Nos. 23-1201 & 24-17

IN THE

Supreme Court of the United States

CC/DEVAS (MAURITIUS) LIMITED, *ET AL*;
Petitioners,

v.

ANTRIX CORP. LTD., *ET AL,*
Respondents.

DEVAS MULTIMEDIA PRIVATE LIMITED,
Petitioner,

ANTRIX CORP. LTD., ET AL.,
Respondents.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Antrix, an Indian government-owned company, was sued in U.S. district court under the arbitration exception to the Foreign Sovereign Immunities Act (FSIA) by another Indian company, Devas (Petitioner in No. 24-17). Devas sought to enforce an Indian arbitration award—later set aside by the competent Indian court—that arose out of a dispute in India. Shareholders and a subsidiary of Devas (Petitioners in No. 23-1201) intervened and convinced the district court not only to confirm the arbitral award, but to allow the Intervenors to register that judgment.

The Ninth Circuit overturned those decisions. The panel held that, for personal jurisdiction to lie, the FSIA requires a claimant to show that the defendant meets the minimum-contacts standard, and that no such showing was made here. Rehearing *en banc* was denied. The question presented is thus:

Does either the FSIA or constitutional due process require a minimum-contacts showing—*i.e.*, that there is some connection between the parties, the dispute, and the United States—for a U.S. court to exercise personal jurisdiction to enforce a foreign arbitral award against a foreign sovereign entity?

CORPORATE DISCLOSURE STATEMENT

Antrix Corp. Ltd does not have a parent corporation. Antrix is wholly owned by the Government of India. Accordingly, no publicly held company owns 10% or more of its stock.

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INTRODUCTION

Petitioners ask this Court to review the unpublished decision of a Ninth Circuit panel holding, based on forty years of FSIA precedent, that to enforce an arbitration award against a foreign sovereign in a U.S. court, the sovereign must have some relevant connection to, or property in, the forum. The source of that ruling is the settled understanding, reflected in precedent from across the circuits, that in subjecting foreign sovereigns to jurisdiction under the FSIA exceptions to immunity, Congress understood those exceptions to embody the contacts with the United States described in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

Petitioners argue that the Ninth Circuit's statutory analysis is wrong. They then invite the Court to address a broader constitutional question: whether foreign sovereigns are entitled to due process under the Fifth Amendment. And Petitioners ask the Court to take up these statutory and constitutional questions in an unusual context: a case to enforce an arbitral award that has been set aside by the court of competent jurisdiction, brought in a forum that has no connection to the parties' dispute. Petitioners also ignore that the question they present—whether foreign sovereigns are entitled to due process—is difficult to reach here because Respondent is a distinct corporate entity, not the sovereign. The Court should decline Petitioners' invitation.

As shown below, the Ninth Circuit is no outlier in its application of minimum contacts analysis to FSIA cases. In fact, most circuits have long recognized that the FSIA's exceptions to sovereign immunity—at least most of them, save one that is not at issue here

(the terrorism exception)—incorporate minimum contacts requirements. This is evident from their text, and it is consistent with Congress's clear intent in enacting the FSIA. It is also fully consistent with both the text and Congress's understanding of the "arbitration enforcement" exception to the FSIA. An action to enforce an arbitration award against a foreign sovereign, just as against a private party, necessarily contemplates that there be some property or presence in the forum where the action is brought.

Petitioners' contrary position explicitly posits that the FSIA's arbitration enforcement exception opened every federal courthouse to any plaintiff, from anywhere in the world, to drag a foreign sovereign that lost an arbitration into U.S. court, and then subject that sovereign to intrusive discovery—even if the sovereign has no presence or assets in the forum and the dispute has no connection to the forum. *See* Int.Pet.23 ("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 propounding post-judgment discovery requests[.]"); Devas.Pet.19 (similar). Petitioners go even further here, urging that, in a case that involves no contact with the United States and in which the United States has no interest, U.S. courts may nonetheless review and overrule the final judgment of India's highest court that an arbitration award was entered improperly. It is unlikely Congress would abandon basic principles of comity and open U.S. courts to suits against foreign sovereigns in this way.

Petitioners try to support their assertion that the FSIA exceptions do not embrace due process standards by invoking a recent exception not applicable here: the terrorism exception. They even suggest that the decision below will frustrate attempts to hold terrorists responsible for harm to U.S. nationals and U.S. government employees. *E.g.*, Int.Pet.22. But the exception allowing suits by U.S. nationals or government employees against state sponsors of terrorism, 28 U.S.C. § 1605A(a), is different in text and intent from the other FSIA exceptions. Indeed, the D.C. Circuit decision on which Petitioners rely most heavily to argue that there is no right to a minimum contacts analysis in *any* FSIA case, *Price v. Socialist People's Libyan Arab Jamahiriya*, discussed that difference—and reaffirmed that the other exceptions incorporate minimum contacts requirements. 294 F.3d 82, 89 (D.C. Cir. 2002) ("Under the original FSIA, . . . there had to be some tangible connection between the conduct of the foreign defendant and the *territory* of the United States."). While a few circuits have extended *Price* to other exceptions, they are a minority—and at least one has indicated it is reconsidering that choice.

Petitioners make much of that fact that two panel judges joined a brief concurrence opining that, "[i]n an appropriate case, we should reconsider [the issue] *en banc*." Int.Pet.App.11a. But all panel members then voted (or recommended, in the case of District Judge Molloy, sitting by designation) against *en banc* review, thus conveying that they did not view this case as an appropriate vehicle to revisit the issue.

The reasons for that are clear enough, and strongly counsel against granting certiorari.

First, there is no longer an award to enforce because the Delhi High Court—the court of competent jurisdiction to determine the award's enforceability—set it aside, a decision affirmed by the Indian Supreme Court. Under principles of comity and longstanding case law, the award no longer exists and cannot be enforced. Petitioners suggest that the Court should ignore that development and let the Ninth Circuit deal with it on remand. But since there is no award to enforce, this case should be moot. At the very least, it is not suitable for review.

Second, Respondent is not a foreign state, but a state-owned corporation. It is well established that juridical entities distinct from their sovereign are presumptively entitled to due process even when they are not entitled to sovereign immunity under the FSIA. Unless the entity was subject to extensive government control and used for fraudulent purposes (of which there is no suggestion here), it retains its separate identity. This threshold issue, which the Ninth Circuit did not address, is logically antecedent to whether foreign sovereigns are entitled to due process under the FSIA or the Constitution.

