No. 24-17

IN THE
Supreme Court of the United States

DEVAS MULTIMEDIA PRIVATE LIMITED,

Petitioner,

v.

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

Respondents.

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

BRIEF FOR PETITIONER

VERN CASSIN
BAKER BOTTS L.L.P.
700 K Street, N.W.
Washington, DC 20001
(202) 639-7700

AARON M. STREETT
Counsel of Record
CHRISTOPHER E. TUTUNJIAN
BAKER BOTTS L.L.P.
910 Louisiana Street
Houston, TX 77002
(713) 229-1234
aaron.streett@bakerbotts.com

Counsel for Petitioner Devas Multimedia Private Limited

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

QUESTION PRESENTED

Under the Foreign Sovereign Immunities Act, "[p]ersonal 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." 28 U.S.C. § 1330(b).

The question presented is:

Whether the exercise of personal jurisdiction over a foreign state under the Foreign Sovereign Immunities Act requires satisfaction of the minimum-contacts test.

PARTIES TO THE PROCEEDINGS BELOW AND RULE 29.6 DISCLOSURE STATEMENT

1. Petitioner Devas Multimedia Private Limited was petitioner in the district court and petitioner-appellee in Ninth Circuit No. 20-36024.

2. Respondents are Antrix Corp. Ltd.; CC/Devas (Mauritius) Limited; Devas Multimedia America, Inc.; Devas Employees Mauritius Private Limited; and Telcom Devas Mauritius Limited. Respondent Antrix Corp. Ltd. was respondent in the district court and respondent-appellant in Ninth Circuit No. 20-36024. Respondents CC/Devas (Mauritius) Limited; Devas Multimedia America, Inc.; Devas Employees Mauritius Private Limited; and Telcom Devas Mauritius Limited were intervenors-plaintiffs in the district court and appellees-intervenors in Ninth Circuit No. 20-36024.

3. The corporate disclosure statement in the petition for a writ of certiorari remains accurate.

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

CONSTITUTIONAL PROVISION

STATUTES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

IN THE
Supreme Court of the United States

DEVAS MULTIMEDIA PRIVATE LIMITED,
Petitioner,

v.

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

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

---

BRIEF FOR PETITIONER

Petitioner Devas Multimedia Private Limited respectfully requests that this Court reverse the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The court of appeals' opinion (Pet. App. 1a-12a) is unreported but is available at 2023 WL 4884882. The court of appeals' denial of rehearing en banc (Pet. App. 42a-67a) is reported at 91 F.4th 1340. The district court's opinion confirming the arbitral award (Pet. App. 17a-35a) is unreported but is available at 2020 WL 6286813.

STATEMENT OF JURISDICTION

The judgment of the court of appeals was filed on August 1, 2023. Pet. App. 1a. Timely petitions for rehearing en banc were denied on February 6, 2024. *Id.* at 43a-45a. This Court extended the time in which to file a petition for certiorari to July 5, 2024. *Devas Multimedia Private Limited* v. *Antrix Corp. Ltd.*, No. 23A966 (U.S.) (Apr. 30, 2024). Petitioner timely sought certiorari on July 3, 2024, which this Court granted on October 4, 2024, consolidating this case with *CC/Devas (Mauritius) Limited* v. *Antrix Corp. Ltd.*, No. 23-1201. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides in relevant part:

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

28 U.S.C. § 1330(a)-(b) provides:

> (a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605–1607 of this title or under any applicable international agreement.
>
> (b) 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.

PRELIMINARY STATEMENT

Since the Founding, the amenability of foreign states to suit in the United States has been a decision confided to the political branches, free of constitutional constraints. Before the enactment of the Foreign Sovereign Immunities Act ("FSIA"), the Executive Branch made jurisdictional recommendations to courts based on the Executive's preferred approach to foreign sovereign immunity and international comity, and courts routinely accepted them. Congress stepped in with the FSIA in 1976 to provide a comprehensive set of legal standards governing when foreign states may be sued in the United States.

Under the FSIA, foreign states are presumptively immune from suit, subject to specified exceptions. When a plaintiff's claim falls within an exception, the foreign state loses its immunity and subject-matter jurisdiction exists over the claim. Unlike in other types of litigation, personal jurisdiction under the FSIA follows automatically from subject-matter jurisdiction. "Personal jurisdiction over a foreign state *shall exist* as to every claim for relief over which the district courts have [subject-matter] jurisdiction" and where proper "service has been made." 28 U.S.C. § 1330(b) (emphasis added). The FSIA's comprehensive scheme replaced the regime of *ad hoc* Executive Branch discretion with enduring jurisdictional rules prescribed by Congress and approved by the President. But, just as before the FSIA, the political branches controlled the scope of foreign sovereign immunity, with no role for judicial adventurism under the Constitution or otherwise.

