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,

v.

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

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

BRIEF FOR PETITIONERS CC/DEVAS (MAURITIUS) LIMITED, ET AL.

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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 in No. 23-1201 are CC/Devas (Mauritius) Limited; Devas Multimedia America, Inc.; Devas Employees Mauritius Private Limited; and Telcom Devas Mauritius Limited. Petitioners in No. 23-1201 are Respondents in No. 24-17 and 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 in No. 23-1201 are Antrix Corp. Ltd. and Devas Multimedia Private Limited. Respondent Antrix Corp. Ltd. is a Respondent in 24-17 and 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 is a Petitioner in No. 24-17 and 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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Rules

Other Authorities

BRIEF FOR PETITIONERS
CC/DEVAS (MAURITIUS LIMITED) ET AL.

OPINIONS BELOW

The Ninth Circuit's opinion (Pet.App. 1a-12a) is unreported but is available at 2023 WL 4884882. The Ninth Circuit's denial of rehearing (Pet.App. 42a-68a) is reported at 91 F.4th 1340. The opinion of the district court confirming the arbitral award (Pet.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 (Pet.App. 36a-41a) is unreported but is available at 2022 WL 36731.

JURISDICTION

The court of appeals entered judgment on August 1, 2023. Timely petitions for rehearing were denied on February 6, 2024 (Pet.App. 45a). The timely petitions for certiorari were granted on October 4, 2024. This Court's jurisdiction rests on 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 subsec-

tion (a) where service has been made under section 1608 of this title.

STATEMENT

In the Foreign Sovereign Immunities Act (FSIA or Act), Congress and the President created a comprehensive scheme governing when United States courts may exercise jurisdiction over foreign states. The FSIA provides that "a foreign state shall be immune" unless one of several enumerated exceptions to immunity applies. 28 U.S.C. § 1604. The FSIA includes a system governing service of process on a foreign state. *Id*. § 1608. And the FSIA provides that "personal jurisdiction over a foreign state shall exist as to every claim for relief" where an enumerated exception to immunity applies and "where service has been made" under Section 1608. *Id.* § 1330(b).

Here, it is undisputed that one of the FSIA's enumerated exceptions to immunity, the arbitral exception, 28 U.S.C. § 1605(a)(6), applies. Pet.App. 54a. And it is likewise undisputed that service was properly made under Section 1608. Yet the Ninth Circuit vacated the judgment confirming an arbitration award, holding that FSIA plaintiffs must satisfy an additional requirement—found nowhere in the text of the FSIA or the Constitution—and prove that a foreign state has the requisite minimum contacts with the United States to satisfy the standard of *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), and its progeny. That holding is wrong and should be reversed.

The FSIA's text is clear. Personal jurisdiction "*shall exist*" if a state is served and is not immune under the Act. The Ninth Circuit based its contrary

holding not on the text, but on decades-old precedent that rests on a misinterpretation of the FSIA's legislative history. That legislative history cannot supersede the text of the Act and, in any event, does not support the Ninth Circuit's holding.

Nor does the Constitution provide a basis for requiring minimum contacts, as Antrix has argued and another Ninth Circuit precedent erroneously holds. The Fifth Amendment provides that no "person" may be "deprived of * * * property, without due process of law." U.S. Const. amdt. V. In *Republic of Argentina* v. *Weltover, Inc.*, this Court suggested that foreign states, like States of the Union, are not "persons" protected by the Due Process Clause. 504 U.S. 607, 619 (1992). That suggestion conforms both with the interpretive principle that "person" does not include a sovereign and the Court's precedent holding that States of the Union are not persons entitled to invoke due process protections.

But even if foreign states were "persons" protected by the Due Process Clause, there still would be no basis for imposing a minimum-contacts limitation on the FSIA's assertion of personal jurisdiction over foreign states. Congress and the President, acting in a domain in which they have exclusive competence, have provided in the FSIA a comprehensive system of substantive and procedural protections for foreign states. The FSIA's protections far exceed whatever process is due in this area under the Fifth Amendment.

1. For most of this Nation's history, "the United States generally granted foreign sovereigns complete immunity from suit in the courts of this country." *Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480,

486 (1983). At the time of the founding, it was generally understood that "the jurisdiction of a nation within its own territory 'is susceptible of no limitation not imposed by itself,'" and this Nation accorded immunity to foreign states as "a matter of grace and comity on the part of the United States, and not a restriction imposed by the Constitution." *Ibid.* (quoting *The Schooner Exchange* v. *McFaddon*, 11 U.S. (7 Cranch) 116, 136 (1812)). Because the immunity of foreign states from the jurisdiction of U.S. courts "stands upon principles of public comity and convenience" "it may be withdrawn upon notice at any time, without just offence." *The Santissima Trinidad*, 20 U.S. (7 Wheat.) 283, 353 (1822).

Because the immunity of foreign states from the jurisdiction of federal courts was understood as a matter of comity and custom rather than constitutional right, courts correctly "deferred to the decisions of the political branches—in particular, those of the Executive Branch—on whether to take jurisdiction over actions against foreign sovereigns and their instrumentalities." *Verlinden*, 461 U.S. at 486. The longstanding practice of federal courts was to abstain from exercising jurisdiction over foreign states and their property in all cases in which the State Department recognized a claim of immunity. A foreign state threatened with suit in American courts could "present its claim to the Department of State, the political arm of the Government charged with the conduct of our foreign affairs." *Ex parte Republic of Peru*, 318 U.S. 578, 588 (1943). "Upon recognition and allowance of the claim by the State Department and certification of its action presented to the court by the Attorney General, it [was] the court's duty" to refrain

from exercising its jurisdiction and refer the plaintiff to "relief obtainable through diplomatic negotiations." *Ibid.*

Just as it was "not for the courts to deny an immunity which our government ha[d] seen fit to allow," courts also had no warrant "to allow an immunity on new grounds which the government ha[d] not seen fit to recognize." *Republic of Mexico* v. *Hoffman*, 324 U.S. 30, 35 (1945). That is because "recognition by the courts of an immunity upon principles which the political department of government has not sanctioned may be equally embarrassing" as the judicial denial of a recognized immunity "in securing the protection of our national interests and their recognition by other nations." *Id.* at 36.

2. This regime was in place for most of our nation's history. "Until 1952, the State Department ordinarily requested immunity in all actions against friendly foreign sovereigns." *Verlinden*, 461 U.S. at 486. That year, the State Department in the "Tate Letter" announced that it "would thereafter apply the 'restrictive theory' of sovereign immunity," under 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*)." *Republic of Austria* v. *Altmann*, 541 U.S. 677, 689-90 (2004).

"[T]he change in State Department policy wrought by the 'Tate Letter' had little, if any impact on federal courts' approach to immunity analyses" because "'[a]s in the past, initial responsibility for deciding questions of sovereign immunity fell primarily upon the Executive acting through the State Depart-

ment,' and courts continued to 'abid[e] by' that Department's 'suggestions of immunity.'" *Id.* at 690 (quoting *Verlinden*, 461 U.S. at 487).

The State Department's adoption of the restrictive theory of sovereign immunity nevertheless "'thr[ew] immunity determinations into some disarray,' since 'political considerations sometimes led the Department to file suggestions of immunity in cases where immunity would not have been available under the restrictive theory.'" *Republic of Argentina* v. *NML Capital, Ltd.*, 573 U.S. 134, 141 (2014) (quoting *Altmann*, 541 U.S. at 690). And "when in particular cases the State Department did *not* suggest immunity, courts made immunity determinations 'generally by reference to prior State Department decisions.'" *Ibid.*

Thus, between 1952 and 1976, "sovereign immunity determinations were made in two different branches, subject to a variety of factors, sometimes including diplomatic considerations" and "the governing standards were neither clear nor uniformly applied." *Verlinden*, 461 U.S. at 488.

3. In 1976, Congress and the President "abated the bedlam" of the Tate Letter system by enacting the FSIA. *NML Capital*, 573 U.S. at 141. "By reason of its authority over foreign commerce and foreign relations, Congress has the undisputed power to decide, as a matter of federal law, whether and under what circumstances foreign nations should be amenable to suit in the United States." *Verlinden*, 461 U.S. at 493. Congress accordingly "exercised its Article I powers by enacting a statute comprehensively regulating the amenability of foreign nations to suit in the United States"—the FSIA. *Ibid.* (footnote omitted).

The FSIA defines "foreign state" to "includ[e] a political subdivision of a foreign state or an agency or instrumentality of a foreign state." 28 U.S.C. § 1603(a). It further defines an "agency or instrumentality of a foreign state" in relevant part as "any entity" "which is 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," and "which is neither a citizen of a State of the United States * * * nor created under the laws of any third country." *Id.* § 1603(b).