In short, the question Petitioners raise—which is really two questions, one statutory and one constitutional—arises infrequently and is not cleanly presented here. And the panel decision is no outlier, but aligns with precedent from across the circuits, as well as Congress's intent in enacting the FSIA. The petitions for certiorari should be denied.

STATEMENT

A. Legal Background.

Before Congress enacted the FSIA, lawsuits brought against foreign sovereigns operated under the "principle [ ] that courts may not so exercise their jurisdiction … as to embarrass the executive arm of the government in conducting foreign relations." *Ex parte Republic of Peru*, 318 U.S. 578, 588 (1943). There followed a "policy, recognized both by the Department of State and the courts, that our national interest will be better served in such cases if the wrongs to suitors, involving our relations with a friendly foreign power, are righted through diplomatic negotiations rather than by the compulsions of judicial proceedings." *Id.* at 589. This meant sovereign immunity determinations were often made by two different branches under governing standards that were neither clear nor uniformly applied. *Republic of Austria v. Altmann*, 541 U.S. 677, 691 (2004). "In 1976 Congress sought to remedy these problems by enacting the FSIA." *Id.*

The FSIA "codifies . . . the restrictive theory of sovereign immunity. A foreign state is normally immune from the jurisdiction of federal and state courts … subject to a set of exceptions specified" in the FSIA. *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 488 (1983). Subject to those exceptions, the FSIA "provides the sole basis for obtaining jurisdiction over a foreign state in the courts of this country." *Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993) (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 443 (1989)). At present,

the FSIA's exceptions cover: (1) waiver; (2) commercial activity; (3) expropriation; (4) noncommercial torts in the United States; (5) enforcement of arbitral awards; and (6) state-sponsored terrorism. *See* 28 U.S.C. §§ 1605, 1605A. Only the exception for enforcement of arbitral awards is at issue here.

When enacted in 1976, it was understood that the FSIA would be applied to suits to enforce arbitration agreements or confirm arbitral awards against foreign states through the waiver exception of 28 U.S.C. § 1605(a)(1). But waiver was found only "in cases where a foreign state has agreed to arbitration in another country or where a foreign state has agreed that the law of a particular country should govern a contract." H.R. Rep. No. 94-1487, at 18 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6604, 6617; *see Ipitrade Int'l, S. A. v. Fed. Republic of Nigeria*, 465 F. Supp. 824, 826 (D.D.C. 1978).

A decade later, in 1988, the arbitration exception was enacted to allow suits against a foreign state to enforce an arbitration agreement between the foreign state and a private party—or to confirm an arbitral award pursuant to such an agreement. Pub. L. No. 100-669, 102 Stat. 3969 (1988) (codified at 28 U.S.C. § 1605(a)(6)). The amendment codified implied waiver as one of the grounds for application of the arbitration exception. *Id.* § 1605(a)(6)(D). And it added further grounds, including to allow suit where the agreement or award is "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)(B).

The terrorism exception, enacted twenty years after the original FSIA,[1] is a different story. That exception provides that a "designated state sponsor of terrorism" has no immunity from a suit for money damages for personal injury or death caused by "an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act … is engaged in by an official, employee, or agent of such foreign state[.]" 28 U.S.C. § 1605A(a)(1). The terrorism exception was amended substantially in 2008, including to remove it from the list of immunity exceptions set forth in section 1605(a), and to create a new statutory provision outlining the particular requirements of that unique exception.[2]

The terrorism exception is an outlier to the territoriality originally required, and still otherwise required, for FSIA jurisdiction. Under that exception, "the only required link between the defendant nation and the territory of the United States is the nationality of the claimant." *Price*, 294 F.3d at 90. It thus "allows personal jurisdiction to be maintained ... in circumstances that do not appear to satisfy the 'minimum contacts' requirement of the Due Process Clause." *Id.* But nothing in the text of the terrorism exception suggests any change to the scope of earlier FSIA exceptions.

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[1] *See* Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, 1241 (1996) (formerly codified at 28 U.S.C. § 1605(a)(7)).

[2] *See* Nat'l Def. Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, 122 Stat. 3, 338–44 (2008).

B. Factual Background.

This case arises from a contract between two Indian companies that contracted in India for performance in India, then arbitrated their contractual dispute before a tribunal seated in India, resulting in an award that has since been set aside by the Indian court of competent jurisdiction.

Antrix is a private Indian company owned by the Government of India. ER-246.[3] Antrix has provided space-related services since its incorporation in 1992, but Antrix is not an agent of the Indian Department of Space or the Indian Space Research Organization ("ISRO"). DevasSER-53; ER-110. Antrix acts with a separate legal personality from the Indian government, and it operates under the Indian Companies Act like any other private company. *See id*. Antrix has never had agents, offices, or operations in the United States.

Devas Multimedia Private Ltd. ("Devas"), a private Indian company,[4] was founded in 2004. ER-

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[3] Citations to "ER" (Appellant's Excerpts of Record), "DevasSER" (Appellee's Supplemental Excerpts of Record), and "ECF" (docket entry numbers) are references to the Ninth Circuit's 20-36024 docket. Citations to "1-ER," "2-ER," and "3-ER" (Appellant's Excerpts of Record) are references to the Ninth Circuit's 22-35103 docket. Citations to "D.C. Dkt." are references to the U.S. District Court for the Western District of Washington's 2:18-cv-1360 docket.

[4] Devas misleadingly states that it was founded by American investors and executives to provide telecommunications service in India. Devas.Pet.4. But Devas was founded by *Indian* shareholders, including one ex-ISRO official, to provide satellite-based multimedia services. *See* ER-79

46; ECF 72 at 4–5. Devas was later found liable in India for fraud in its incorporation and management. 3-ER-335–349; ECF 72 at 234–245.

The parties' dispute arose out of a satellite leasing Agreement executed in India in 2005, governed purely by Indian law and calling for performance in India, which Antrix terminated when India's Cabinet Committee on Security blocked performance. ER-50–52; ER-88. Over Antrix's objections and without any arbitrators selected by Antrix, Devas commenced an ICC-administered arbitration. ER-60–61; ER-89; ER-251–252. The arbitration was seated in New Delhi and applied Indian law. ER-64; ER-89–90; ER-251-52.