Just four years after the FSIA's advent, however, the Ninth Circuit engrafted a minimum-contacts requirement onto the FSIA for asserting personal jurisdiction over foreign states. The court divined its due-process-style test from the Act's legislative history, overlooking the clear, mandatory line drawn by the text of the long-arm provision. The ensuing decades have not been kind to the Ninth

Circuit's countertextual position. No other court of appeals has endorsed it, and nine judges below disavowed it.

This case illustrates how the Ninth Circuit's departure from enacted text upsets the delicate balance struck by Congress. The FSIA abrogates immunity whenever a plaintiff seeks to enforce certain arbitral awards against a foreign state. It is undisputed that this arbitration exception was satisfied and that proper service was achieved. Yet the Ninth Circuit rejected personal jurisdiction because the underlying dispute did not arise out of the foreign state's minimum contacts with the United States.

In so doing, the Ninth Circuit recalibrated Congress's judgment about when victims of sovereign wrongdoing should have access to federal court. And its outlier approach sweeps across all of the FSIA's immunity exceptions, closing the courthouse doors to victims of state-sponsored terrorism and expropriation who cannot meet the minimum-contacts test.

This Court should honor the judgment of the political branches by enforcing the FSIA's textual command that the minimum-contacts test is irrelevant to personal jurisdiction under the Act. In the unlikely event that the Court reaches constitutional questions in the first instance, it should confirm that the Due Process Clause does not constrain jurisdiction over foreign states. The judgment below should be reversed.

STATEMENT

I. BACKGROUND

A. Legal Background

1. "From the Nation's founding until 1952, foreign states were generally granted complete immunity from suit in United States courts, and the Judicial Branch deferred to the decisions of the Executive Branch on such questions." *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 n.1 (1989) (cleaned up).

Courts "deferred to the decisions of the political branches" because "foreign sovereign immunity is a matter of grace and comity on the part of the United States, * * * not a restriction imposed by the Constitution." *Verlinden B.V.* v. *Cent. Bank of Nigeria*, 461 U.S. 480, 486 (1983). In those pre-1952 cases, "the State Department ordinarily requested immunity in all actions against friendly foreign sovereigns." *Ibid.*

In 1952, however, "the State Department announced its adoption of the 'restrictive' theory of foreign sovereign immunity," under which "immunity is confined to suits involving the foreign sovereign's public acts, and does not extend to cases arising out of a foreign state's strictly commercial acts." *Id.* at 487. "The restrictive theory was not initially enacted into law, however, and its application proved troublesome." *Ibid.* "In the ensuing years, the process by which the Executive Branch submitted statements regarding a foreign state's immunity sometimes led to inconsistency, particularly in light of the case-by-case diplomatic pressure that the Executive Branch received from foreign nations." *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 271 (2023). "And when foreign states did not ask the State Department to weigh in, courts were left to render immunity rulings on their own, generally by reference to prior State Department decisions." *Id.* at 271-272. "Thus, sovereign immunity determinations were made in two different branches, subject to a variety of factors, sometimes including diplomatic considerations. Not surprisingly, the governing standards were neither clear nor uniformly applied." *Verlinden*, 461 U.S. at 488.

"In 1976, Congress entered the fray and sought to standardize the judicial process with respect to immunity for foreign sovereign entities in civil cases." *Turkiye Halk Bankasi*, 598 U.S. at 272. The FSIA displaces the case-by-case approach and "provides the 'sole basis' for obtaining

jurisdiction over a foreign sovereign in the United States." *Republic of Argentina* v. *Weltover, Inc.*, 504 U.S. 607, 611 (1992) (citation omitted). To that end, the FSIA "contains a comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state or its political subdivisions, agencies or instrumentalities." *Verlinden*, 461 U.S. at 488. Because immunity and jurisdiction are two sides of the same coin, the FSIA likewise "establishes a comprehensive framework for determining whether a court in this country, state or federal, may exercise jurisdiction over a foreign state." *Weltover*, 504 U.S. at 610.

