Ltd.*,
No. 20-36024 (Aug. 1, 2023)
(judgment reversing confirmation of arbitral award)

Devas Multimedia Private Limited v. *Antrix Corp. Ltd.*,
No. 22-35085 (Aug. 1, 2023) (judgment reversing confirmation of arbitral award)

Devas Multimedia Private Limited v. *Antrix Corp. Ltd.*,
No. 22-35103 (Aug. 1, 2023) (judgment reversing confirmation of arbitral award)

Supreme Court of the United States

Devas Multimedia Private Limited v. *Antrix Corp. Ltd.*,
No. 23A966 (Apr. 30, 2024) (order granting application of Devas Multimedia Private Limited to extend time to file petition for certiorari)

United States District Court (E.D. Va.)

Devas Multimedia Private Ltd. v. *Antrix Corp. Ltd.*,
No. 1:22-mc-00003-RDA-JFA (July 29, 2022)
(ordering garnished sums to be tendered to Petitioner Devas Multimedia America, Inc.)

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PETITION FOR A WRIT OF CERTIORARI

Petitioners CC/Devas (Mauritius) Limited; Devas Multimedia America, Inc.; Devas Employees Mauritius Private Limited; and Telcom Devas Mauritius Limited respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in three consolidated appeals arising from the same district-court proceeding.

OPINIONS BELOW

The Ninth Circuit's opinion (App.1a-12a) is unreported but is available at 2023 WL 4884882. The Ninth Circuit's denial of rehearing (App.42a-68a) is reported at 91 F.4th 1340. The opinion of the district court confirming the arbitral award (App.17a-35a) is unreported but is available at 2020 WL 6286813. The opinion of the district court granting leave to register the judgment in the Eastern District of Virginia (App.36a-41a) is unreported but is available at 2022 WL 36731.

JURISDICTION

The judgment of the court of appeals was entered on August 1, 2023. Timely petitions for rehearing were denied on February 6, 2024 (App.45a). This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that:

> No person shall * * * be deprived of life, liberty, or property, without due process of law * * * .

28 U.S.C. § 1330(b) provides that:

> Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

STATEMENT

Congress in the Foreign Sovereign Immunities Act ("FSIA") provided that personal jurisdiction over a foreign state and its instrumentalities "shall exist" if the foreign state is not immune under the FSIA and is properly served. 28 U.S.C. § 1330(b). All parties agree that Respondent Antrix Corp. Ltd., which is wholly owned by the Republic of India, is not immune under the FSIA and was properly served in this case.

Nonetheless, the Ninth Circuit held that the district court lacked personal jurisdiction because Antrix did not have "the requisite minimum contacts with the United States." App.6a. Requiring minimum contacts for a foreign state sued under the FSIA puts the Ninth Circuit in conflict with "every other federal court" to address the question since this Court's decision in *Republic of Argentina* v. *Weltover, Inc.*, 504 U.S. 607 (1992). App.47a; see *Gater Assets Ltd.* v. *AO Moldovagaz*, 2 F.4th 42, 49 (2d Cir. 2021); *Abelesz* v. *Magyar Nemzeti Bank*, 692 F.3d 661, 694 (7th Cir. 2012); *S & Davis International, Inc.* v. *Republic of Yemen*, 218 F.3d 1292, 1303 (11th Cir. 2000); *TMR Energy Ltd.* v. *State Property Fund of Ukraine*, 411 F.3d 296, 299-303 (D.C. Cir. 2005).

The Ninth Circuit's outlier requirement, concocted from sparse and inapposite legislative history, is incorrect. Two members of the Ninth Circuit panel acknowledged that its "precedent applying the minimum-contacts test to the exercise of personal jurisdiction over foreign states has no foundation in the Constitution or the FSIA." App.10a-11a (Miller, J., concurring). And seven more Ninth Circuit judges agreed that "no other court interprets the FSIA this way" and that "nothing in the Constitution requires a minimum-contacts analysis." App.49a (Bumatay, J., dissenting from denial of rehearing); see also App.46a (O'Scannlain, J., respecting the denial of rehearing). As Judge Bumatay observed, the Ninth Circuit's ruling, by imposing a minimum-contacts requirement that has no basis in law, "violates the separation of powers and anoints [courts] gatekeepers in a way not contemplated by Congress or the Constitution." App.47a.

This Court should grant certiorari and confirm that no minimum contacts analysis is required for foreign states sued under the FSIA. As it stands, foreign states sued in California or Oregon may insist on a showing of minimum contacts, whereas foreign states sued in New York or Illinois or the District of Columbia may not. The Ninth Circuit's requirement thus undermines Congress's goal of creating "a uniform body of law concerning the amenability of a foreign sovereign to suit in United States courts." *First National City Bank* v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 622 n.11 (1983) (quotation marks omitted).