The FSIA provides that "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. Section 1605, in turn, enumerates a series of exceptions for when "[a] foreign state shall not be immune from the jurisdiction of courts of the United States." *Id.* § 1605(a). These include actions "in which the foreign state has waived its immunity," *id.* § 1605(a)(1), actions based on the "commercial activity" of the foreign state, *id.* § 1605(a)(2), actions seeking relief for injuries caused by terrorism, *id.* § 1605A, and actions to enforce arbitral awards, *id.* § 1605(a)(6).

The FSIA also governs service of process on a foreign state, including an instrumentality or agency of a foreign state. 28 U.S.C. § 1608. Section 1608 sets out "strict requirements" that differ from the ordinary rules of service and that must be followed to effect service on a foreign state. *Republic of Sudan* v. *Harrison*, 587 U.S. 1, 19 (2019); Fed. R. Civ. P. 4(j) ("A foreign state * * * must be served in accordance with 28 U.S.C. § 1608.").

Finally, the FSIA contains two provisions granting federal courts jurisdiction over cases against foreign states. Section 1330(a) provides "subject-matter jurisdiction in federal courts" whenever "a suit falls within" one of the FSIA's exceptions from immunity. *Harrison*, 587 U.S. at 4 (citing 28 U.S.C. § 1330(a)). And Section 1330(b) provides that "[p]ersonal jurisdiction over a foreign state shall exist as to every claim" where the federal court has subject-matter jurisdiction under Section 1330(a) and "where service has been made under section 1608." 28 U.S.C. § 1330(b).

4. This case arises from a dispute between Devas Multimedia Private Ltd. (Devas), an Indian corporation, and Antrix Corp. Ltd., a corporation wholly owned by the Republic of India. Pet.App. 17a. India created Antrix as the commercial arm of India's Department of Space and the Indian Space Research Organization. Pet.App. 53a.

Devas was incorporated by a group of American telecommunications executives and investors to provide satellite-carried telecommunications services in India. Pet.App. 53a. Devas and Antrix signed a contract in which Antrix agreed to build, launch, and operate two government satellites and to lease S-band spectrum and transponders on those satellites to Devas. Pet.App. 17a. The agreement contained an arbitration clause submitting disputes to arbitration "in accordance with the rules and procedures of the ICC (International Chamber of Commerce) or UNCITRAL." Pet.App. 18a.

The Government of India later decided to retain the spectrum for itself. So it instructed Antrix to ter-

minate the contract with Devas, which Antrix did. Pet.App. 18a.

Devas commenced an ICC arbitration, and the arbitral tribunal concluded that Antrix had wrongfully repudiated its agreement. Pet.App. 20a. The panel issued Devas an award of $562.5 million plus interest. Pet.App. 20a.

5. Devas petitioned to confirm the award in the U.S. District Court for the Western District of Washington. Pet.App. 20a. Antrix moved to dismiss the petition, arguing (among other things) that the district court lacked personal jurisdiction over it. Pet.App. 13a. The parties "d[id] not dispute that personal jurisdiction exists as a matter of statute, but Antrix maintain[ed] that it is entitled to additional, constitutional due process protections requiring a minimum contacts analysis." *Ibid.*[1]

The district court rejected this argument. Relying on decisions of the Second, Fifth, and D.C. Circuits, the district court determined that foreign states are not "persons" under the Due Process Clause and that, "[w]here the state exercises sufficient control over a foreign corporation, the due process clause does not apply and statutory personal jurisdiction under the FSIA is all that is required." Pet.App. 14a.

Because the district court found that "[t]he Government of India exercises 'plenary control' over Antrix in a principal-agent relationship," it concluded that "Antrix is not a 'person' for due process purposes"

[1] Antrix did not dispute that the suit was properly venued in the Western District of Washington based on its "doing business" in the district. 28 U.S.C. § 1391(f)(3).

and that it had personal jurisdiction under the FSIA. Pet.App. 13a-14a. The district court also held, in the alternative, that even if Antrix were "entitled to due process protection, due process ha[d] been satisfied in this case because [Antrix] possesses the requisite 'minimum contacts' with the United States." Pet.App. 22a.

The district court rejected Antrix's other arguments against confirmation (which are not relevant here) and entered judgment in favor of Devas. Pet.App. 34a. Antrix appealed.

6. While Antrix's appeal was pending, Antrix petitioned a corporate-law tribunal in India to liquidate Devas based on unsubstantiated assertions that Devas had procured the Devas-Antrix agreement through fraud—assertions that Antrix had never raised in nearly a decade of arbitration and litigation. Pet.App. 54a-55a. The next day, without permitting Devas to file a response, the Indian tribunal granted Antrix's petition and appointed an official liquidator (Liquidator), who is an employee of the Government of India, to seize control of Devas. *Ibid.*

Upon seizing control of Devas, the Liquidator fired Devas's award-enforcement counsel throughout the world and left Devas unrepresented in the district court and the Ninth Circuit for months. Three of Devas's shareholders and its Delaware subsidiary (Petitioners) intervened in both the district court and the Ninth Circuit to defend and enforce the award. Pet.App. 54a-55a.

The district court permitted Petitioners to conduct post-judgment discovery to locate Antrix's assets in the United States, and that discovery revealed a claim

that Antrix held in a bankruptcy proceeding in the Eastern District of Virginia. Pet.App. 37a, 41a. Over the objection of both Antrix and the Liquidator (assertedly representing Devas), the district court permitted Petitioners to register the judgment in the Eastern District of Virginia, and Petitioners garnished Antrix's claim in bankruptcy. *Ibid.* Both Antrix and the Liquidator separately appealed from the order permitting registration of the judgment. Pet.App. 3a.[2]

7. The Ninth Circuit decided all three appeals—Antrix's appeal from the judgment and Antrix's and the Liquidator's appeals from the registration order—on the ground that the district court lacked personal jurisdiction over Antrix. Pet.App. 3a-8a.

The Ninth Circuit acknowledged that "[t]he parties agree that for purposes of the FSIA, Antrix is a 'foreign state,' service has been made, and an enumer-

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[2] Meanwhile, in India, Antrix argued in its long-languishing case to set aside the arbitral award that the Indian corporate-law tribunal's findings provided a new basis to set aside the award. The Liquidator (purportedly acting for Devas) acquiesced in this argument. CA9 (No. 20-36024) Dkt. 72, at 31; CA9 (No. 20-36024) Dkt. 85, at 21-40; see also CA9 (No. 22-35085) Dkt. 24-2, at 4-6. And the Indian court set aside the award. Pet.App. 55a. Antrix then filed a motion for a limited remand from the Ninth Circuit. *Ibid.* But Antrix never moved the district court for an indicative ruling to set aside the judgment. Fed. R. Civ. P. 60, 62.1. Had Antrix done so, Petitioners would have opposed on the ground that the proceedings in India were "repugnant to fundamental notions of what is decent and just" and 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). Because these issues have yet to be presented to any U.S. court, they have no bearing on the question presented.

ated exception [to sovereign immunity] applies." Pet.App. 4a. But the panel nevertheless felt bound by Ninth Circuit precedent engrafting an atextual minimum-contacts requirement onto the FSIA.

The panel observed that in *Thomas P. Gonzalez Corp.* v. *Consejo Nacional De Produccion De Costa Rica*, 614 F.2d 1247 (9th Cir. 1980), the Ninth Circuit "held that 'the 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'" and "requires satisfaction of the traditional minimum contacts standard." Pet.App. 4a (quoting *Gonzalez*, 614 F.2d at 1255) (cleaned up). Based on *Gonzalez* and its progeny, the Ninth Circuit held: "It follows that if a foreign state is not a person and thus not entitled to a minimum contacts analysis through the Constitution, it is still entitled to a minimum contacts analysis through our reading of the FSIA." Pet.App. 5a.

The Ninth Circuit panel accordingly concluded that "the district court erred in ignoring our precedents requiring it to conduct a minimum contacts analysis" and that "[t]he district court also erred in concluding that Antrix has the requisite minimum contacts with the United States." Pet.App. 6a. Because it determined that the district court lacked personal jurisdiction over Antrix, the Ninth Circuit reversed the judgment against Antrix. Pet.App. 8a. And because there was no longer a judgment to register, the panel also reversed the order permitting Petitioners to register the judgment in the Eastern District of Virginia. *Ibid.*

Judge Miller, joined by Judge Koh, wrote a concurrence joining the disposition based on existing

Ninth Circuit precedent. Pet.App. 10a. But the concurring judges argued that this "precedent applying the minimum-contacts test to the exercise of personal jurisdiction over foreign states has no foundation in the Constitution or the FSIA" and suggested the Ninth Circuit should "reconsider it en banc." Pet.App. 10a-11a.