In September 2015, the Tribunal issued an award for Devas (the "Award"). ER-150. That same year, Antrix appealed by applying to set aside the Award in an Indian court. Petitioner Devas, however, initiated proceedings to secure the Award in a different Indian court—the Delhi High Court. The Indian Supreme Court determined that the Delhi High Court was the competent court to decide the issue. 3-ER-350–354.

While the set-aside proceedings were ongoing, a specialized corporate law court in Bengaluru found Devas liable for fraud in its incorporation and management and appointed a liquidator. 3-ER-335–349. The Indian Supreme Court upheld that decision. ECF 72 at 234–245.

On August 29, 2022, the Delhi High Court set aside the Award. The court concluded that the Tribunal had erred in key respects, including by ignoring the pre-contractual documents and issuing

contradictory rulings, and that the Award was contrary to public policy in light of the Indian Supreme Court's findings of fraud in Devas's formation and management. *See* ECF 72. An appellate panel of the Delhi High Court affirmed that set-aside. ECF 85. The Indian Supreme Court dismissed Devas's last appeal, ECF 116 (Attach. A), and so the set-aside decision is final.

C. Procedural Background.

In 2018, with Antrix's set-aside application still pending, Devas filed suit to confirm the Award in the Western District of Washington. ER-45–48. Devas assured the district court that, "[i]f the ultimate result in India is that the award is affirmed, then no prejudice whatsoever is had. If the ultimate decision in India is that the award is somehow rescinded, then money is returned." D.C. Dkt. 50, Hr'g Tr. 16:14–17 (Oct. 24, 2020).

Over Antrix's opposition, and with Indian court proceedings pending, the district court confirmed the Award in November 2020 and entered judgment for Devas. Int.Pet.App.34a. The district court then allowed Intervenors (Mauritian shareholders[5] of Devas and one U.S. subsidiary) to conduct post-

[5] These companies have been under the control of a liquidator appointed by the Mauritius Supreme Court, which entered an order in 2023 prohibiting shareholders and "[any] agent acting on their behalf" from representing these companies "in any legal or arbitral proceedings, including" to "continu[e] . . . proceedings before any forum, institution, or jurisdiction, whether local or abroad." ECF 116, Attach. B at 10-11. Intervenor-Petitioners' pursuit of certiorari violates that order.

judgment discovery. 2-ER-287; 2-ER-166–167; 1-ER-28. Over Devas's opposition, the district court certified the judgment for *Intervenors* to register in the Eastern District of Virginia and garnish $146,457 owed to Antrix there. Devas.Pet.App.40a. Intervenors did so and collected funds. Antrix appealed both the entry and registry of the judgment. Devas also appealed the decision allowing Intervenors to register the judgment.

In September 2022, shortly after the Delhi High Court set aside the Award, Antrix moved for a limited remand back to the district court to ask the district court to vacate its judgment confirming an award that had since been set aside by the Indian courts. ECF 72. The Ninth Circuit instead scheduled argument, asking the parties to address the remand motion therein. ECF 78, 84.

In an unpublished decision, a Ninth Circuit panel reversed the district court's judgment, holding that under longstanding Ninth Circuit precedent, minimum contacts requirements must be met for a foreign sovereign to be sued in the United States under the FSIA. Int.Pet.App.5a-6a.

The Ninth Circuit further held that "the district court erred in holding that Antrix had the requisite minimum contacts for personal jurisdiction" because the dispute bore no connection to the United States: the Agreement "was negotiated outside of the United States, executed in India in 2005, and did not require Antrix to conduct any activities or create ongoing obligations in the United States." Int.Pet.App.7a. Notably, Petitioners do not ask this Court to revisit

the panel's holding that Antrix lacks minimum contacts with the United States; they only challenge whether minimum contacts analysis is required at all.

Because the panel reversed the judgment below on other grounds, it denied Antrix's motion for a limited remand as moot. Int.Pet.App.8a n.1. The panel also did not reach the question of Intervenors' authority to enforce the Award.

In a concurring opinion, two panel members opined that the Ninth Circuit should, in "an appropriate case," reconsider its precedent requiring a minimum-contacts showing for foreign states. Int.Pet.App.11a. They did not say *this* is the appropriate case. Indeed, all panel members voted to deny *en banc* review. Int.Pet.App.45a. Only six of the Ninth Circuit's twenty-nine active judges voted for *en banc* rehearing, which was therefore denied. Int.Pet.App.45a-46a.

REASONS FOR DENYING THE PETITIONS

I. The decision below is sound and consistent with the FSIA's history and text.

The Ninth Circuit's unreported panel decision reversing the judgment against Antrix because Antrix lacks minimum contacts with the United States is fundamentally sound. It aligns with the history, text, and Congressional intent behind the FSIA and its exceptions to sovereign immunity, including the arbitration exception.

A. The panel's decision aligns with the FSIA's history.

The panel's holding that a foreign sovereign entity must have minimum contacts with the United States before it can be sued under the FSIA's arbitration exception is well grounded in the history of and Congressional intent behind the FSIA.

Before Congress enacted the FSIA, lawsuits brought against foreign sovereigns were subject to the "principle [] that courts may not so exercise their jurisdiction ... as to embarrass the executive arm of the government in conducting foreign relations." *Ex parte Republic of Peru*, 318 U.S. at 588. This reflected a "policy, recognized both by the Department of State and the courts, that our national interest will be better served in such cases if the wrongs to suitors, involving our relations with a friendly foreign power, are righted through diplomatic negotiations rather than by the compulsions of judicial proceedings." *Id.* at 589.

In 1952 the State Department issued the "Tate Letter," which introduced a newly-narrowed framework for immunity in which "the immunity of the sovereign is recognized with regard to sovereign or public acts (jure imperii) of a state, but not with respect to private acts (jure gestionis)."[6] Congress enacted the FSIA in 1976 to codify this distinction, describing the Act as "a Federal long-arm statute over foreign states[.]" H. Rep. No. 94-1487, at 13. And, in

[6] Letter from Jack B. Tate, Acting Legal Adviser, U.S. Dep't of State, to Acting U.S. Attorney General Philip B. Perlman (May 19, 1952).

enacting the text, Congress plainly proceeded on the understanding that:

> The requirements of minimum jurisdictional contacts and adequate notice are embodied in the provision.