Because the "*sole question*" the Ninth Circuit decided below is "whether plaintiffs must prove mini-

mum contacts before federal courts may assert personal jurisdiction over foreign states," App.56a, this case is an appropriate vehicle for this Court to resolve this question of profound national—and international—importance.

1. The FSIA "establishes a comprehensive framework for determining whether a court in this country, state or federal, may exercise jurisdiction over a foreign state." *Weltover*, 504 U.S. at 610. It defines "foreign state" to include not only the foreign state and its "political subdivision[s]" but also "an agency or instrumentality of a foreign state," including "a separate legal person, corporate or otherwise, * * * a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof." 28 U.S.C. § 1603(a)-(b).

Generally, "a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter." 28 U.S.C. § 1604. Among the enumerated exceptions are cases brought "to confirm an award made pursuant to" an arbitration agreement with the foreign state if "the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards." *Id.* § 1605(a)(6). The arbitration exception was added to the FSIA by Congress in 1988. Pub. L. No. 100-669, § 2, 102 Stat. 3969, 3969 (1988).

The FSIA vests federal courts with subject-matter jurisdiction over any action brought under any of the FSIA's exceptions to sovereign immunity. 28 U.S.C. § 1330(a). And the FSIA provides that "[p]ersonal ju-

risdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title." *Id.* § 1330(b).

2. This case arises from a breach of contract by Antrix, a corporation wholly owned by the Republic of India and created to serve as the commercial marketing arm for India's Department of Space. App.17a-18a. In 2005, Antrix entered an agreement with Respondent Devas Multimedia Private Limited, an Indian corporation founded and funded by American telecommunications executives and investors to provide telecommunications services in India. App.17a-18a, 53a-54a. Under the Devas-Antrix agreement, Antrix committed to lease S-band spectrum and transponders on Indian governmental satellites to Devas, which Devas in turn would use to provide telecommunications services throughout India. App.17a-18a. But the government of India decided to keep the spectrum Antrix had leased to Devas for itself and directed Antrix to terminate the agreement, which Antrix did in 2011. App.18a.

Devas, invoking the arbitration clause in its agreement with Antrix, initiated an arbitration before the International Chamber of Commerce, which awarded Devas $562.5 million in damages (plus interest) for Antrix's breach of contract. App.18a-20a. This award is governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, often referred to as the "New York Convention." App.21a.

3. Devas petitioned to confirm this award in the U.S. District Court for the Western District of Wash-

ington, invoking the arbitration exception of the FSIA. App.20a-21a; see 28 U.S.C. § 1605(a)(6). Antrix did not dispute that the FSIA's arbitration exception applied or that it had been properly served under 28 U.S.C. § 1608. App.20a-21a. Yet it moved to dismiss for lack of personal jurisdiction, arguing that it had a right to demand a showing of minimum contacts. *Ibid.*

The district court rejected that argument. It concluded that "[t]he Government of India exercises 'plenary control' over Antrix in a principal-agent relationship" such that, like India, "Antrix is not a 'person' for due process purposes" with a right to a minimum-contacts analysis. App.13a-14a. Even if Antrix were entitled to due process, the district court found that "due process has been satisfied in this case" because Antrix "possesses the requisite 'minimum contacts' with the United States." App.22a. Rejecting all of Antrix's other arguments against confirmation, the district court confirmed Devas's arbitral award and entered a $1.293 billion judgment for Devas in November 2020. App.34a-35a. Antrix appealed from that judgment. App.3a.

4. While that appeal was pending, Antrix petitioned a corporate-law tribunal in India to liquidate Devas based on unsubstantiated assertions (never raised during arbitration or confirmation) that Devas had procured its agreement with Antrix through fraud. App.54a-55a. The next day, the Indian tribunal appointed a government liquidator to seize control of Devas and its affairs, including its award-enforcement activity in the courts below. *Ibid.* The courts of

India later set aside Devas's arbitral award based on Antrix's unproven allegations. *Ibid.*[1]

With Devas under the control of an agent of its judgment debtor, Petitioners—three of Devas's shareholders and its Delaware subsidiary—intervened in both the district court and the Ninth Circuit to defend and enforce the judgment. App.54a-55a. The district court permitted Petitioners to conduct post-judgment discovery to locate executable assets of Antrix in the United States and to register the judgment in the Eastern District of Virginia after discovery revealed that Antrix had a claim in a bankruptcy proceeding in that District, which Petitioners subsequently garnished. App.37a, 41a. Both Antrix and Devas (now under the control of an Indian liquidator) filed independent appeals from the order permitting Petitioners to register the judgment. App.3a.