8. Petitioners and the Liquidator petitioned for rehearing en banc, but the Ninth Circuit denied those petitions over a dissent authored by Judge Bumatay and supported by six other circuit judges. Pet.App. 45a-46a. The dissenting judges reasoned that the FSIA's clear text granted the district court personal jurisdiction over Antrix. Pet.App. 47a. Because "some of [the Ninth Circuit's] later precedents began couching [its] minimum-contacts inquiry as a constitutional requirement," Pet.App. 62a—as Antrix has argued throughout the litigation—the dissenting judges also explained that "nothing in the Constitution requires a minimum-contacts analysis either," Pet.App. 49a, 62a.

9. Petitioners and the Liquidator both petitioned for certiorari. This Court granted both petitions and consolidated the cases for briefing and oral argument.

SUMMARY OF ARGUMENT

I.A. When Congress enacted the Foreign Sovereign Immunities Act, it established a comprehensive statutory framework governing the amenability of foreign states to suit in federal and state courts. In the FSIA, Congress provided that jurisdiction "shall exist" over "every claim" against a foreign state in which (1) an enumerated exception to immunity ap-

plies; and (2) the foreign state is properly served with process.

B. The Ninth Circuit erroneously engrafted onto the FSIA a minimum-contacts requirement found nowhere in the statutory text. Its precedent rested not on the text of the FSIA's personal jurisdiction provision but instead on the FSIA's commercial-activity immunity exception and on a House Committee report. The Ninth Circuit improperly allowed unenacted legislative history, which it misinterpreted, to trump the FSIA's clear text. That holding was wrong.

C. The arbitral exception, the only alternate textual basis for the Ninth Circuit's interpretation of the FSIA, provides no support for a minimum-contacts standard. It provides the express terms on which an arbitral award against a foreign state is enforceable in the United States, with no mention of minimum contacts. And the history of the enactment of the arbitral exception confirms that this proceeding was precisely the type of enforcement allowable under the FSIA.

D. The arbitral exception allows the United States to comply with its obligations under various international agreements requiring it to recognize arbitral awards. Congress was aware of those obligations when it enacted the FSIA and the arbitral exception, and there is no basis to impose on the FSIA a reading that would place the United States in violation of those obligations.

II.A. The Ninth Circuit's minimum-contacts requirement cannot be grounded in the Due Process Clause of the Fifth Amendment either. The original meaning of the Due Process Clause makes clear that foreign states have no right to demand a showing of

minimum contacts before being haled into a U.S. court. The word "person" in legal texts ordinarily is interpreted to exclude sovereigns, and this Court does not interpret the Constitution to accord due-process rights to the States of the Union.

B. Even if foreign states were "persons" entitled to "process," the Due Process Clause permits the exercise of personal jurisdiction where Congress has so provided regardless of whether the defendant has sufficient minimum contacts with the United States. This Court has never required minimum contacts under the Fifth Amendment. History provides no support for such a requirement. And the FSIA vastly exceeds whatever process may be due to foreign states.

C. The structural relationship between the United States and foreign states and the history of U.S. foreign-relations law confirm that foreign states do not enjoy a constitutional right to demand a showing of minimum contacts. Under basic principles of international law, disputes between juridically coequal sovereign states are not determined by the internal law of either state but by the law of nations, international agreements, and principles of comity. There is therefore no reason to interpret the Due Process Clause to accord rights to foreign states—who exist entirely outside our constitutional system—beyond those afforded by the political branches in the FSIA.

III. Finally, interpreting the Due Process Clause to accord foreign states a right to require proof of minimum contacts would contravene important legislative judgments of the political branches and call the FSIA into constitutional doubt. Congress determined that certain plaintiffs—victims of terrorism, those harmed by certain commercial activities of foreign states, and holders of arbitral awards against for-

eign states—are entitled to seek relief in this country's courts. Congress's authority in this field is paramount, and the Ninth Circuit's refusal to defer to its foreign-policy judgments in the FSIA violates the separation of powers and undermines important national interests.

ARGUMENT

I. The FSIA Does Not Require Minimum Contacts To Establish Personal Jurisdiction.

A. The FSIA's plain text precludes a minimum-contacts requirement.

The FSIA addresses subject matter and personal jurisdiction in parallel provisions. Section 1330(a) grants district courts subject-matter jurisdiction over any claim against a foreign state when the requirements for an exception to immunity under the FSIA are satisfied. And Section 1330(b) provides: "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." (emphasis added).

Under any plausible reading of its statutory text, the FSIA *requires* district courts to exercise personal jurisdiction whenever there is subject-matter jurisdiction and service in accordance with Section 1608. In "every" case where those conditions are satisfied, personal jurisdiction "shall exist." The word "shall" connotes a "mandatory" requirement. *Sebelius* v. *Auburn Regional Medical Center*, 568 U.S. 145, 154 (2013). And "every" identifies "each individual or part of a group *without exception*." *Webster's New Collegiate*

Dictionary 288 (1977 ed.) (emphasis added). "[I]t is hard to imagine a clearer statute." Pet.App. 58a. As this Court explained decades ago, "§ 1330(b) provides personal jurisdiction *wherever* [1] subject matter jurisdiction exists under subsection (a) and [2] service of process has been made under § 1608 of the Act." *Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 485 n.5 (1983) (emphasis added).

By directly tying the scope of personal jurisdiction over foreign states to the scope of the substantive exceptions to immunity, the FSIA's text and structure make personal jurisdiction coextensive with the Act's enumerated exceptions to immunity, so long as the plaintiff complies with Section 1608's reticulated service requirements to serve a foreign state. Antrix *itself* has conceded that the FSIA provides "that personal jurisdiction exists where, in addition to proper service, the textual requirements of an exception to immunity set forth in [§] 1605 have been met." Br. in Opp. 16. And, other than the Ninth Circuit, every court of appeals to consider the issue has agreed. See, *e.g.*, *Gater Assets Ltd.* v. *AO Moldovagaz*, 2 F.4th 42, 49 (2d Cir. 2021); *TMR Energy Ltd.* v. *State Property Fund of Ukraine*, 411 F.3d 296, 303 (D.C. Cir. 2005); *S & Davis International, Inc.* v. *Republic of Yemen*, 218 F.3d 1292, 1303 (11th Cir. 2000); *Callejo* v. *Bancomer, S.A.*, 764 F.2d 1101, 1107 n.5 (5th Cir. 1985).

The FSIA's limitations on personal jurisdiction thus arise not from minimum-contacts requirements found in many longarm statutes, see, *e.g.*, Alaska Stat. § 09.05.015(a); Colo. Rev. Stat. § 13-1-124(1); Conn. Gen. Stat. § 52-59b; Del. Code Ann. tit. 10, § 3104; Fla. Stat. § 48.193; Ga. Code Ann. § 9-10-91, but from the statute's strict limitations on subject matter jurisdic-

tion and Section 1608's reticulated service requirements. While other federal statutes allow service of process on a defendant "wherever it may be found," 15 U.S.C. § 53(a), the FSIA imposes "strict requirements" for service of process, *Republic of Sudan* v. *Harrison*, 587 U.S. 1, 19 (2019), that allow service only through specified means appropriate to a sovereign litigant, such as "special arrangement[s]" between the plaintiff and the defendant or "in accordance with an applicable international convention." 28 U.S.C. § 1608(a)(1)-(2), (b)(1)-(2). And "authoriz[ing] service of process" is "Congress's typical mode of providing for the exercise of personal jurisdiction." *BNSF Railway Co.* v. *Tyrrell*, 581 U.S. 402, 409 (2017) (collecting statutes).

Congress having expressly imposed these two limitations on personal jurisdiction in the text of the FSIA, an additional, unwritten minimum-contacts requirement is "not to be implied." *TRW Inc.* v. *Andrews*, 534 U.S. 19, 28-29 (2001) (citation omitted). "If courts were authorized to add a fairness requirement to the implementation of federal statutes, judges would be potent lawmakers indeed. We do not—we cannot—add provisions to a federal statute." *Alabama* v. *North Carolina*, 560 U.S. 330, 351-52 (2010).

B. The Ninth Circuit erred by engrafting a minimum-contacts requirement.

The Ninth Circuit has never purported to "ground" its minimum-contacts requirement "in the text of § 1330(b)." Pet.App. 58a. Nor could it, given that the provision includes not a word about minimum contacts. Instead, the Ninth Circuit located a minimum-contacts requirement in the FSIA's immunity exception for commercial activity—then expanded

that supposed requirement for one ground of subject-matter jurisdiction into a requirement for personal jurisdiction in every circumstance covered by the Act. In addition to conflating subject-matter and personal jurisdiction in this way, the Ninth Circuit sprinkled on some inapposite legislative history. Neither the Ninth Circuit's statutory analysis nor its invocation of legislative history provides any basis for imposing a minimum-contacts limitation on personal jurisdiction under the FSIA.