Id.

That understanding was consistent with practice at the time. As this Court has explained, when the FSIA was enacted, the exercise of jurisdiction over a foreign sovereign "generally requires some form of contact with the United States." *See Verlinden B.V.*, 461 U.S. at 490 n.15. "Significantly, each of the immunity provisions in the bill, sections 1605-1607, requires some connection between the lawsuit and the United States" and thus "prescribe the necessary contacts which must exist before our courts can exercise personal jurisdiction." Mary Kay Kane, *Suing Foreign Sovereigns: A Procedural Compass*, 34 Stan. L. Rev. 385, 396 n.64 (Jan. 1982) (quoting H.R. Rep. No. 1487, at 13).

Congress was quite clear about its intent to bake the minimum contacts standard into the FSIA's exceptions to immunity. In the years leading to enactment, Congress contemplated that "the jurisdictional standard [would be] the same for the activities of a foreign state as for the activities of a foreign private enterprise." *Immunities of Foreign States: Hearing on H.R. 3493 before the Subcomm. on Claims and Governmental Relations of the H Comm. on the Judiciary*, 93d Cong., 41 (1973). As scholars have explained, "the general assumption was that foreign sovereigns enjoyed the same constitutional protections as other defendants." Ingrid Wuerth, *The*

Due Process and Other Constitutional Rights of Foreign Nations, 88 Fordham L. Rev. 633, 646 (Nov. 2019).

Shortly before enactment, one FSIA drafter—and the Chief of the Foreign Litigation Section of the Department of Justice's Civil Division—testified:

> Absent the requisite contacts, no suit can be maintained since the existence of the contacts with the forum is essentially to satisfy the constitutional requirement of due process. … [T]he long-arm feature of the bill will insure that only those disputes which have a relation to the United States are litigated in the courts of the United States[.][7]

Once the FSIA was enacted, circuit courts consistently recognized Congress's intent to incorporate a minimum contacts requirement. *E.g.*, *Carey v. Nat'l Oil Corp.*, 592 F.2d 673, 676 (2d Cir. 1979) ("The legislative history of this section makes clear that it embodies the standard set out in *International Shoe* . . . that in order to satisfy due process requirements, a defendant . . . must have 'certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantive justice.'"); *see also Gregorian v. Izvestia*, 871 F.2d 1515, 1529 (9th Cir. 1989) ("Personal jurisdiction under the FSIA requires satisfaction of the traditional

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[7] *Jurisdiction of U.S. Courts in Suits Against Foreign States: Hearings on H.R. 11315 Before Subcomm. on Admin. Law & Governmental Relations of the Comm. on the Judiciary*, 94th Cong. 29, 31 (1976) (testimony of Bruno Ristau).

minimum contacts standard.") (citing *Thomas P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica*, 614 F.2d 1247, 1255 n.5 (9th Cir. 1980) ("The requirements of minimum jurisdictional contacts and adequate notice are embodied in the provision.")).

Decades after enactment of the FSIA, scholars continued to note Congress's intent to "treat foreign state defendants similar[ly] to other 'persons' who are entitled to due process protection" for personal jurisdiction purposes.[8]

B. The panel's decision aligns with the FSIA's text.

The text of the FSIA reflects Congress's intent to allow suit against a foreign sovereign only where it has contacts with the United States of the kind that would satisfy due process standards. Petitioners point to section 1330(b), arguing that it requires only a showing of subject matter jurisdiction plus proper service to establish personal jurisdiction. *E.g.*, Devas.Pet.11. But what section 1330(b) provides is that personal jurisdiction exists where, in addition to proper service, the textual requirements of an exception to immunity set forth in section 1605 have been met. *See* 28 U.S.C. § 1330(b); *see also id.* § 1330(a) (jurisdiction exists only where "the foreign

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[8] Karen Halverson, *Is a Foreign State a "Person"? Does It Matter?: Personal Jurisdiction, Due Process, and the Foreign Sovereign Immunities Act*, 34 N.Y.U. J. Int'l L. & Pol. 115, 122 (2001).

state is not entitled to immunity … under sections 1605–1607 of this title").

Thus, it is not the Ninth Circuit that has "mixed up" subject matter and personal jurisdiction (Devas.Pet.12, quoting Judge Bumatay's dissent from the denial of *en banc* rehearing). It is Congress that chose to make the requirements of the exceptions prerequisites for establishing personal jurisdiction. And those exceptions, in turn, require some connection between the parties, the dispute, and the United States.

For most of those exceptions, the required nexus to the United States satisfying both the exception and the traditional requisites of due process are apparent. For example, the commercial activity exception, codified at section 1605(a)(2), uses "direct effects" language which "closely resembles the 'minimum contacts' language of constitutional due process and these two analyses have overlapped." *S & Davis Int'l, Inc. v. The Republic of Yemen*, 218 F.3d 1292, 1304 (11th Cir. 2000); *U.S. Fidelity & Guar. Co. v. Braspetro Oil Servs., Co.*, 199 F.3d 94, 97 (2d Cir. 1999) ("[T]he *Rein* Court made explicit the finding that was implicit in *Hanil Bank,* stating that questions regarding minimum contacts for personal jurisdiction purposes and commercial contacts for FSIA purposes were inextricably intertwined."). Indeed, that was the basis of this Court's constitutional conclusion in *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 619–20 (1992); *i.e.*, that any due process requirements were satisfied by the same debt issuance actions that satisfied the FSIA's "direct effects" standard. *See also Sec. Pac. Nat'l Bank*

v. Derderian, 872 F.2d 281, 286–87 (9th Cir. 1989) ("the requirement of a 'direct effect' incorporates the minimum contacts standards of *International Shoe*"); *Rein v. Socialist People's Libyan Arab Jamahiriya*, 162 F.3d 748, 760–61 (2d Cir. 1998) ("The finding of subject matter jurisdiction under the commercial activities exception also entail[s] a finding of minimum contacts[.]").