5. The Ninth Circuit resolved all three appeals—Antrix's appeal from the judgment and the two appeals from the registration order—on a single ground. The Ninth Circuit reversed the judgment confirming the arbitral award on the sole ground that personal jurisdiction did not exist in the absence of minimum contacts between Antrix and the United States. App.3a-8a. It relied on decades-old Ninth Circuit precedent holding, based on "legislative history," that

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[1] Antrix declined to file a motion for relief from the judgment and seek an indicative ruling from the district court. See Fed. R. Civ. P. 60, 62.1. Had it done so, Petitioners would have opposed, including because the proceedings in India were "repugnant to fundamental notions of what is decent and just" and thus not entitled to respect in United States courts. *Corporación Mexicana de Mantenimiento Integral, S. de R.L. de C.V.* v. *Pemex-Exploración y Producción*, 832 F.3d 92, 106 (2d Cir. 2016).

"[p]ersonal jurisdiction under the [FSIA] requires satisfaction of the traditional minimum contacts standard." App.4a (quoting *Thomas P. Gonzalez Corp.* v. *Consejo Nacional De Produccion De Costa Rica*, 614 F.2d 1247, 1255 (9th Cir. 1980)).

Under that circuit precedent, the Ninth Circuit reasoned, Antrix is "entitled to a minimum contacts analysis through our reading of the FSIA" even if it "is not a person and thus not entitled to a minimum contacts analysis through the Constitution." App.5a. The Ninth Circuit thus concluded that the "district court erred in ignoring our precedents requiring it to conduct a minimum contacts analysis" and also that it "erred in concluding that Antrix has the requisite minimum contacts with the United States." App.6a.

Because the Ninth Circuit concluded that the district court lacked personal jurisdiction over Antrix under the FSIA, it reversed the judgment against Antrix and did "not address any of the other issues raised in the Confirmation Appeal"—including whether the district court properly held that Antrix is India's alter ego. App.8a. And "[b]ecause there is no judgment to register," it also reversed the order granting leave to register the judgment and did "not address any of the issues raised by the Registration Appeals"—including whether Petitioners could properly enforce the judgment against Antrix. *Ibid.*

Judge Miller, joined by Judge Koh, concurred. Although they joined "the court's disposition because it correctly applies our precedent," that "precedent applying the minimum-contacts test to the exercise of personal jurisdiction over foreign states has no foundation in the Constitution or the FSIA." App.9a-11a.

And "it is contrary to the views of other courts of appeals." App.10a-11a.

Judge Miller "agree[d]" with the uniform decisions of other circuits that neither "'the text of the Constitution, Supreme Court decisions construing the Due Process Clause, nor long standing tradition provide a basis for extending the reach of this constitutional provision for the benefit of foreign states.'" App.9a (quoting *Price* v. *Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 99 (D.C. Cir. 2002)). He also explained "the statutory theory of a minimum-contacts requirement is little better than the constitutional one" because "[n]othing in the text of the FSIA's long-arm provision describes a minimum-contacts requirement." App.10a. Rather, that text "'clearly expresses the decision of the Congress to confer upon the federal courts personal jurisdiction over a properly served foreign state—and hence its agent—coextensive with the exceptions to foreign sovereign immunity in the FSIA,' and it imposes no additional limitations." *Ibid.* (quoting *TMR*, 411 F.3d at 303).

6. Both Petitioners and Devas petitioned for rehearing en banc, and the Ninth Circuit denied those petitions. App.45a. Judge Bumatay, joined by five other judges, dissented from the denial of rehearing en banc. App.46a-69a; see also App.46a (statement of Judge O'Scannlain "agree[ing] with the views expressed by Judge Bumatay").

Judge Bumatay explained that this "case presents a straightforward question": Are plaintiffs suing under the FSIA required to "prove 'minimum contacts' to assert personal jurisdiction over a foreign state?" App.47a. "Unlike every other federal court, the Ninth

Circuit answers 'yes.'" *Ibid.* And that answer "means that we lock the courthouse doors to plaintiffs whom Congress expressly granted access," including "victims of terrorism, those harmed by violations of international law, and persons who suffered from torture." *Ibid.* The Ninth Circuit's "failure to correct this error violates the separation of powers and anoints ourselves gatekeepers in a way not contemplated by Congress or the Constitution." *Ibid.*

Judge Bumatay also emphasized that the Ninth Circuit's requirement of minimum contacts depends on an "interpretive move under the most dubious of guises—legislative history," which cannot "undo a statute's plain meaning." App.48a (citing *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 523 (2018)). And, far from seeking to bring the Ninth Circuit into accord with its sister circuits, the panel opinion extended that minimum-contacts requirement "to a new context—the arbitral exception—for the first time," "[s]o while the majority of the panel disagrees with our precedent, it expanded its troubling reach." App.49a-50a.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Conflicts With Those Of Every Other Court Of Appeals That Has Addressed The Issue.