2. The Act governs suits against "foreign state[s]," which it defines to include "political subdivision[s]." 28 U.S.C. § 1603(a). A foreign state also encompasses "an agency or instrumentality of a foreign state," which includes "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." *Id.* § 1603(a)-(b); see also *Turkiye Halk Bankasi*, 598 U.S. at 272 ("The FSIA defines a 'foreign state' to encompass instrumentalities of a foreign state—including entities that are directly and majority-owned by a foreign state.").

"[T]he FSIA codifies a baseline principle of immunity for foreign states and their instrumentalities" and "then sets out exceptions to that principle." *Turkiye Halk Bankasi*, 598 U.S. at 272; see 28 U.S.C. § 1604 ("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"). The Act's original exceptions—which remain in effect today—cover cases that involve:

- the foreign state's waiver of immunity, 28 U.S.C. § 1605(a)(1),

- the foreign state's commercial activity in, or having an effect in, the United States, *id.* § 1605(a)(2),
- the foreign state's taking of property in violation of international law when the expropriated property or property exchanged for it has a nexus to commercial activity in the United States, *id.* § 1605(a)(3),
- rights in inherited and gift property and immovable property located in the United States, *id.* § 1605(a)(4), and
- the foreign state's commission of a non-commercial tort in the United States, *id.* § 1605(a)(5).[1]

In sum, the original FSIA exceptions required either a waiver of immunity or "some form of substantial contact with the United States." *Verlinden*, 461 U.S. at 490 & n.15.

The FSIA grants subject-matter jurisdiction over any claim that satisfies an immunity exception. 28 U.S.C. § 1330(a) ("The district courts shall have original jurisdiction * * * of any nonjury civil action against a foreign state * * * as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605–1607 of this title or under any applicable international agreement."). Thus, "Sections 1604 and 1330(a) work in tandem: § 1604 bars federal * * * courts from exercising jurisdiction when a foreign state *is* entitled to immunity, and § 1330(a) confers jurisdiction on district courts * * * when a foreign state is *not* entitled to immunity." *Amerada Hess*, 488 U.S. at 434.

---

[1] The original FSIA also contained exceptions for certain actions involving maritime liens, 28 U.S.C. § 1605(b), and certain counterclaims, *id.* § 1607.

Personal jurisdiction, in turn, goes hand-in-hand with the existence of subject-matter jurisdiction under the immunity exceptions. "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." 28 U.S.C. § 1330(b) (emphasis added). In other words, personal jurisdiction is automatically established by proper service combined with the existence of subject-matter jurisdiction under an enumerated exception. The converse is also true: When subject-matter jurisdiction is lacking because the claim falls outside the immunity exceptions, "the federal court will also lack personal jurisdiction." *Verlinden*, 461 U.S. at 489 n.14. In this way, "sections 1330(b), 1608, and 1605-1607 are all carefully interconnected." H.R. Rep. No. 94-1487, at 14 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6604, 6612.

3. Over time, Congress expanded the list of immunity exceptions. It added the arbitration exception in 1988. Pub. L. No. 100-669, § 2, 102 Stat. 3969, 3969 (1988). That exception provides that a foreign state is not immune in any case, *inter alia*, "in which the action is brought * * * to confirm an award made pursuant to * * * an agreement to arbitrate" with the foreign state if "the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards." 28 U.S.C. § 1605(a)(6)(B).[2] This exception is commonly used to enforce arbitral awards governed by treaties such as

[2] The arbitration exception also applies to confirmation or enforcement of awards where "the arbitration takes place or is intended to take place in the United States," where "the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607," or where "[§ 1605(a)(1)'s waiver provision] is otherwise applicable." 28 U.S.C. § 1605(a)(6)(A), (C)-(D).

the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997, and the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States ("ICSID Convention"), Mar. 18, 1965, 17 U.S.T. 1270, T.I.A.S. No. 6090. See, *e.g.*, *Process & Indus. Devs. Ltd.* v. *Fed. Republic of Nigeria*, 27 F.4th 771, 776 (D.C. Cir. 2022) ("[T]he New York Convention is exactly the sort of treaty Congress intended to include in the arbitration exception.") (citation and internal quotation marks omitted); *Blue Ridge Invs., L.L.C.* v. *Republic of Argentina*, 735 F.3d 72, 85 (2d Cir. 2013) ("[E]very court to consider whether awards issued pursuant to the ICSID Convention fall within the arbitral award exception to the FSIA has concluded that they do.").