Similarly, under the expropriation exception, claims involving rights in property taken in violation of international law may be heard if the property has a commercial nexus with the United States. 28 U.S.C. § 1605(a)(3). And that requirement may be met by showing either that "property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state," or that "property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity[.]" *Zappia Middle E. Constr. Co. v. Emirate of Abu Dhabi*, 215 F.3d 247, 251 (2d Cir. 2000).

Section 1605(a)(4), addressing cases "in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue," likewise presumes sufficient contacts with the U.S. to satisfy the minimum contacts standard. The property must either be present in the United States in connection with the foreign state's commercial activity, or owned or operated by an agent of that state engaged in commercial activity in the forum. *See Abelesz v. Magyar Nemzeti Bank*, 692 F.3d 661, 686 (7th Cir. 2012).

Section 1605(a)(5), in turn, denies immunity "for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state"—thus implicitly requiring a direct connection between the dispute, the foreign sovereign, and the United States. *See Cmty. Fin. Grp., Inc. v. Republic of Kenya*, 663 F.3d 977, 982 (8th Cir. 2011) (citing *Amerada Hess Shipping Corp.*, 488 U.S. at 441). In other words, a foreign sovereign must commit a tort that causes harm in the United States.

The arbitration exception, 28 U.S.C. § 1605(a)(6), follows the same model as the prior exceptions. It allows suit in the U.S. to "enforce" an arbitral agreement and "confirm" the resulting award. *Id*. The required connection with the United States is implicit in the very notion of enforcement and confirmation, which requires the presence of the person against which to enforce the agreement or the property against which to confirm the award. Mark Feldman, Chair of the Ad Hoc Committee on Revision of the FSIA, so observed, stating: "Enforcement of arbitral awards … requires the presence of property of the defendant in the United States."[9] Feldman further noted that "there would seem to be no unfairness in allowing an action to realize on [a] debt in a state *where the defendant has property*."[10] Thus, Congress yet again demonstrated its intent to require a

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[9] *Arbitral Awards: Hearing Before the Subcomm. On Admin. Law and Governmental Relations of the H. Comm. On the Judiciary*, 99th Cong. 102–03 (1986).

[10] *Id*. at 98 (emphasis added).

connection between the dispute and the forum before allowing a suit against a foreign sovereign to proceed.

The Ninth Circuit's decision is thus consistent with both Congress's intent in enacting the FSIA's exceptions and the language Congress chose to express that intent.

C. The panel's decision aligns with the historic treatment of foreign sovereigns and reinforces the separation of powers.

If the Court were to resolve the statutory question in Petitioners' favor, it would then need to reach the constitutional aspect of the question: whether foreign sovereigns are "persons" entitled to due process in United States courts. The Court should not rush to take up that question, particularly in such an unusual and ill-suited vehicle (*see* Section IV, *infra*).

Contrary to Petitioners' suggestion, there is nothing incongruent or ahistorical about applying basic constitutional due process requirements when foreign sovereigns are sued in U.S. courts. Congress and the courts historically viewed foreign sovereigns as "persons." *See People v. McLeod*, 25 Wend. 483, 536, 551–52, 595 (N.Y. 1841) (discussing the imputation of the acts of subjects to their sovereigns as though both are persons with moral and legal agency); *The Schooner Exch. v. McFaddon*, 11 U.S. 116, 130 (1812) (explaining the possessive rights of sovereigns and the exercise of jurisdiction over sovereigns in terms of persons); *see also The Jurisdictional Immunity of Foreign Sovereigns*, 63 Yale L.J. 1148, 1149 (June 1954) (describing *The*

Schooner Exchange as holding "that the immunity of the sovereign *person* extended to the sovereign's public armed vessels") (emphasis added). There is thus ample support for application of minimum contacts analysis as a constitutional matter, not just a statutory mandate.

Petitioners make much of this Court's citation in *Weltover*, to *South Carolina v. Katzenbach*, 383 U.S. 301 (1966). They characterize it as suggesting that foreign states should not be entitled to due process-based protections if U.S. states are not. Petitioners make too much of a "cf" citation to a decision that "was not about personal jurisdiction" and "is explicitly limited to 'States of the Union.'" Wuerth, 88 Fordham L. Rev. at 649. But were the Court to take up this issue, it would have to consider that, as an historic matter, foreign sovereigns are very differently situated, in terms of their relationship to the federal government and our Constitution, than U.S. states.

When ratifying the Constitution, each U.S. state opted in to our unique federal structure, which is characterized by a particular balance between state and federal authority. *See* The Federalist No. 9 (Alexander Hamilton) ("The proposed Constitution, so far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the Senate, and leaves in their possession certain exclusive and very important portions of sovereign power."). As a result of their status within the union, U.S. states enjoy many privileges that foreign governments do not, including representation for their citizens in Congress and the

Electoral College;[11] unrestricted access for their businesses to the common market of the United States;[12] freedom of travel throughout the nation for their residents;[13] and full faith and credit afforded to the judgments of their courts in the courts of all other states.[14] U.S. states also have recourse, should the federal government take an action adverse to their interests, through both judicial and legislative action. States thus have an ability to influence the federal government that a foreign sovereign could never hope to enjoy, even where there is a strong diplomatic relationship. There is thus nothing anomalous in suggesting that domestic and foreign states may be treated differently for purposes of the due process clause and its application to personal jurisdiction.

Finally, rather than violating the separation of powers as Petitioners assert (*e.g.*, Devas.Pet.3), the panel's decision protects the Executive Branch's primary role in conducting foreign relations. The decision below, and the long line of precedent on which it is based, ensure that courts do not assert jurisdiction so broadly as to interfere in foreign disputes in which the U.S. has no interest or stake, and thereby threaten diplomatic relations with allies such as India.

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[11] U.S. Const. art. I, § 2.
[12] *See Great Atl. & Pac. Tea Co. v. Cottrell*, 424 U.S. 366, 380 (1976).
[13] *See Saenz v. Roe*, 526 U.S. 489, 501 (1999).
[14] U.S. Const. art. IV, § 1.

II. The decision below aligns with precedent from across the circuits.

In addition to being well grounded in the FSIA's history and text, the panel decision is no outlier, as Petitioners claim. *E.g.*, Devas.Pet.2. It is consistent with a long line of precedent applying minimum contacts requirements in FSIA suits.