The Ninth Circuit held that a "minimum contacts analysis" was necessary for the district court to "exercise personal jurisdiction over Antrix." App.3a. "[E]very other federal court" to have considered the question has held that the FSIA does not require a showing of minimum contacts, and the "consensus of circuit courts" has held that "foreign states are not en-

titled to the protections of the Due Process Clause." App.47a, 63a. Thus, the Ninth Circuit "stands alone." App.68a.

This Court should grant certiorari to resolve the conflict between the Ninth Circuit and the D.C., Second, Seventh, and Eleventh Circuits on the important question presented here.

1. The D.C. Circuit has long held that the FSIA does not require a showing of minimum contacts. To the contrary, "under the FSIA, 'subject matter jurisdiction plus service of process equals personal jurisdiction.'" *Price* v. *Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 95 (D.C. Cir. 2002) (quoting *Practical Concepts, Inc.* v. *Republic of Bolivia*, 811 F.2d 1543, 1548 n.11 (D.C. Cir. 1987)). Thus, the FSIA "clearly expresses the decision of the Congress to confer upon the federal courts personal jurisdiction over a properly served foreign state—and hence its agent—coextensive with the exceptions to foreign sovereign immunity in the FSIA," without regard to "'minimum contacts.'" *TMR Energy Ltd.* v. *State Property Fund of Ukraine*, 411 F.3d 296, 303 (D.C. Cir. 2005).

Likewise, the D.C. Circuit has held that foreign states are not "persons" with the right to a minimum-contacts analysis under "the Fifth Amendment." *Price*, 294 F.3d at 96-100. Among other reasons, the court noted that "'the term "person" does not include the sovereign,'" that the States of the Union are not "persons" under the Due Process Clause, and accordingly that "it would make no sense to view foreign states as 'persons' under the Due Process Clause." *Id.*

at 96 (quoting *Will* v. *Michigan Department of State Police*, 491 U.S. 58, 64 (1989)).

Looking to "history and tradition," the D.C. Circuit reasoned that this Court has never "suggested that foreign nations enjoy rights derived from the Constitution." *Price*, 294 F.3d at 97. "Rather, the federal judiciary has relied on principles of comity and international law to protect foreign governments in the American legal system." *Ibid.*

Finally, the D.C. Circuit noted the "serious practical problems" that would arise if foreign states could "cloak themselves in the protections of the Due Process Clause." *Price*, 294 F.3d at 99; see *ibid.* (noting that freezing assets or imposing economic sanctions "could be challenged as deprivations of property without due process of law," requiring courts to "adjudicate these sensitive questions" and tying "the hands of the other branches as they sought to respond to foreign policy crises").

2. The Second Circuit agrees that "[t]he FSIA provides that a court with subject-matter jurisdiction pursuant to the FSIA also has '[p]ersonal jurisdiction over a foreign state' so long as 'service [was] made' in accordance with the FSIA's service rules." *Gater Assets Ltd.* v. *AO Moldovagaz*, 2 F.4th 42, 49 (2d Cir. 2021) (quoting 28 U.S.C. § 1330(b)).

That court also has held that foreign states have no constitutional right to a minimum-contacts analysis: "[F]oreign states do not enjoy due process protections from the exercise of the judicial power because foreign states, like U.S. states, are not 'persons' for the purposes of the Due Process Clause." *Gater Assets*, 2 F.4th at 49. Notably, the Second Circuit had reached

the opposite conclusion decades ago, but it "overruled" that decision because it found the D.C. Circuit's decision in *Price* "persuasive." *Frontera Resources Azerbaijan Corp.* v. *State Oil Co. of Azerbaijan Republic*, 582 F.3d 393, 399-400 (2d Cir. 2009) (overruling *Texas Trading & Milling Corp.* v. *Federal Republic of Nigeria*, 647 F.2d 300 (2d Cir. 1981)).

The Seventh Circuit too has held that foreign states have no right to require a showing of sufficient minimum contacts. It has explained, in a case invoking the FSIA's "commercial activity" exception to foreign sovereign immunity, that "the 'commercial activity' inquiry under the FSIA is not congruent with a general personal jurisdiction inquiry." *Abelesz* v. *Magyar Nemzeti Bank*, 692 F.3d 661, 694 (7th Cir. 2012). And it "agree[d]" with the decisions of the D.C. and Second Circuits holding that "foreign states are not 'persons' entitled to rights under the Due Process Clause." *Ibid*.