1. The Ninth Circuit announced its minimum-contacts requirement more than 40 years ago, holding that "[p]ersonal jurisdiction under the Act requires satisfaction of the traditional minimum contacts standard." *Thomas P. Gonzalez Corp.* v. *Consejo Nacional de Produccion de Costa Rica* ("*Gonzalez*"), 614 F.2d 1247, 1255 (9th Cir. 1980). It supported this holding with the "tersest of reasoning." Pet.App. 57a.

The court first noted that "[t]he words 'direct effect' " in the commercial-activity exception, 28 U.S.C. § 1605(a)(2)—"have been interpreted as embodying the minimum contacts standard of *International Shoe*." *Gonzalez*, 614 F.2d at 1255. It then stated 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.* "That's the entirety of *Gonzalez*'s textual analysis." Pet.App. 58a.

This analysis collapses on even minimal scrutiny. True, the immunity exception for commercial activity requires an assessment of the extent and nature of the foreign state's contacts with the United States. See 28 U.S.C. § 1605(a)(2). But nothing in the text of the

commercial-activity exception even remotely suggests an incorporation of the *International Shoe* minimum-contacts test that had been developed in an entirely different context. While some "circuits have suggested that the 'direct effects' analysis and 'minimum contacts' test are related, * * * the Ninth Circuit appears to stand alone in expressly incorporating the 'minimum contacts' test wholesale." *Rote* v. *Zel Custom Manufacturing LLC*, 816 F.3d 383, 395 n.8 (6th Cir. 2016).

Nor is it obvious why the FSIA would adopt *International Shoe*'s standard, whether for the commercial-activity exception or otherwise. The *International Shoe* standard is grounded in "principles of 'interstate federalism,'" *Ford Motor Co.* v. *Montana Eighth Judicial Dist. Ct.*, 592 U.S. 351, 368 (2021) (quoting *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 293 (1980)), that "are a consequence of territorial limitations on the power of the respective States," *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958). Those concerns play no role in suits in federal courts against foreign states, as it is well-established that "Congress has the authority to enforce its laws beyond the territorial boundaries of the United States." *EEOC* v. *Arabian American Oil Co.*, 499 U.S. 244, 248 (1991), *superseded by statute on other grounds*.

Even if the commercial-activity exception did somehow include a minimum-contacts requirement, other immunity exceptions—the exception relating to waivers of sovereign immunity, for example, see 28 U.S.C. § 1605(a)(1)—most certainly do not. To import a minimum-contacts requirement into these other immunity exceptions would disregard Congress's careful design of those differing exceptions. It likewise would

invert the principle that "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion." *Russello* v. *United States*, 464 U.S. 16, 23 (1983). And, of course, the existence of a minimum-contacts limitation on *subject-matter* jurisdiction under the commercial-activity exception suggests no basis whatsoever for separately imposing the same limitation on the exercise of *personal* jurisdiction. See *Verlinden*, 461 U.S. at 488.

Gonzalez's statutory analysis is not salvaged by its detour into the FSIA's legislative history. "[L]egislative history is not the law." *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 523 (2018). According to *Gonzalez*, a House Committee report "confirms" that Section 1330(b) "does not extend beyond the limits" of *International Shoe*. 614 F.2d at 1255. But "it is the statute, and not the Committee Report, which is the authoritative expression of the law." *City of Chicago* v. *Environmental Defense Fund*, 511 U.S. 328, 337 (1994). Nor could the House Committee report "trump clear statutory language." *National Ass'n of Manufacturers* v. *Department of Defense*, 583 U.S. 109, 132 n.9 (2018) (cleaned up). And the text of Section 1330(b) is pellucid; it contains no minimum-contacts limitation on personal jurisdiction.

In any event, *Gonzalez* misread the Committee Report on which it relied. That report did not state that Section 1330(b) always requires a showing of minimum contacts. Instead, it expressed the Committee's view that the enumerated "immunity provisions in the bill, sections 1605-1607"—one of which must

apply for subject-matter jurisdiction to exist under Section 1330(a)—"require[e] 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. As a result, the Committee wrote, citing *International Shoe*, the "requirements of minimum jurisdictional contacts and adequate notice are embodied" in Section 1330(b). *Ibid.*

The Committee's acknowledgement that *some* of the FSIA's then-enumerated exceptions to sovereign immunity—which Section 1330(b) incorporates by reference—require a connection with the United States does not mean that the FSIA's personal-jurisdiction provision *always* requires a showing of sufficient minimum contacts, even if the applicable exception to immunity requires no such contacts. In concluding otherwise, "*Gonzalez* simply mixe[d] up subject-matter jurisdiction and personal jurisdiction" and "create[d] a universal minimum-contacts requirement for § 1330(b) [that] conflates the two concepts and makes no textual sense." Pet.App. 59a.

And if that were not enough, "the arbitral exception" at issue here "was added more than a decade after the Committee Report" cited in *Gonzalez*, rendering the "application of a minimum-contacts test here even more dubious." Pet.App. 62a.

Gonzalez's approach is, in short "a relic from a bygone era of statutory construction," *Food Marketing Institute* v. *Argus Leader Media*, 588 U.S. 427, 437 (2019), unpersuasive even in its time, and inapplicable here.

2. In the district court and on appeal, Antrix "acknowledge[d] the statutory basis for personal jurisdiction under 28 U.S.C. § 1330(b)" and "d[id] not dispute that personal jurisdiction exists as a matter of statute." Pet.App. 13a, 21a-22a. Its certiorari-stage attempts to rehabilitate the Ninth Circuit's minimum-contacts requirement lack merit. See Br. in Opp. 13-20.

Antrix begins, not with the text of Section 1330(b), but with a grab bag of legislative history. It cites, for example, materials from a "congressional hearin[g] years earlier on a different bill that was never enacted into law." *Food Marketing Institute*, 588 U.S. at 437; see Br. in Opp. 14 (quoting 1973 hearing report). It block quotes testimony from a *non*-lawmaker—"among the least illuminating forms of legislative history." *Food Marketing Institute*, 588 U.S. at 437 (citation omitted); see Br. in Opp. 15. And it launders the Ninth Circuit's legislative history by quoting a law review article quoting the same inapposite Committee Report. See Br. in Opp. 14 (quoting Mary Kay Kane, *Suing Foreign Sovereigns: A Procedural Compass*, 34 Stan. L. Rev. 385, 396 n.64 (Jan. 1982)).

"And even those lowly sources speak at best indirectly to the precise question here." *Advocate Health Care Network* v. *Stapleton*, 581 U.S. 468, 481 (2017). Each suggests only that certain of the FSIA's original exceptions required some connection to the United States for purposes of subject-matter jurisdiction. None trumps—or even illuminates—the plain and unambiguous text of Section 1330(b).

When Antrix turns to the text, it concedes the argument: "[W]hat section 1330(b) provides is that per-

sonal jurisdiction exists where, in addition to proper service, the textual requirements of an exception to immunity set forth in section 1605 have been met." Br. in Opp. 16. Because those requirements are not in dispute, the FSIA's personal jurisdiction requirements are satisfied.

To evade that conclusion, Antrix merely points out that some of the FSIA's exceptions "require some connection" between the parties, the dispute, and the United States. Br. in Opp. 17. This just repeats the errors of Antrix's sources. Antrix cannot point to *any* exception requiring *International Shoe minimum contacts* with the United States. See *id.* at 17-20. And even if it could locate such a requirement in *some* immunity exceptions, it would not follow that minimum contacts are *always* required. Antrix does not even purport to find such a requirement in the text of the arbitral exception. Instead, it resorts—again—to hearing testimony from someone who was not even a member of Congress. See *id.* at 19.

C. The arbitral exception does not require minimum contacts.

Because a minimum-contacts requirement cannot be interpolated into Section 1330(b) itself, the decision below could be affirmed only if such a requirement could be located in the text of the arbitral exception. But that text contains no such requirement. The arbitral exception confers jurisdiction over any action "to confirm an award made pursuant to * * * an agreement to arbitrate." 28 U.S.C. § 1605(a)(6). And it applies whenever "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 recogni-

tion and enforcement of arbitral awards." *Ibid.* The arbitral exception does not require any greater nexus with the United States.

In fact, the legislative and statutory history of the arbitral exception confirms that it *does not* require a minimum-contacts showing. The Committee Report on which *Gonzalez* relied, for example, observed in discussing the waiver exception to sovereign immunity, 28 U.S.C. § 1605(a)(1), that "courts have found [implicit] waivers in cases where a foreign state has agreed to arbitration in another country." H.R. Rep. No. 94-1487, at 18. Although the FSIA originally did not include an arbitral exception, some expected "arbitration awards to be executed against the commercial assets of foreign states under Sections 1605(a)(1) and 1610(a)(1) of the Act," *i.e.*, the waiver exceptions.[3]

Proving that expectations based on legislative history are ill-founded, courts expressed "uncertainty" and "confusion" about whether and when "an agreement to international arbitration constitutes a waiver of sovereign immunity." 1986 House Hearing at 95. Enacted text, not legislative history, was needed "to clarify the jurisdiction of the federal courts to enforce arbitration agreements with and arbitral awards

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[3] *Arbitral Awards: Hearing Before the Subcommittee on Administrative Law & Governmental Relations of the Committee on the Judiciary*, 99th Cong. 89, 92 (1986) ("1986 House Hearing") (statement of Mark B. Feldman, Chairman, Ad Hoc Committee on Revision of the Foreign Sovereign Immunities Act, American Bar Association); see Restatement (Third) of Foreign Relations Law § 456 (1987) ("Under the law of the United States * * * an agreement to arbitrate is a waiver of immunity from jurisdiction in * * * an action to enforce an arbitral award rendered pursuant to the agreement.").

made against foreign states and government agencies." *Id.* at 92.