A. Before and after *Weltover*, courts have applied minimum contacts requirements in FSIA cases.

The Ninth Circuit's decision aligns with precedent from most of the remaining circuits. Specifically, the Third, Fourth, Fifth, Sixth, Eighth, and Eleventh Circuits have all determined, either implicitly or explicitly, that the various FSIA exceptions to sovereign immunity reflect and embody traditional due process standards, requiring a minimum contacts analysis to exercise jurisdiction.

For example, in *Stena Rederi AB v. Comision de Contratos del Comite Ejecutivo General del Sindicato Revolucionario de Trabajadores Petroleros de la Republica Mexicana, S.C.*, the Fifth Circuit held that there was no jurisdiction under the commercial activities exception due to the lack of connection between the dispute and the United States. 923 F.2d 380, 391 (5th Cir. 1991). The court of appeals opined: "Pemex's commercial operations are not of sufficient import—both in relation to the territorial boundaries of the United States and Stena's causes of action—to support … jurisdiction under the FSIA." *Id.* In the course of its analysis, the court noted: "As with all

suits … the exercise of personal jurisdiction must comport with the requirements of due process." *Id.* at 386 n.8 (citing *Callejo v. Bancomer, S.A.*, 764 F.2d 1101, 1107 n.5 (5th Cir. 1985)).

The Sixth Circuit also employs a minimum contacts analysis in FSIA cases. In *Antoine v. Atlas Turner, Inc.*, the corporate defendant, "an instrumentality of a foreign state," argued "that the District Court lacked personal jurisdiction because Atlas did not have the requisite minimum contacts with the State of Ohio." 66 F.3d 105, 109, 111 (6th Cir. 1995). The court rejected this argument—but not because it thought minimum contacts were unnecessary. To the contrary, the court adopted Ninth Circuit precedent applying the minimum contacts analysis, explained how to conduct the minimum contacts analysis in an FSIA case, and upheld the lower court's conclusion that defendant had sufficient contacts in the United States. *Id.*

The Eighth, Third, and Fourth Circuits have similarly expressed agreement with the Ninth Circuit's rule requiring a minimum contacts showing to allow a suit to proceed under the FSIA. *See BP Chems. Ltd., an Eng. Corp. v. Jiangsu SOPO Corp. (Grp.) Ltd.*, 420 F.3d 810, 818 (8th Cir. 2005) ("The district court found SOPO had sufficient contacts with the United States to fit within the commercial activity exception of the FSIA. We believe this is dispositive of the related issue whether SOPO had sufficient minimum contacts with an American forum that it could be expected to be haled into court there."); *Velidor v. L/P/G Benghazi*, 653 F.2d 812, 819 n.12 (3d Cir. 1981) ("We must also inquire …

whether the assertion of personal jurisdiction comports with the due process clause."); *cf. Gerding v. Republic of France*, 943 F.2d 521, 527 (4th Cir. 1991) ("When the district court examined these contacts it found that the Gerdings had not satisfied the due process 'minimum contacts' standard, much less the FSIA's 'substantial contacts' requirement.").

The Eleventh Circuit also requires minimum contacts, notwithstanding Petitioners' argument to the contrary. Before *Weltover*, the Eleventh Circuit evaluated minimum contacts in detail when assessing personal jurisdiction under the FSIA, explaining that, because the FSIA "cannot create personal jurisdiction where the Constitution forbids it, we must assess the exercise of authority against the standards of due process." *Harris Corp. v. Nat'l Iranian Radio & Television*, 691 F.2d 1344, 1352 (11th Cir. 1982) (internal quotation omitted). After *Weltover*, the Eleventh Circuit continues to do so. *See Vermeulen v. Renault, U.S.A., Inc.*, 985 F.2d 1534, 1545 (11th Cir. 1993) ("Because we similarly conclude that [Defendant, a government-owned car manufacturer] possessed minimum contacts to satisfy the Due Process Clause, we likewise hold that the exercise of federal jurisdiction in this case would not violate [Defendant's] constitutional rights."). The Eleventh Circuit case on which Petitioners rely to suggest otherwise did not address whether the foreign sovereign was entitled to due process, instead holding that minimum contacts existed under the FSIA's commercial activity exception. *See S & Davis Int'l, Inc.*, 218 F.3d at 1303–04 ("We do not need to determine the precise constitutional status of a

foreign sovereign because we find that the due process requirements have been met[.]").

Thus, far from being an outlier, the Ninth Circuit's unreported decision comports with the rule applied by a majority of circuits: i.e., that there must be some connection between the parties, the dispute, and the United States for a foreign sovereign to be hauled into U.S. court. And that rule, in turn, rests on fundamental due process and fairness principles, which this Court should not rush to abandon.

B. The contrary precedent on which Petitioners rely arises out of the FSIA's terrorism exception, which is different in text and intent.

The cases on which Petitioners rely to argue that minimum contacts requirements do not apply in FSIA cases—either as a matter of statutory text or constitutional right—are drawn from a minority of circuits that reached that conclusion based on precedent assessing a unique FSIA exception not at issue here: the terrorism exception.

Specifically, the Second and Seventh Circuits relied on the D.C. Circuit's decision in *Price* to hold that a minimum contacts analysis is not required in FSIA cases. *See Frontera Res. Azerbaijan Corp. v. State Oil Co. of the Azerbaijan Republic*, 582 F.3d 393, 399 (2d Cir. 2009) (relying on *Price*); *Abelesz*, 692 F.3d at 694 (citing *Price and Frontera*). The Second Circuit, however, has since questioned the validity of its decision to broadly dispense with due process protections for foreign sovereigns. *See Gater Assets*

Ltd. v. AO Moldovagaz, 2 F.4th 42, 66 n.24 (2d Cir. 2021) ("Recent scholarship questions our earlier holding in *Frontera* that foreign sovereigns do not qualify as persons under the Due Process Clause."). In any event, *Price*'s analysis of the terrorism exception does not support applying its reasoning to other FSIA exceptions.