Finally, the Eleventh Circuit has held that "personal jurisdiction exists" when one of the FSIA's exceptions to sovereign immunity applies and "proper service has been made," full stop. *S & Davis International, Inc.* v. *Republic of Yemen*, 218 F.3d 1292, 1303 (11th Cir. 2000).

Apart from the Ninth Circuit, "no other court interprets the FSIA" to require "*another* layer of minimum-contacts review before denying foreign-state immunity." App.48a-49a. And no other court of appeals since this Court's decision in *Republic of Argentina* v. *Weltover, Inc.*, 504 U.S. 607 (1992)—which "strongly hinted that foreign states should be treated the same as domestic States" for purposes of the Due Process

Clause—has required minimum contacts as a constitutional matter. App.63a.[2]

The Ninth Circuit's minimum-contacts requirement is thus "contrary to the views of other courts of appeals"; the Ninth Circuit "stands alone." App.10a-11a, 68a. This Court should grant certiorari to resolve the conflict created by the Ninth Circuit's outlier position.

II. The Decision Below Is Wrong.

This Court's review is especially needed because the Ninth Circuit's outlier position is incorrect. As the concurring and dissenting judges below explained—and as other courts of appeals have held—neither the FSIA nor the Constitution provides any support for the Ninth Circuit's minimum-contacts requirement. App.9a-11a, 56a-68a.

A. The FSIA does not require a showing of minimum contacts.

The FSIA imposes two—and only two—statutory requirements for personal jurisdiction. "Personal jurisdiction over a foreign state *shall* exist as to *every* claim for relief over which [1] the district courts have jurisdiction under subsection (a) [2] where service has

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[2] True, before *Weltover*, some courts of appeals held that foreign states are entitled to a minimum-contacts showing as a matter of due process. See *Texas Trading*, 647 F.2d at 308; *Velidor* v. *L/P/G Benghazi*, 653 F.2d 812, 819 n.12 (3d Cir. 1981); *Callejo* v. *Bancomer, S.A.*, 764 F.2d 1101, 1107 n.5 (5th Cir. 1985). But the Second Circuit overruled *Texas Trading* after *Weltover*. *Frontera*, 582 F.3d at 399-400. And to the extent that the Third and Fifth Circuits adhere to their prior decisions (which relied on *Texas Trading*, App.65a n.2), it would only deepen the conflict among the circuits.

been made under section 1608 of this title." 28 U.S.C. § 1330(b) (emphases added). "[I]t is hard to imagine a clearer statute." App.58a. "When subject-matter jurisdiction and service are proper under the FSIA, the district court 'shall' have personal jurisdiction." *Ibid.* The Ninth Circuit's additional minimum-contacts requirement is "found nowhere in the text." App.57a.

Unsurprisingly, the Ninth Circuit has never purported to "ground" its requirement "in the text of § 1330(b)." App.58a. The panel here considered itself bound by *Thomas P. Gonzalez Corp.* v. *Consejo Nacional De Produccion De Costa Rica*, 614 F.2d 1247 (9th Cir. 1980). App.4a-5a. There, the court noted that the term "'direct effect'"—found in the FSIA's commercial activity exception, not Section 1330(b)—had "been interpreted as embodying the minimum contacts standard." *Gonzalez*, 614 F.2d at 1255 (quoting 28 U.S.C. § 1605(a)(2)). And it asserted that "[t]he legislative history of the Act confirms that the reach of § 1330(b) does not extend beyond the limits set by the *International Shoe* line of cases." *Ibid.* "Based on these flimsy data points, *Gonzalez* broadly proclaimed: 'Personal jurisdiction under the Act requires satisfaction of the traditional minimum contacts standard.'" App.58a (quoting 614 F.2d at 1255).

As Judge Bumatay explained, that conclusion does not follow from those (dubious) premises. For one thing, "[t]he commercial activities exception, along with the other FSIA exceptions, provides *subject-matter* jurisdiction to federal courts"; *personal* jurisdiction is "governed by § 1330(b)." App.59a. So holding that the commercial-activity exception "creates a universal minimum-contacts requirement for

§ 1330(b) conflates the two concepts and makes no textual sense." App.59a-60a.

For another, "*Gonzalez* was wrong to alter the clear text of § 1330(b) based on legislative history," which "'is not the law.'" App.59a-60a (quoting *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 523 (2018)). "Even for those who find legislative history persuasive, it does not support *Gonzalez*'s minimum-contacts test for the FSIA." App.60a. The committee report on which *Gonzalez* relies simply notes that the FSIA's *enumerated exceptions* require "some connection between the lawsuit and the United States, or an express or implied waiver by the foreign state of its immunity from jurisdiction." H.R. Rep. No. 94-1487, at 13-14 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6604, 6612. It does not suggest that *Section 1330(b)* requires a showing of minimum contacts. "And if all that were not enough, the arbitral exception was added more than a decade after the Committee Report" on which *Gonzalez* relied, "making application of a minimum-contacts test" in cases falling within that exception "even more dubious." App.62a.