Congress added the terrorism exception in 1996. Pub. L. No. 104-132, § 221, 110 Stat. 1214, 1241-1243 (1996) (codifying exception at 28 U.S.C. § 1605(a)(7)); see also Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338-344 (2008) (replacing 28 U.S.C. § 1605(a)(7) with an amended exception codified at 28 U.S.C. § 1605A). As amended, this exception creates jurisdiction over suits against designated state sponsors of terrorism "for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act" where the victim is a U.S. national, armed-forces member, or government employee or contractor. 28 U.S.C. § 1605A(a)(1), (2)(A)(i)-(ii). The terrorism exception applies regardless of where the terrorist attack occurred or if it had any effects in the United States. See *ibid.*

When Congress codified those additional immunity exceptions, it did not amend the FSIA's long-arm provision, 28 U.S.C. § 1330(b), which bases personal jurisdiction

solely on proper service and subject-matter jurisdiction under any immunity exception.

4. Finally, the FSIA prescribes detailed rules for the civil action. The Act specifies the proper venue, 28 U.S.C. § 1391(f), authorizes removal if suit is initially brought in state court, *id.* § 1441(d), provides rules for service and pleadings, *id.* § 1608, and details the extent of the foreign state's liability, *id.* § 1606. Once a judgment is obtained, the FSIA establishes a default rule that the foreign state's property is immune from attachment and execution, with certain exceptions for when the foreign state's property loses its immunity. *Id.* §§ 1609-1611.

B. Factual Background

Respondent Antrix is a corporation wholly owned by the Republic of India that promotes and markets goods and services created by the nation's Department of Space and Indian Space Research Organisation. Pet. App. 17a, 52a. Petitioner Devas is an Indian corporation incorporated in December 2004 by former employees of the Indian Space Research Organisation to develop and provide telecommunication services in India. *Ibid.*

In January 2005, Devas and Antrix entered into an agreement under which Antrix agreed to build, launch, and operate two satellites and to make available 70 MHz of S-band spectrum for Devas's use. *Id.* at 17a-18a, 52a-53a. Antrix repudiated the agreement in 2011, claiming force majeure on the ground that the Indian government had made a policy decision not to provide S-band spectrum for commercial use. C.A. E.R. 88. Devas invoked the agreement's arbitration clause and initiated arbitral proceedings before the International Chamber of Commerce seated in New Delhi, India. Pet. App. 18a-20a. In 2015, the tribunal determined that Antrix breached the agreement and awarded Devas $562.5 million in damages plus interest. *Id.* at 20a. It is undisputed that this award is

governed by the laws of India and subject to the New York Convention. *Id.* at 21a.

Shortly thereafter, Antrix petitioned an Indian court to set aside the award. *Id.* at 20a. The Indian court agreed in 2022, holding that the award suffered from patent illegality and fraud and conflicted with Indian public policy. C.A. Doc. 72, App. A. This order was upheld on appeal by the Supreme Court of India. C.A. Doc. 116, Attach. A.

Meanwhile, in 2021, the National Company Law Tribunal ordered that Devas be placed into liquidation, finding that it had been incorporated for fraudulent and unlawful purposes and that its affairs were being conducted in a fraudulent manner. Pet. App. 54a; C.A. Doc. 38-2, at ¶¶ 1, 11. As a result of that order, Devas remains under the management of a court-appointed Official Liquidator, who must safeguard Devas's assets (including the award) and ultimately liquidate the company. Pet. App. 54a; C.A. Doc. 38-2, at ¶¶ 1, 2, 6-8, 12-14. The liquidation order was upheld on appeal by the Supreme Court of India. C.A. Doc. 72, App. B.

II. PROCEEDINGS BELOW

A. Proceedings in the district court

Devas sought to confirm the award in 2018 in the U.S. District Court for the Western District of Washington, invoking the FSIA's arbitration exception to establish subject-matter jurisdiction, 28 U.S.C. § 1605(a)(6). Pet. App. 20a-21a. Antrix conceded that it is "an agency or instrumentality of a foreign state" and therefore a "foreign state" under the FSIA, 28 U.S.C. § 1603(a)-(b). Pet. App. 21a. Antrix did not dispute that it was properly served and that the arbitration exception applies, thus conceding the statutory basis for personal jurisdiction under 28 U.S.C. § 1330(b). *Id.* at 22a. Nevertheless, Antrix moved to dismiss the petition for lack of personal jurisdiction, arguing that the Due Process Clause precludes personal

jurisdiction because the dispute does not arise out of Antrix's "minimum contacts" with the forum. *Ibid.*; see *Walden* v. *Fiore*, 571 U.S. 277, 283-284 (2014) (To establish "the 'minimum contacts' necessary to create specific jurisdiction," "the defendant's suit-related conduct must create a substantial connection with the forum State.").