In *Price*, the D.C. Circuit acknowledged that, "[w]hen Congress passed the original FSIA, it was assumed that the exercise of personal jurisdiction over foreign states under the statute always would satisfy the demands of the Constitution." 294 F.3d at 90. But the court explained that *the text of the terrorism exception* did not reflect the same intent. *See id.* ("The antiterrorism amendments changed this statutory framework."). Rather, on its face, that exception's text indicated Congress's intent to allow suits based on acts of terror *against U.S. nationals and employees* to proceed, even where the connection to the United States would not satisfy traditional "minimum contacts" standards. *Id.*[15]

Both Petitioners and Judge Bumatay, in his opinion dissenting from denial of *en banc* review, highlight the terrorism exception case law. But there is nothing in the unpublished decision below or prior Ninth Circuit precedent that would prevent a future panel addressing *the terrorism exception* from

[15] Having determined that application of the terrorism exception did not require a minimum contacts showing, the *Price* court considered whether constitutional due process applies to foreign sovereigns (294 F.3d at 95–99). The Ninth Circuit did not reach that issue here, and this Court should not reach it either.

reaching the same conclusion as the *Price* court. The unique text, context, and history of the terrorism exception, 28 U.S.C. § 1605A, may well overcome any assumption that Congress expected traditional due process concerns to limit jurisdiction over foreign sovereigns. But that issue is not presented here.

This case concerns the FSIA's arbitral award enforcement exception, 28 U.S.C. § 1605(a)(6), for which there is no indication that Congress intended the traditional rule requiring some connection between the dispute, the parties, and the forum before hauling a foreign state (let alone a state-owned corporation) into U.S. court to fall by the wayside. The arbitral exception also presents none of the special foreign policy concerns associated with protecting U.S. nationals and government employees abroad from terrorism. Where a foreign sovereign has had no relevant contact with the United States, has no presence in the forum, and has no property in the forum against which to enforce a judgment, it is difficult to identify any interest that the United States has in lending its courts to enforcement actions for foreign arbitral awards. Conversely, it would be unfair to subject a foreign sovereign to suit in such circumstances.

Were Petitioners' view to prevail, the result would be highly incongruous: only the arbitration exception would allow an FSIA suit to proceed in a U.S. court where there is no connection between the foreign parties, their dispute, and the forum, but rather was brought solely to subject a foreign sovereign to U.S.-style discovery. This Court should not rush to re-

interpret the FSIA's immunity exceptions in such an illogical and imbalanced way.

Indeed, even the terrorism exception requires a connection between the suit and the United States; suit may only be brought by *U.S. nationals, government employees or contractors, or members of the armed forces*. *See* 28 U.S.C. § 1605A(a)(2)(A)(ii). Thus, relying on the terrorism exception to jettison the minimum contacts test for all FSIA exceptions is illogical. That a few circuits continue to apply the rule arising out of *Price*'s examination of the terrorism exception in other FSIA cases does not create a need for this court to re-examine the Ninth Circuit's longstanding application of traditional minimum contacts requirements.

Petitioner Devas argues that the panel's decision "undermines Congress's goal of creating 'a uniform body of law concerning the amenability of a foreign sovereign to suit in United States courts.'" Devas.Pet.3 (quoting *First National City Bank* v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 622 n.11 (1983) ("*Bancec*"). But it is the few circuits that have extended an exemption to the minimum contacts requirement that arose out of the peculiarities of the terrorism exception to other FSIA claims that have undermined an otherwise uniform body of law recognizing that due process must be observed for a foreign state to be hauled into U.S. courts. The Ninth Circuit did nothing more than apply the traditional rule to a case where there is plainly no connection between the parties, the dispute, and the United States. There is no cause for this Court to review that unremarkable decision.

III. The question presented rarely arises.

The panel opinion rightly recognized that the question of whether there must be minimum contacts to sue under the FSIA's arbitration exception rarely arises, for a simple reason: "In most cases involving the enforcement of an arbitral award[,]" that requirement "can easily be satisfied by the presence of assets in the forum." Int.Pet.App.11a. The concurring opinion further noted that Petitioners "forfeited" their opportunity to invoke jurisdiction on that basis, even in briefing on appeal, after learning of funds owed to Antrix in Virginia. That makes it particularly inappropriate to use this case as the vehicle for this Court to take up the questions of whether either the FSIA or the Constitution requires a minimum contacts analysis. Int.Pet.App.12a.

Petitioners nonetheless assert that the issue presented here is likely to recur because foreign states are regularly sued in the Ninth Circuit. Int.Pet.22. But the cases they cite only demonstrate, by contrast, how unique the issue raised here is:

- *Mohammad v. General Consulate of State of Kuwait in L.A.*, 28 F.4th 980, 983–84 (9th Cir. 2022), was brought under the commercial activities exception; the defendant consulate was a California employer with substantial contacts with the forum; and the cause of action arose from those contacts.

- The Ninth Circuit resolved *Broidy Capital Management, LLC v. State of Qatar,* 982 F.3d 582, 594–96 (9th Cir. 2020), by concluding that

neither the tortious conduct nor the commercial activity exceptions applied based on the facts of the case.

- The Ninth Circuit dismissed claims against the Ukraine in *Baiul-Farina v. Lemire*, 804 F. App'x 533, 537 (9th Cir. 2020), because the state was "fraudulently joined."

- In *Sequeira v. Republic of Nicaragua*, 791 F. App'x 681 (9th Cir. 2020), the Ninth Circuit agreed that the plaintiff did not allege facts showing that the defendant was subject to the waiver or commercial activity exceptions.

- In *Sukyas v. Romania*, 765 F. App'x 179, 179–80 (9th Cir. 2019), the Ninth Circuit affirmed that defendant lacked sufficient connections with the United States to come within the commercial activities exception, but ordered the district court to reevaluate whether the expropriation exception applied.

None of these cases concern the FSIA's arbitration exception. Most simply addressed whether a plaintiff had alleged facts sufficient to meet the specific requirements of some other exception. Thus, far from being an issue of great importance, the issue raised here is an obscure one. But if the Court were to take it up and broadly hold, as Petitioners ask, that there are no minimum contacts requirements to sue a foreign sovereign under any FSIA exception, the Court would be opening the doors of all U.S. courts—and our liberal discovery process—to foreign disputes that have no connection to the United States.

IV. The question is not cleanly presented here.

This case is unique, and the context is strange. It does not present the question Petitioners seek to raise "cleanly," as they claim. Int.Pet.24; Devas.Pet.20. Quite the opposite; there are several threshold issues that logically precede that question, and that make this case an inappropriate vehicle for the Court to resolve the question posed.