No member of the Ninth Circuit even attempted to justify *Gonzalez*'s interpretation of the FSIA in this case. To the contrary, a majority of the panel *agreed* that *Gonzalez* was wrongly decided. App.10a-11a. This Court should grant certiorari to correct the Ninth Circuit's error and restore a uniform interpretation of the FSIA.

B. Foreign states do not have a constitutional due-process right to a minimum-contacts analysis.

The Ninth Circuit's decision cannot be defended on the alternate basis that "the constitutional constraints of the Due Process clause preclude the assertion of personal jurisdiction over" Antrix. *Gregorian* v. *Izvestia*, 871 F.2d 1515, 1529 (9th Cir. 1989); see App.62a ("Perhaps realizing *Gonzalez*'s shaky textual foundation, some of our later precedents began couching our minimum-contacts inquiry as a constitutional requirement."). "As a matter of original meaning and modern precedent, the Fifth Amendment's Due Process Clause does not extend the benefit of minimum contacts to foreign states." *Ibid.*

This Court held in *South Carolina* v. *Katzenbach*, that "[t]he word 'person' in the context of the Due Process Clause of the Fifth Amendment cannot, by any reasonable mode of interpretation, be expanded to encompass the States of the Union, and to our knowledge this has never been done by any court." 383 U.S. 301, 323-24 (1966).

In *Weltover*, this Court was presented with the question whether the Due Process Clause of the Fifth Amendment accords to foreign states rights that the States of this Union do not enjoy. The Court "assum[ed], without deciding, that a foreign state is a 'person' for purposes of the Due Process Clause, cf. *South Carolina* v. *Katzenbach*, * * * (States of the Union are not 'persons' for purposes of the Due Process Clause)." 504 U.S. at 619. By citing *Katzenbach*, the Court "strongly hinted" that foreign states are *not* persons enjoying due process protections. App.63a.

The courts of appeals generally took the hint. As the Second Circuit noted, "*Weltover* did not require deciding the issue because Argentina's contacts satisfied the due process requirements, but the Court's implication was plain: If the 'States of the Union' have no rights under the Due Process Clause, why should foreign states?" *Frontera*, 582 F.3d at 398-99 (citation omitted) (holding that foreign states are not "persons" under the Due Process Clause); *Price*, 294 F.3d at 96 (same); *Abelesz*, 692 F.3d at 694 (same). "After *Weltover*, no other circuit court has ruled" that foreign states have a right to demand a showing of minimum contacts under the Due Process Clause. App.65a.

And for good reason. There is an "often-expressed understanding that in common usage, the term 'person' does not include the sovereign, and statutes employing the word are ordinarily construed to exclude it." *Price*, 294 F.3d at 96 (quoting *Will*, 491 U.S. at 64). This is especially true when foreign states are considered. As one scholar has put it, it is "unlikely that the framers of the Fifth Amendment would have viewed foreign states as persons given that foreign sovereigns were treated as completely immune from suit at the time of the founding." Donald Earl Childress III, *Questioning the Constitutional Rights of Foreign Nations*, 88 Fordham L. Rev. Online 60, 70 (2019). And even the leading scholar espousing the opposing view—that "foreign states were viewed as 'persons' entitled to 'process'" under the Fifth Amendment—nevertheless agrees that "when it comes to personal jurisdiction, due process limitations may be largely coextensive with the process that Congress chooses to provide." Ingrid Wuerth, *The Due Process*

and Other Constitutional Rights of Foreign Nations, 88 Fordham L. Rev. 633, 637, 679 (2019).

The history of U.S. foreign-relations law further underscores that foreign nations do not hold due process rights against the federal government. "Relations between nations in the international community are seldom governed by the domestic law of one state or the other" and "legal disputes between the United States and foreign governments are not mediated through the Constitution." *Price*, 294 F.3d at 97; see Lori Fisler Damrosch, *Foreign States and the Constitution*, 73 Va. L. Rev. 483, 520 (1987) ("The most a foreign state can demand is that other states observe *international* law, not that they enforce provisions of domestic law.").