In drafting the text that would eventually become the arbitral exception, its proponents expressly rejected "minimum contacts" objections. 1986 House Hearing at 95. Such objections "ignore[d]," for example, that the arbitral exception rested on an implicit "waive[r]." *Id.* at 95, 97-98.[4] The arbitral exception thus allowed enforcement against a foreign state not present in the United States—even when "the underlying transaction has no connection with the United States." *Id.* at 95.

Thus, the arbitral exception's legislative history only confirms what the plain text provides: There is no basis for imposing a minimum-contacts requirement upon it. And the fact that Congress was *aware* of minimum-contacts objections and *declined* to require minimum contacts for personal jurisdiction underscores that it was a "deliberate choice, not inadvertence." *Bruesewitz* v. *Wyeth LLC*, 562 U.S. 223, 232-33 (2011) (citation omitted).

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[4] Accord, *e.g.*, 1986 House Hearing at 32 (statement of Elizabeth G. Verville, Acting Legal Adviser, Dep't of State) ("[T]he amendment would clarify the law that is emerging from a body of cases on implicit waiver."); *Id.* at 184-85 (statement of Cecil J. Olmstead, The National Foreign Trade Council) ("[I]t is important that Congress ensure that its previously stated position on implied waivers, at least as to enforcement of arbitral awards, be enacted into law to ensure that courts do not follow misguided decisions as precedents in the future.").

D. Requiring minimum contacts would violate the United States's international obligations.

Adopting the Ninth Circuit's reading of the FSIA would place the United States in conflict with other nations on the enforceability of arbitral awards and the obligations imposed by international conventions governing arbitral enforcement. Those conventions pre-dated the enactment of the FSIA and of the arbitral exception, and there is no basis to impute to Congress an intent to place the United States in violation of those obligations.

Devas's arbitration against Antrix is enforceable under the New York Convention, in which contracting states commit to enforce arbitral awards arising out of commercial relationships. N.Y. Convention, Art. I(3). The Convention directs that "Each Contracting State *shall recognize* arbitral awards as binding *and enforce* them." *Id.* Art. III; 9 U.S.C. § 207. Other international conventions impose similar obligations. See, *e.g.*, 9 U.S.C. §§ 301-07 (Inter-American Convention on International Commercial Arbitration); 22 U.S.C. § 1650a (International Centre for Settlement of Investment Disputes "ICSID" Convention).

Thus, if the FSIA is read to require a minimum-contacts showing before foreign states may be haled into court in the United States, the United States may be in violation of its obligation to enforce awards. Congress was aware of this risk when it enacted the arbitral exception, and the importance of the United States's obligation to recognize such awards was a driving factor in the enactment of the arbitral exception. See 1986 House Hearing, at 98 ("Any other con-

clusion would impede the United States from discharging its obligations under the New York Convention to enforce foreign arbitral awards."). Given that background, it would upend ordinary rules of statutory construction to interpret Section 1330(b) to place the United States in violation of its obligation under these conventions. See Restatement (Third) of Foreign Relations Law § 114 (1987); *Murray* v. *Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804).

Moreover, by acceding to these Conventions, a foreign state has also agreed that it may be subject to enforcement proceedings in other contracting states, including the United States. As courts in other common law countries have explained, "Contracting States have submitted to the jurisdiction" of other Contracting States by acceding to these conventions "and therefore may not oppose the registration of [arbitral] awards against them on the grounds of state immunity." *Infrastructure Services Luxembourg S.À.R.L.* v. *Kingdom of Spain*, No. CA-2023-001556, ¶ 103 (Court of Appeals (Eng. & Wales) Oct. 22, 2024); see also *Kingdom of Spain* v. *Infrastructure Services Luxembourg S.À.R.L.*, [2023] HCA 11, ¶ 8 (High Court of Austl. Apr. 12, 2023) ("the effect of Spain's agreement to [the ICSID Convention] amounted to a waiver of foreign State immunity from the jurisdiction of the courts of Australia to recognize and enforce" award against Spain).

If a minimum-contacts requirement is read into the FSIA, however, other foreign states will have defenses available in U.S. courts that are entirely unavailable to the United States in foreign courts. There is no basis for interpreting the FSIA to impose that disuniformity.

* * *

The Ninth Circuit's holding that the FSIA requires a showing of minimum contacts flies in the face of the Act's text, history, and structure, and threatens to place the United States in violation of its international obligations. This Court should reverse and make clear the FSIA requires only an applicable exception to immunity and proper service of process to create personal jurisdiction—exactly what its plain text provides.

II. The Due Process Clause Does Not Require Minimum Contacts To Establish Personal Jurisdiction.

Although the panel in this case purported to rest its holding on statutory grounds, Antrix has argued that it is entitled to a minimum-contacts analysis as a constitutional matter. And Ninth Circuit precedent, undisturbed by the panel's opinion, holds that in FSIA actions "a court must consider whether the constitutional constraints of the Due Process clause preclude the assertion of personal jurisdiction" by reference to "the traditional minimum contacts standard." *Gregorian* v. *Izvestia*, 871 F.2d 1515, 1529 (9th Cir. 1989); see Pet.App. 5a (declining to depart from prior Ninth Circuit precedent notwithstanding *Republic of Argentina* v. *Weltover, Inc.*, 504 U.S. 607, 619 (1992)).

That outlier view conflicts with the views of every court of appeals to consider this question since *Weltover*, see Pet. 11-14, and would render Section 1330(b) unconstitutional. This Court should resolve the conflict among the circuits and hold that Section 1330(b) is constitutional.

The Fifth Amendment's Due Process Clause does not require a showing of minimum contacts for the assertion of personal jurisdiction over a foreign state for at least two reasons. First, a foreign state is not a "person" capable of invoking the Due Process Clause. Second, and more fundamentally, the political branches have authority under the Fifth Amendment to define by statute the process that is "due" in this area of international relations. Congress and the President, by enacting the FSIA's comprehensive framework governing civil litigation against foreign states (including their agencies and instrumentalities), far exceeded any constitutional minimum required by the Fifth Amendment for the exercise of personal jurisdiction.

A. Foreign states are not "persons" within the meaning of the Due Process Clause.

A foreign state is not a "person" entitled to due process under the Fifth Amendment. As this Court has explained, there is an "often-expressed understanding that in common usage, the term 'person' does not include the sovereign." *Will* v. *Michigan Department of State Police*, 491 U.S. 58, 64 (1989). For that reason, "statutes employing the word are ordinarily construed to exclude it." *Ibid.* And, in *South Carolina* v. *Katzenbach*, this Court held as a constitutional matter 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." 383 U.S. 301, 323-24 (1966).

When this Court was confronted with the question whether foreign states are entitled to more due process protection than States of the Union, it

"[a]ssum[ed], without deciding, that a foreign state is a 'person' for purposes of the Due Process Clause." *Weltover*, 504 U.S. at 619. But it suggested that assumption was not correct by citing *Katzenbach*'s holding that "States of the Union are not 'persons' for the purposes of the Due Process Clause." *Ibid.* (citing *Katzenbach*, 383 U.S. at 323-24).