A. The arbitral award no longer exists.

It would be incongruous for the Court to take up the issue raised here—whether there must be a minimum contacts showing when a foreign entity is sued under the FSIA's arbitral award exception—when there is no longer an arbitral award to enforce because it has been set aside by the court of competent jurisdiction in the country where it was made.

Having resolved the issue on minimum contacts, the Ninth Circuit did not have occasion to consider this case's unique posture: there is no longer an Award to enforce because the Delhi High Court set it aside. ECF 72 at 28–115; ECF 85 at 2–134. No party disputes that the Delhi High Court—Devas's chosen forum—is the court of competent jurisdiction to decide the validity of the Award. ER-251–252; 3-ER-351–354. And the Indian Supreme Court has dismissed Devas's final appeal to that decision. *See* ECF 116, Attach. A.

The Delhi High Court's set-aside of the Award rendered it unenforceable under the New York Convention. *See* N.Y. Convention Guide, Art. V(1)(e);

9 U.S.C. § 207. Every circuit court to address the issue has held that "an arbitration award does not exist to be enforced … if it has been lawfully 'set aside' by a competent authority in the State in which the award was made." *TermoRio S.A. E.S.P. v. Electranta S.P.*, 487 F.3d 928, 935–36 (D.C. Cir. 2007); *see Esso Expl. & Prod. Nigeria Ltd. v. Nigerian Nat'l Petroleum Corp.* ("*Esso*"), 40 F.4th 56, 74 (2d Cir. 2022); *Getma Int'l v. Republic of Guinea*, 862 F.3d 45, 48 (D.C. Cir. 2017); *Baker Marine (Nig.) Ltd. v. Chevron (Nig.) Ltd.*, 191 F.3d 194, 197–98 (2d Cir. 1999). The result is the same even when the award is set aside after a judgment enforcing it. *See Thai-Lao Lignite (Thailand) Co. v. Gov't of Lao People's Democratic Republic*, 864 F.3d 172, 179–80 (2d Cir. 2017). A suit cannot be brought under the FSIA's arbitration exception to enforce an award that does not exist.

Only twice have circuit courts refused to recognize a set-aside as "repugnant to fundamental notions of what is decent and just." *See Corporacion Mexicana De Mantenimiento Integral, S. De R.L. De C.V. v. Pemex-Exploracion Y Produccion*, 832 F.3d 92, 108–10 (2d Cir. 2016) (addressing retroactive law resulting in public taking); *Compania de Inversiones Mercantiles S.A. v. Grupo Cementos de Chihuahua S.A.B. de C.V.*, 58 F.4th 429, 460–61 (10th Cir. 2023) (parties waived right to seek annulment). That "standard is high, and infrequently met," *Esso*, 40 F.4th at 73–74 (internal quotation omitted). No such showing could be made here, where the set-aside decision was thoroughly explained by the Delhi High Court, properly considered on appeal, and has been confirmed by the Indian Supreme Court.

The judgment enforcing the Award thus cannot stand, even setting aside the minimum contacts issue. Petitioners argue that this Court *could* address the due process issues they raise, leaving for later whether there is an extant award to enforce, but offer little explanation as to why this Court *should* choose to take up such questions in the context of an attempt to enforce an award that no longer exists.

B. Antrix is a state-owned corporation, not a foreign government.

Even if this Court were inclined to determine whether foreign *states* lack due process rights under both the FSIA and the Constitution, the answer to that question would not directly address the question of Antrix's due process protections as a foreign *corporation*. *See Daimler AG v. Bauman*, 571 U.S. 117 (2014); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984) (finding insufficient minimum contacts to allow suit to proceed against Columbian government-owned corporation). As a foreign *corporation* that is independently operated, Antrix is entitled to due process protections absent a particular (and onerous) showing of control by the foreign state. *Bancec*, 462 U.S. at 626–27.

This traditional rule that foreign state-owned corporations have due process rights so long as they have separate legal persona would quickly render irrelevant the questions presented to this Court regarding a foreign *sovereign's* entitlement to a minimum contacts analysis, whether based on the FSIA or the Constitution. Under this Court's precedent, state-owned companies are "juridical

entities distinct and independent from their sovereign" unless there is a showing of *both* extensive control of the corporation by the foreign state, *and* that the corporation was used for fraudulent purposes. *Bancec*, 462 U.S. at 626–27; *Doe v. Holy See*, 557 F.3d 1066, 1076–80 (9th Cir. 2009) (applying *Bancec* analysis to determine that acts by "corporations created by the Holy See" could *not* be attributed to it); *Gater Assets Ltd.*, 2 F.4th at 56 (finding same for corporation of Republic of Moldova). Nothing in the decisions of the courts below suggests that Antrix would be deprived of due process under a proper *Bancec* analysis. The district court did not even cite *Bancec*, *see* Int.Pet.App.17a-35a, and the Ninth Circuit did not address it in its decision.

But a proper *Bancec* analysis would obviate the need to answer the question that Petitioners ask this court to take up. There is no need to consider whether foreign states are entitled to due process protections, either as a matter of statutory text or constitutional right, if Antrix—as a foreign corporation—is entitled to such protections anyway. This Court should decline to take up the statutory and constitutional issues raised by Petitioners where their resolution would not dispose of this case.

Intervenor-Petitioners make the unremarkable point that the Court of Appeals could address any other issues raised by this case on remand. Int.Pet.25. But they fail to grapple with the fact that the issues discussed above make this case a poor vehicle to address the questions they raise. The cases Intervenor-Petitioners cite did not leave similar issues for the lower courts to address on remand—let

alone issues that similarly call into question the validity of taking further action in the case. In *Samantar v. Yousuf*, 560 U.S. 305, 311, 325–26 (2010), the Court held that the FSIA does not address the immunity claims of foreign *officials*, and left it for the lower courts to determine on remand whether common law alternatively entitled the defendant to immunity. And the Court in *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 445 (2020), simply held that domestic principles of equitable estoppel do not conflict with the New York Convention, and then left it to the court of appeals to *apply* those principles to an arbitration clause. Neither of those cases bypassed threshold issues that would obviate any need to address the question presented.

This case is thus not an appropriate vehicle to address the questions of due process and sovereign immunity that Petitioners raise.

CONCLUSION

The Petitions should be denied.

Respectfully submitted,

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