Because "foreign nations are the juridical equals of the government that seeks to assert jurisdiction over them," they must rely not on rights provided by the U.S. Constitution but on the "panoply of mechanisms in the international arena through which to seek vindication or redress." *Price*, 294 F.3d at 98. Extending a constitutional right "meant to protect individual liberty" to "frustrate the United States government's clear statutory command" that a foreign state is subject to suit in the courts of this country is "not only textually and structurally unsound," but "distort[s] the very notion of 'liberty' that underlies the Due Process Clause." *Id.* at 98-99.

The Ninth Circuit's decision therefore cannot be supported on the ground that foreign states are entitled to a minimum-contacts analysis as a matter of due process. This Court should grant certiorari to make clear that the U.S. Constitution does not em-

power a foreign state to defeat jurisdiction that Congress expressly directed federal courts to exercise over it.

III. This Case Is An Appropriate Vehicle To Resolve This Important And Recurring Question.

The Ninth Circuit's outlier precedent undermines the principle that our nation should speak with one voice to foreign states, a principle that the FSIA was specifically designed to foster. And it closes the courthouse doors in cases where Congress specifically directed the federal courts to provide a forum for relief, such as suits by victims of terrorism. This issue is certain to recur, and, because it was the only issue the Ninth Circuit considered and is logically prior to all other issues in this case, this petition provides an appropriate vehicle to resolve it.

A. The petition raises an important and recurring issue.

The issues raised by this petition are "unquestionably significant." App.50a.

1. Foreign states sued in the Ninth Circuit have a right to a minimum-contacts analysis that they do not enjoy anywhere else in the United States. But "concern for uniformity in this country's dealings with foreign nations" is what "animated the Constitution's allocation of the foreign relations power to the National Government in the first place." *American Insurance Ass'n* v. *Garamendi*, 539 U.S. 396, 413 (2003); The Federalist No. 42, at 279 (James Madison) (Jacob E. Cook ed., 1961) ("If we are to be one nation in any respect, it clearly ought to be in respect to other nations.").

The enactment of the FSIA itself is an expression of the need for uniformity in the treatment of foreign states. "When it enacted the FSIA, Congress expressly acknowledged 'the importance of developing a uniform body of law' concerning the amenability of a foreign sovereign to suit in United States courts." *First National City Bank* v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 622 n.11 (1983); see H.R. Rep. No. 94-1487, at 13 ("uniformity in decision * * * is desirable since a disparate treatment of cases involving foreign governments may have adverse foreign relations consequences").

If the Ninth Circuit's decision is allowed to stand, a foreign state will be able to insist on a finding of minimum contacts if it is sued in Seattle or San Francisco but not if it is sued in Washington, D.C., New York City, or Chicago. That result undermines the fundamental principle that decisions that "touch on foreign relations * * * must be made with one voice." *Arizona* v. *United States*, 567 U.S. 387, 409 (2012).

The disuniformity entrenched by the decision below is particularly troubling because the Second and D.C. Circuits, where actions against foreign states are frequently brought, see David P. Stewart, Federal Judicial Center, *The Foreign Sovereign Immunities Act: A Guide for Judges* 23 (2d ed. 2018) ("foreign states are most frequently sued in the District of Columbia"), have already squarely rejected the Ninth Circuit's view in thorough, reasoned opinions. *Price*, 294 F.3d at 95-100; *TMR*, 411 F.3d at 299-303; *Frontera*, 582 F.3d at 398-401. And the Ninth Circuit, in this case, has already rejected an opportunity to change course.

This Court has granted certiorari to resolve circuit conflicts of similar size when they "implicate[] serious issues of foreign relations." *JPMorgan Chase Bank* v. *Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88, 91 (2002) (noting that court granted certiorari to resolve split between the Second Circuit and three other circuits). And further developments in the courts of appeals are unlikely to assist this Court's review of the question presented or to obviate the need for such review.

2. As Judge Bumatay noted below, the Ninth Circuit's decision also "violates the separation of powers" because it "lock[s] the courthouse doors to plaintiffs whom Congress expressly granted access." App.47a. This means that "victims of terrorism, those harmed by violations of international law, and persons who suffered from torture may be barred from seeking justice" in the Ninth Circuit. *Ibid.* (citing 28 U.S.C. §§ 1605, 1605A, 1605B). At the very least, "the regime that the Ninth Circuit erects" will require "a state sponsor of terrorism to have minimum contacts with our country before allowing our citizens to vindicate the death or injury of a loved one at the hands of a terrorist." App.68a. Nothing in the FSIA or the Constitution compels that unjust result.