That assumption was not correct. It is in fact "unlikely that the framers of the Fifth Amendment would have viewed foreign states as persons" within the meaning of an Amendment guaranteeing due process in connection with civil lawsuits "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). "Given this absolute immunity, foreign states would not need to be persons protected by any process under the Fifth Amendment because at that time they were absolutely immune from all process." *Ibid.*

After all, as Alexander Hamilton put it, it "is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent. This is the general sense, and the general practice of mankind." The Federalist No. 81, at 548-49 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

Chief Justice Marshall expanded on this point in *The Schooner Exchange* v. *McFaddon*, 11 U.S. (7 Cranch) 116 (1812). There, he explained that the "jurisdiction of the nation within its own territory is necessarily exclusive and absolute" and "is susceptible of no limitation not imposed by itself." *Id.* at 136. As a corollary, the "full and absolute territorial jurisdiction

* * * of every sovereign" did not "contemplate foreign sovereigns nor their sovereign rights as its objects." *Id.* at 137. To the contrary, under then-prevailing "usages and received obligations," a "sovereign being in no respect amenable to another" would "enter a foreign territory only under an express license" or confident that sovereign immunity would be "reserved by implication, and [would] be extended to him." *Ibid.*

"If, as *Schooner Exchange* suggests, the assertion of jurisdiction against a foreign sovereign was unimaginable, it is very difficult to argue that the framers intended that foreign sovereigns would require the protection of the Fifth Amendment." Joseph W. Glannon & Jeffery Atik, *Politics and Personal Jurisdiction: Suing State Sponsors of Terrorism Under the 1996 Amendments to the Foreign Sovereign Immunities Act*, 87 Georgetown L.J. 675, 692 (1999). Moreover, "it would seem anomalous for a new nation to inaugurate its foreign policy by gratuitously adopting constraints on its foreign policy power which are not reciprocated by other states." *Ibid.*

It would be equally anomalous for the new United States "to afford greater Fifth Amendment rights to foreign nations, who are entirely alien to our constitutional system, than are afforded to the states, who help make up the very fabric of that system." *Price* v. *Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 96 (D.C. Cir. 2002). As "integral and active participants in the Constitution's infrastructure" the States of the Union "both derive important benefits and must abide by significant limitations as a consequence of their participation." *Ibid.*

The States of the Union, for example, benefit from the protections the federal military provides against hostile foreign states, see U.S. Const. art. I, § 8, cl. 10-14, and from "a national market for competition undisturbed by preferential advantages conferred by a State upon its residents or resident competitors," *General Motors Corp.* v. *Tracy*, 519 U.S. 278, 299 (1997). In exchange for these benefits, the Constitution prohibits the States from engaging in certain acts, see U.S. Const. art. I, § 10, and it provides that state law shall be preempted to the extent that it is inconsistent with federal law, *id.* art. VI, cl. 2.

In contrast, a "foreign State lies outside the structure of the Union." *Principality of Monaco* v. *State of Mississippi*, 292 U.S. 313, 330 (1934). "[T]he Constitution does not limit foreign states, as it does the States of the Union, in the power they can exert against the United States or its government." *Price*, 294 F.3d at 97. And "the federal government cannot invoke the Constitution, save possibly to declare war, to prevent a foreign nation from taking action adverse to the interest of the United States or to compel it to take action favorable to the United States." *Ibid.* It would thus "be quite strange to interpret the Due Process Clause as conferring upon [foreign states] rights and protections *against* the power of [the] federal government" that the Constitution denies to the States of the Union. *Ibid.*; accord *Abelesz* v. *Magyar Nemzeti Bank*, 692 F.3d 661, 694 (7th Cir. 2012); *Frontera Resources Azerbaijan Corp.* v. *State Oil Co. of Azerbaijan Republic*, 582 F.3d 393, 399 (2d Cir. 2009).

As against this Nation's government, the interests of foreign nations are addressed through "comity and international law," not the Due Process Clause.

Price, 294 F.3d at 97. And because foreign states are not "persons" entitled to due process, Antrix is "not a 'person' for due process purposes" because it is the alter ego of its parent sovereign, the Republic of India. Pet.App. 13a.

B. The political branches have provided all the process that is due to a foreign state.

Even if foreign states (or their agencies or instrumentalities) were "persons" entitled to due process, the Fifth Amendment still would not require minimum contacts for the exercise of personal jurisdiction. To the contrary, the FSIA's careful and reticulated framework more than satisfies any due process requirements.

1. This Court has never held that the Due Process Clause of the Fifth Amendment incorporates *International Shoe*'s minimum-contacts requirement. Rather, the Court has repeatedly left "open the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court" as the Fourteen Amendment imposes on that of a state court. *Bristol-Myers Squibb Co.* v. *Superior Court of California*, 582 U.S. 255, 269 (2017); see also *J. McIntyre, Ltd.* v. *Nicastro*, 564 U.S. 873, 885 (2011) (plurality) (It "may be that * * * Congress could authorize the exercise of jurisdiction in appropriate courts" though a state could not.). As the Fifth and Fourteenth Amendments "were ingrafted upon the Constitution at different times and in widely different circumstances of our national life, it may be that questions may arise in which different constructions and applications of their provisions may be proper." *French* v. *Barber Asphalt Paving Co.*, 181 U.S. 324, 328 (1901).

Those differences are particularly sharp with respect to personal jurisdiction. As this Court has explained, the constitutional "restrictions on personal jurisdiction" that the Court has enforced under the Fourteenth Amendment "'are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of *territorial limitations on the power of the respective States*.'" *Bristol-Myers Squibb*, 582 U.S. at 263 (emphasis added). Although States retain "the sovereign power to try causes in their courts," the "sovereignty of each State * * * implie[s] a limitation on the sovereignty of all its sister States." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 293 (1980).

The Fourteenth Amendment's Due Process Clause thus "act[s] as an instrument of interstate federalism." *Bristol-Myers Squibb*, 582 U.S. at 263. And the "limitation" it imposes is "express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment," *World-Wide Volkswagen*, 444 U.S. at 293.

There is no reason to conclude that the Fifth Amendment's Due Process Clause acts the same way or imposes the same restrictions on the sovereign power of the *United States* to try causes in its courts against foreign states or their agencies or instrumentalities. The Fifth Amendment has nothing to do with interstate federalism. See *Davis* v. *Passman*, 442 U.S. 228, n.23 (1979) ("application of the Fifth Amendment" does not "serve the purposes of federalism"). And nothing in the original scheme of the Constitution or the Fifth Amendment limits the national sovereignty of the United States with respect to foreign states. Rather, as was understood at the founding,

"the jurisdiction of a nation within its own territory 'is susceptible of no limitation not imposed by itself,'" and the protections given to foreign states are "a matter of grace and comity on the part of the United States, and not a restriction imposed by the Constitution." *Verlinden*, 461 U.S. at 486; see also Congressional Power to Provide for the Vesting of Iranian Deposits in Foreign Branches of United States Banks, 4A Op. OLC 365, 368 (1980) (The "rights of foreign states in this country depend not on constitutional protections, but on treaties, international custom, and such privileges as this nation extends under principles of comity."). Transplanting the minimum-contacts requirement into the Fifth Amendment makes little sense.

2. Unsurprisingly, the early "[c]ases involving foreign states provide no support for extending the Fourteenth Amendment's 'minimum contacts' analysis to the Fifth Amendment." Ingrid Wuerth, *The Due Process and Other Constitutional Rights of Foreign Nations*, 88 Fordham L. Rev. 633, 683 (2019). Rather, they "suggest that the Constitution itself does not dictate the rules governing personal jurisdiction, whether as a function of Article III or the Fifth Amendment." *Ibid*. In short, the original understanding reflected in those cases indicates that "Congress could extend personal jurisdiction and abrogate the immunity of foreign states if it wanted to do so." *Ibid.*

To the extent courts at the founding considered overarching restrictions on personal jurisdiction, they grounded those restrictions in "general and international law" but those were "rules that could be altered by federal statute, with no obvious constitutional constraint." Stephen E. Sachs, *The Unlimited Jurisdic-*

tion of the Federal Courts, 106 Va. L. Rev. 1703, 1711 (2020); see also Service of Process on a British Ship-of-War, 1 U.S. Op. Atty. Gen. 87, 91-92 (1799) (recognizing Congress's legislative power to authorize service of process aboard foreign vessel).

For example, Justice Washington, riding circuit, explained that "general principles of law, which our courts acknowledge as rules of decision," provided that federal courts had "no authority, generally, to issue process into another district, except in cases where such authority has been specially bestowed, by some law of the United States." *Ex parte Graham*, 10 F. Cas. 911, 912 (C.C.E.D. Pa. 1818). He reasoned that, "should it be the will of congress to vest in the courts of the United States an extra-territorial jurisdiction in prize causes, over persons and things found in a district other than that from which the process issued," the courts would be bound to follow Congress's instruction. *Id.* at 913; see *id.* ("the exercise of jurisdiction over persons not inhabitants of, or found within the district where the suit is brought" presents "difficulties, which, in the opinion of the court, nothing but an act of congress can remove").

Justice Story applied the same reasoning in *Picquet* v. *Swan*, 19 F. Cas. 609 (C.C.D. Mass. 1828). There, the plaintiff attempted to subject a U.S. citizen residing in France to the circuit court's in personam jurisdiction by attaching property of the nonresident defendant in Massachusetts. *Id.* at 609-10. Justice Story concluded that the circuit court could not exercise jurisdiction over the nonresident defendant—but he reached that decision "as a matter of general law and statute, not as something regulated by the Constitution." Sachs, *supra*, 106 Va. L. Rev. at 1714.