3. This issue is also likely to recur. Foreign states and their alter egos are regularly sued in the Ninth Circuit. See *Mohammad* v. *General Consulate of State of Kuwait*, 28 F.4th 980 (9th Cir. 2022); *Broidy Capital Management, LLC* v. *State of Qatar*, 982 F.3d 582 (9th Cir. 2020); *Baiul-Farina* v. *Lemire*, 804 F. App'x 533 (9th Cir. 2020); *Sequeira* v. *Republic of Nicaragua*, 791 F. App'x 681 (9th Cir. 2020); *Sukyas* v. *Romania*, 765 F. App'x 179 (9th Cir. 2019). If the Ninth Circuit's de-

cision is not reversed, a foreign state may have a minimum-contacts defense in every pending or future case in the Ninth Circuit, a defense that would be unavailable in other circuits.

The panel concurrence erroneously suggested that this issue is unlikely to arise in proceedings to enforce arbitral awards against foreign states because the Ninth Circuit's minimum-contacts requirement "can easily be satisfied by the presence of assets in the forum." App.11a. That is no answer to the fact that the Ninth Court's minimum-contacts requirement will be implicated in cases invoking not just the arbitration exception but "*all* exceptions under the FSIA." App.49a. And the concurrence's surmise is wrong on its own terms. Parties seeking to confirm foreign arbitral awards are often unaware whether their judgment debtor has assets in the United States and seek confirmation for the purpose of "propound[ing] post-judgment discovery requests to identify the [debtor's] commercial property in the United States available for execution." *FG Hemisphere Associates, LLC* v. *Democratic Republic of Congo*, 637 F.3d 373, 375-76 (D.C. Cir. 2011). That is precisely what happened in this case: Petitioners were able to locate executable assets of Antrix in the United States through post-judgment discovery that was available to them only *after* the arbitration award was confirmed. App.40a. If the decision below is not reversed, any party seeking to discover executable assets of a foreign sovereign in the United States will have every incentive to avoid bringing its confirmation proceeding in the Ninth Circuit.

This Court should grant certiorari to correct the Ninth Circuit's error, restore uniformity to the treatment of foreign states in federal court, and ensure that

the courts of this country exercise the jurisdiction against foreign states that Congress commanded "*shall exist*." 28 U.S.C. § 1330(b) (emphasis added).

B. This case squarely and cleanly presents this issue for the Court's review.

This case is an appropriate vehicle for resolving this issue. "[T]he *sole question*" the Ninth Circuit decided, and thus the only question for this Court, is "whether plaintiffs must prove minimum contacts before federal courts may assert personal jurisdiction over foreign states under the FSIA." App.56a. This question is jurisdictional and antecedent to all other issues in this case. Thus, there are no complicating threshold questions that would impede this Court's review and decision on that important question of law.

Below, Antrix opposed rehearing en banc on the ground that the underlying arbitral award confirmed by the district court's judgment has been set aside in a legal proceeding in India and that the district court erroneously found Antrix to be the alter ego of India and therefore not entitled to due process. But those issues are "secondary to whether foreign states are entitled to a minimum-contacts analysis in the first place." App.50a.

Nor would there be any merit to the contention that Petitioners are not the proper parties to petition for certiorari because the judgment that was reversed is in the name of Respondent Devas, not Petitioners. Petitioners successfully intervened in both the district court and the Ninth Circuit, actively enforced and defended the judgment, obtained leave to register the judgment, and garnished a claim of Antrix's in bankruptcy. App.55a. As "intervenors," Petitioners are "en-

titled * * * to seek review by this Court." *Diamond* v. *Charles*, 476 U.S. 54, 68 (1986). And because the Ninth Circuit's judgment eliminated Petitioners' ability to enforce the district court judgment confirming the award and may endanger their prior enforcement efforts, Petitioners have standing to invoke this Court's jurisdiction. See *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 211-12 (2020).

Of course, if this Court reverses the Ninth Circuit's judgment and resolves the jurisdictional question presented, it would lead to other questions on the merits. But that is "no reason to punt" on the "significant question" presented given that "those subsidiary questions" may be left "to the [Ninth Circuit] or district court" in the first instance. App.56a; see *Samantar* v. *Yousuf*, 560 U.S. 305, 325-26 (2010) (holding that foreign official was not entitled to immunity under the FSIA and explaining that "whether he may have other valid defenses * * * are matters to be addressed in the first instance * * * on remand"); *GE Energy Power Conversion France SAS, Corp.* v. *Outokumpu Stainless USA, LLC*, 590 U.S. 432, 445 (2020) (questions that the court of appeals "did not determine * * * can be addressed on remand").

This is a suitable vehicle for answering the important and recurring question presented. This Court should grant certiorari and reverse.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

ANNE CHAMPION
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166

MATTHEW D. MCGILL
Counsel of Record
JACOB T. SPENCER
DAVID W. CASAZZA
BRIAN C. MCCARTY
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 887-3680
mmcgill@gibsondunn.com

Counsel for Petitioners

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