Interpreting a provision in the Judiciary Act of 1789 providing that suits against an inhabitant of the United States must be brought in the district where he is an inhabitant or where he is found, Justice Story rejected the argument that this provision—because it made no such restriction for non-inhabitants—implicitly authorized proceedings against a foreigner in any district. *Picquet*, 19 F. Cas. at 613. He concluded that the statute did not because "[s]uch an intention, so repugnant to the general rights and sovereignty of other nations, ought not to be presumed, *unless it is established by irresistible proof*." *Ibid.* (emphasis added).

Critically, Justice Story explained that though Congress had not authorized service in *Picquet*, Congress had the authority to do so if it so chose. Thus, if Congress had ordered "a subject of England, or France or Russia, * * * be summoned from the other end of the globe to obey our process," the court "would certainly be bound to follow it, and proceed upon the law." *Picquet*, 19 F. Cas. at 613, 615.

This Court adopted Justice Story's reasoning in *Toland* v. *Sprague*, 37 U.S. (12 Pet.) 300 (1838). That plaintiff attempted to subject a citizen of Massachusetts residing in Gibraltar to the personal jurisdiction of a Pennsylvania circuit court by attaching the nonresident's Pennsylvania property. *Id.* at 302. The question was "whether the process of foreign attachment can be properly used in the circuit courts of the United States, in cases where the defendant is domiciled abroad, and not found within the district in which the process issues, so that it can be served upon him." *Id.* at 327. This Court explained that the "answer to this question must be found" not in the meaning of the Due Process Clause of the Fifth Amend-

ment, but "in the construction of the 11th section of the judiciary act of 1789, as influenced by the true principles of interpretation; and by the course of legislation on the subject." *Ibid.*

This Court noted that it "concur[red]" with *Picquet*'s recitation of the issue as one of positive law. *Toland*, 37 U.S. at 328. The Court acknowledged that "Congress *might have* authorized civil process from any circuit court, to have run into any state of the Union" but, as in *Picquet*, concluded that "[i]t has not done so." *Ibid.* (emphasis added). This Court agreed with Justice Story in *Picquet* that if "congress acted under the idea that the process of the circuit courts could reach persons in a foreign jurisdiction," then it would be bound to enforce the law, but that "*independently of positive legislation*, the process can only be served upon persons within the same districts." *Id.* at 330 (emphasis added).

3. In light of that early history, as Judge Bumatay explained, "an emerging consensus shows that the original understanding of the Fifth Amendment's Due Process Clause does not require minimum contacts for foreign states." Pet.App. 66a.

Under the Fifth Amendment, a "federal long-arm provision," such as 28 U.S.C. § 1330(b), "if within Congress's enumerated powers, *establishes* territorial jurisdiction to the satisfaction of the courts; the due process objection to a judgment-without-jurisdiction can never get started." Sachs, *supra*, 106 Va. L. Rev. at 1709. "Because the Due Process of Law Clause requires *process*, * * * service on a defendant" may be "sufficient to validate personal jurisdiction whether or not the *International Shoe Co.* v. *Washington* mini-

mum contacts test was satisfied." Max Crema & Lawrence B. Solum, *The Original Meaning of "Due Process of Law" in the Fifth Amendment*, 108 Va. L. Rev. 447, 530-31 (2022) (emphasis added).

Even the leading proponent of the argument that "historical sources show that foreign states were viewed as 'persons' entitled to 'process,' " agrees that "the *content* of those due process protections is a distinct issue." Wuerth, *supra*, 88 Fordham L. Rev. at 637. The "best reading may be that Congress controls the content of personal jurisdiction protections due to all defendants under the Fifth Amendment." *Ibid.*

In short, the early cases suggest that "so long as Congress expressly authorized such expansive process, Fifth Amendment due process does not impose constitutional limits on federal courts' exercise of personal jurisdiction." *Douglass* v. *Nippon Yusen Kabushiki Kaisha*, 46 F.4th 226, 262 (5th Cir. 2022) (Elrod, J., dissenting); *see also id.* at 284 (Oldham, J., dissenting) ("[A]s originally understood, the Fifth Amendment did not impose any limits on the personal jurisdiction of the federal courts.").

The contrary view articulated by some courts of appeals—that "the standards developed in the Fourteenth Amendment context must govern under the Fifth Amendment," *Douglass*, 46 F.4th at 238—rests on the pure *ipse dixit* that the Fifth and Fourteenth Amendments *must* be coterminous. But the historical backdrop of the Fifth Amendment and the absence of any interstate federalism concerns refute that conclusion. And they counsel great caution, at a minimum, before this Court extends the rule of *International Shoe*, with all its confusion and shortcomings, into the

realm of the Fifth Amendment. Cf. *Burnham* v. *Superior Ct. of Cal.*, 495 U.S. 604, 619 (1990) (plurality) (*International Shoe*'s test does not displace the "continuing traditions of our legal system that define the due process standard of 'traditional notions of fair play and substantial justice.' ")

4. Of course, concluding that the Fifth Amendment does not require minimum contacts does not mean that anything goes. Due process generally requires "notice and an opportunity to be heard before the Government deprives [defendants] of property." *United States* v. *James Daniel Good Real Property*, 510 U.S. 43, 48 (1993); *see also Toland*, 37 U.S. at 329 (noting importance of process and right of appearance). And "in the absence of valid service of process, personal jurisdiction would violate the Due Process of Law Clause"—under the Fourteenth or the Fifth Amendment. Crema & Solum, *supra*, 108 Va. L. Rev. at 531.

The FSIA extends protections far beyond that minimum. Congress's comprehensive scheme provides not only protective "strict requirements" for service, *Harrison*, 587 U.S. at 19; 28 U.S.C. § 1608(a)-(c), but also protection from default judgment, *id.* § 1608(e), protection from punitive damages, *id.* § 1606, limitations on liability "to the same extent as a private individual", *id.*, presumptive immunity from suit, *id.* § 1604, and immunity from attachment, *id.* § 1609. That goes well beyond notice and an opportunity to be heard. In the field of foreign relations where the political branches are at the apex of their power, *infra* 46-47, the Constitution gives no directive for the judiciary to alter the comprehensive system

the political branches have devised by imposing a minimum-contacts requirement.

C. A minimum-contacts test fails to account for the nature of the relationship between the United States and foreign states.

When the United States interacts with foreign sovereigns, it exercises inherent authority that predates and does not depend on the Constitution. In this realm, the political branches are supreme. The Due Process Clause offers no basis for the judiciary to supplement the reticulated framework erected by Congress and the President in the FSIA with the regime of *International Shoe*.

1. This Court has long distinguished "between the powers of the federal government in respect of foreign or external affairs and those in respect of domestic or internal affairs." *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 315 (1936). Although the federal government's domestic powers are limited to "those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers," its foreign affairs power is not. *Id.* at 316. That latter power preexisted the Constitution and "immediately passed to the Union" once "the external sovereignty of Great Britain in respect of the colonies ceased." *Id.* at 317.

Accordingly, "investment of the federal government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution," and "would have vested in the federal government as necessary concomitants of nationality" even "if they had never been mentioned in the Constitution." *Curtiss-Wright*, 299 U.S. at 318. Our Nation's external

relations with other sovereigns are thus governed not by "the Constitution nor the laws passed in pursuance of it" but "by treaties, international understandings and compacts, and the principles of international law." *Ibid.*

It is thus unsurprising that this Court has regularly described the federal government's power "with respect to foreign relations and international commerce" as "plenary." See *Plyler* v. *Doe*, 457 U.S. 202, 225 (1982); *Curtiss-Wright*, 299 U.S. at 320 (referring to "the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations"). Antrix's constitutional argument disparages that plenary authority, insisting that the federal government is powerless to set the terms on which foreign states and their agencies and instrumentalities may be haled into its courts. There is no constitutional basis for such limitation.

2. The nature of the relationship of the United States to foreign states in the international community justifies the primary and plenary power the political branches exercise in foreign relations. "Foreign states exist with the United States as coequal sovereigns on the international plane," each of which "is left free to determine its own internal political organization through whatever constitutional or other vehicles are appropriate to its own circumstances." Lori Fisler Damrosch, *Foreign States and the Constitution*, 73 Va. L. Rev. 483, 519-520 (1987). Based on "these basic international law concepts, foreign states lack any legal interest in whether another state has a constitution, what it says, or whether constitutional provisions are applied according to their terms. The most a foreign state can demand is that other states observe *interna-*

tional law, not that they enforce provisions of domestic law." *Id.* at 520.

Because foreign states are outsiders to our constitutional system who have not agreed to abide by our Constitution and internal law—just as the United States has not agreed to abide by their internal law—"[r]elations between nations in the international community are seldom governed by the domestic law of one state or the other." *Price*, 294 F.3d at 97. "And legal disputes between the United States and foreign governments are not mediated through the Constitution." *Ibid.* Instead, "the federal judiciary has relied on principles of comity and international law to protect foreign governments in the American legal system," an "approach [that] recognizes the reality that foreign nations are external to the constitutional compact" and "preserves the flexibility and discretion of the political branches in conducting the country's relations with other nations." *Ibid.*

Based on the structural relationship of the United States and its Constitution to external foreign states, the "relevant inquiry" is "whether courts should intervene in the structure of foreign policy decisionmaking at the instance of parties whose relation to that structure is one not just of an outsider but of a sovereign equal." Damrosch, *supra*, 73 Va. L. Rev. at 527.

It makes little sense to consider whether a foreign state's due-process rights have been violated because "[t]he personal jurisdiction requirement recognizes and protects an *individual liberty interest*," and "represents a restriction on judicial power not as a matter of *sovereignty*, but as a matter of *individual liberty*." *Insurance Corp. of Ireland, Ltd.* v. *Compagnie des Bauxite de Guinee*, 456 U.S. 694, 702 (1982) (emphasis added); *Price*, 294 F.3d at 98.

Given the Due Process Clause's purpose in protecting the liberty of those subject to our Constitution and laws from unjust deprivation, it is "quite clear" that the personal-jurisdiction requirement "secures interests quite different from those at stake when a sovereign nation * * * seeks to defend itself against the prerogatives of a rival government." *Price*, 294 F.3d at 98. The United States' sovereign juridical equals on the international plane "stand on a fundamentally different footing than do private litigants who are compelled to defend themselves in American courts." *Ibid.*

Foreign states may avail themselves of a "panoply of mechanisms in the international arena" to protect their interests. *Price*, 294 F.3d at 98. But it would "break with the norms of international law and the structure of domestic law" to "extend a constitutional rule meant to protect individual liberty" to "frustrate the Unites States government's clear statutory command that [a foreign state] be subject to the jurisdiction of the federal courts in the circumstances of this case." *Id.* at 98-99.

Because foreign states exist outside our constitutional order, the "constitutional limits that have been placed on the exercise of personal jurisdiction do not limit the prerogative of our nation to authorize legal action against another sovereign." *Price*, 294 F.3d at 99. The United States exercised this prerogative when it enacted the FSIA. *Verlinden*, 461 U.S. at 493. Conferring upon a foreign state entirely alien to our constitutional order a "due process trump * * * against the authority of the United States" as expressed in the FSIA is "not only textually and structurally unsound, but it would distort the very notion of 'liberty' that underlies the Due Process Clause." *Price*, 294 F.3d at 99.

III. Requiring Minimum Contacts Would Disrupt The Comprehensive FSIA System Crafted By The Political Branches.

To accept Antrix's argument, whether on statutory or constitutional grounds, would invert the respective roles of the three branches of the federal government with respect to foreign affairs. As this Court has long held, "the very nature of executive decisions as to foreign policy is political, not judicial." *Chicago & Southern Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948). "Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative." *Ibid.* "They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and have long been held to belong in the domain of political power not subject to judicial intrusion or inquiry." *Ibid.*

In short, "foreign affairs" is a "domain in which the controlling role of the political branches is both necessary and proper." *Bank Markazi* v. *Peterson*, 578 U.S. 212, 234, (2016). "In a world that is ever more compressed and interdependent, it is essential the congressional role in foreign affairs be understood and respected." *Zivotofsky ex rel. Zivotofsky* v. *Kerry* 576 U.S. 1, 21 (2015). This Court has gone so far as to say that "policies in regard to the conduct of foreign relations * * * are so exclusively entrusted to the political branches of government so as to be largely immune from judicial inquiry or interference." *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 589 (1952).

Congress has "undisputed power to decide, as a matter of federal law, whether and under what circumstances foreign nations should be amenable to suit in the United States." *Verlinden*, 461 U.S. at 493. Congress, exercising its plenary authority in matters

of foreign affairs, enacted the FSIA, a "statute comprehensively regulating the amenability of foreign nations to suit in the United States." *Ibid.*

Thus, the FSIA erects a "comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state." *Verlinden*, 461 U.S. at 488. "The key word there * * * is *comprehensive*," a term this Court has used "often and advisedly to describe the Act's sweep." *Republic of Argentina* v. *NML Capital, Ltd.*, 573 U.S. 134, 141 (2014); see *Republic of Austria* v. *Altmann*, 541 U.S. 677, 699 (2004) ("Congress established [in the FSIA] a comprehensive framework for resolving any claim of sovereign immunity."). Accordingly, "any sort of immunity defense made by a foreign sovereign in an American court must stand on the Act's text. Or it must fall." *NML Capital*, 573 U.S. at 141-42.

In the FSIA, Congress determined that a judicial forum for seeking relief against foreign states is available under certain enumerated circumstances. These include if the foreign state has waived its immunity, 28 U.S.C. § 1605(a)(1), if the action is based on certain commercial activities of the foreign state, *id.* § 1605(a)(2), if the foreign state has expropriated certain property in violation of international law, *id.* § 1605(a)(3), if a plaintiff is seeking to confirm an arbitral award against a foreign state, *id.* § 1605(a)(6), and if the foreign state is a state sponsor of terrorism responsible for personal injury or death caused by an act of terrorism, *id.* § 1605A.

In each circumstance, Congress has decided that "[p]ersonal jurisdiction over a foreign state *shall exist* as to *every* claim for relief" so long as the plaintiff

serves the foreign state with process in accordance with the procedure Congress has enacted. 28 U.S.C. § 1330(b) (emphasis added); see *id.* § 1608 (rules governing service of process on a foreign state). By applying a minimum-contacts standard with no basis in the FSIA's text, the Ninth Circuit usurped the role of the political branches. It is for Congress and the President, not courts, to devise conditions in which sovereign immunity falls away and a foreign state becomes subject to suit.

Worse still, the comprehensive system Congress set forth in the FSIA would be displaced in part by an *International Shoe* standard that leads to unpredictable and occasionally divergent outcomes. And in matters, such as these, that "touch on foreign relations" the United States must speak "with one voice." *Arizona* v. *United States*, 567 U.S. 387, 409 (2012). It is "concern for uniformity in this country's dealings with foreign nations" that "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 Ninth Circuit's rule "violates the separation of powers and anoints [courts] gatekeepers in a way not contemplated by Congress or the Constitution." Pet.App. 47a.

As a practical matter, requiring minimum contacts would undermine the FSIA's carefully articulated exceptions to immunity. It would mean that courts "lock the courthouse doors to plaintiffs whom Congress expressly granted access," such as "victims

of terrorism, those harmed by violations of international law, and persons who suffered from torture." Pet.App. 47a.

The result would be "serious practical problems." *Price*, 294 F.3d at 99. As Judge Bumatay noted below, U.S. citizens would be required to demonstrate that a state sponsor of terrorism such as Iran has sufficient minimum contacts with the United States in order to "vindicate the death or injury of a loved one at the hands of a terrorist." Pet.App. 68a. Decisions of Congress and the President "to freeze the assets of foreign nations, or to impose economic sanctions on them, could be challenged as deprivations of property without due process of law," and "courts would be called upon to adjudicate these sensitive questions, which in turn could tie the hands of the other branches as they sought to respond to foreign policy crises." *Price,* 294 F.3d at 99.

Properly recognizing that foreign states or their agencies or instrumentalities cannot invoke the minimum-contacts rule, by contrast, would not have disruptive effects on the FSIA's system. The D.C. Circuit's experience of more than two decades since the holding in *Price*—and that of other circuits in the three decades since *Weltover*—demonstrate that foreign states do not need minimum-contacts protections to ensure fair adjudication in United States courts. (Indeed, more than half a century of case law demonstrates that States of the Union receive fair and appropriate justice despite their inability to invoke due process protections.)

The FSIA provides ample protections that are better attuned to the delicate considerations of the for-

eign relations context than a minimum-contacts test. Most important among these, of course, is the FSIA's baseline guarantee of sovereign immunity, subject to narrow and specific enumerated exceptions. 28 U.S.C. §§ 1604, 1605, 1605A. These are supported by other, equally specific, exceptions governing the circumstances in which a foreign state's assets may be available for execution in the United States. *Id.* §§ 1610, 1610A.

The FSIA also protects foreign states with its particular service rules, 28 U.S.C. § 1608, and substantive protections governing liability and default, *id.* § 1606. Foreign states and their agencies and instrumentalities also enjoy particular standards governing venue that channel FSIA actions into courts accustomed to handling the complexities of sovereign litigation or where the foreign state has made itself present. *Id.* § 1391. With the established system of these rigorous and detailed protections, there is no cause for courts to transplant the minimum-contacts standard into the foreign sovereign context.

This Court should accordingly hold that neither the FSIA nor the Due Process Clause of the Fifth Amendment requires plaintiffs to demonstrate minimum contacts with the United States in cases where the political branches have determined that a foreign state or its agency or instrumentality is subject to suit in our courts.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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