The district court denied Antrix's motion to dismiss. Pet. App. 13a-15a, 22a. The court explained that personal jurisdiction exists under the FSIA because the arbitration exception to immunity applies and Antrix had been validly served. *Id.* at 13a, 21a-22a (citing 28 U.S.C. §§ 1330(b), 1605(a)(6)). The court rejected Antrix's argument that "it is entitled to additional, constitutional due process protections requiring a minimum contacts analysis." *Id.* at 13a. The court reasoned that because a foreign state is not a "person" under the Due Process Clause, the clause does not constrain the exercise of personal jurisdiction over foreign states. *Id.* at 13a-14a. By the same token, "[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." *Id.* at 14a. Because "[t]he Government of India exercises 'plenary control' over Antrix in a principal-agent relationship," the court concluded that Antrix, like India, "is not a 'person' for due process purposes" under the Due Process Clause. *Id.* at 13a-14a (citation omitted). Rejecting Antrix's other arguments against the award's confirmation, the district court confirmed the award and entered judgment for Devas in the amount of $1.3 billion. *Id.* at 34a, 53a. Antrix appealed. *Id.* at 3a.

After Antrix appealed and the Indian judicial system placed Devas into liquidation, several Devas shareholders and a Devas subsidiary—CC/Devas (Mauritius) Limited; Devas Multimedia America, Inc.; Devas Employees Mauritius Private Limited; and Telcom Devas Mauritius Limited—were granted intervention but denied substitution

in the district court and court of appeals, over Devas's objection that these entities have no standing to enforce Devas's award. *Id.* at 54a.[3] The district court permitted the intervenors to conduct post-judgment discovery to locate Antrix's executable assets and to register the judgment in the Eastern District of Virginia after discovery revealed assets there. *Id.* at 36a, 40a-41a. Devas appealed the order permitting the intervenors to register the judgment, arguing that it infringed the Official Liquidator's authority and effectively nullified the Supreme Court of India's order temporarily staying enforcement of the award while Indian legal challenges progressed. *Id.* at 3a.

While both the confirmation and registration appeals were pending before the Ninth Circuit, the Indian courts set aside Devas's arbitral award. *Id.* at 54a. Antrix sought a limited remand to the district court to evaluate the effect of the Indian courts' set-aside ruling on the award's enforceability. *Ibid.*

B. Proceedings in the court of appeals

1. The court of appeals reversed confirmation of Devas's award, holding that the district court lacked personal jurisdiction. Pet. App. 3a. The court acknowledged that under the FSIA, "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." *Id.* at 3a-4a (alteration marks omitted) (quoting 28 U.S.C. § 1330(b)). The court noted the parties' agreement that Antrix was properly served and that subject-matter jurisdiction existed under 28 U.S.C. § 1330(a) because the

---

[3] The intervenors filed a petition for certiorari raising the same issue presented in Devas's petition, and this Court granted both petitions and consolidated the cases. See *CC/Devas (Mauritius) Limited* v. *Antrix Corp. Ltd.*, No. 23-1201.

arbitration exception to immunity applied, 28 U.S.C. § 1605(a)(6). *Id.* at 4a.

Nonetheless, the court of appeals reasoned that circuit precedent imposes an *additional* requirement: "[P]ersonal jurisdiction under the FSIA requires a traditional minimum contacts analysis." *Ibid.* It explained that the Ninth Circuit, relying on the FSIA's legislative history, first adopted this rule in *Thomas P. Gonzalez Corp.* v. *Consejo Nacional De Produccion De Costa Rica*, 614 F.2d 1247, 1255 (9th Cir. 1980), and continued to apply it in later cases. *Ibid.* The court of appeals observed that its precedential minimum-contacts requirement derived from the FSIA itself, not from the Due Process Clause. *Id.* at 5a. Thus, the circuit precedent was not "clearly irreconcilable" with *Republic of Argentina* v. *Weltover, Inc.*, 504 U.S. 607 (1992), which strongly suggested that foreign states are not "persons" under the Due Process Clause and therefore ineligible for a constitutionally mandated minimum-contacts analysis. *Ibid.* (citation omitted).

Applying the minimum-contacts test, the court held that Antrix lacked sufficient suit-related contacts with the United States to support personal jurisdiction. *Id.* at 5a-7a. The court therefore reversed the district court's judgment confirming the award. *Id.* at 8a. Because the court of appeals relied solely on the threshold ground of personal jurisdiction, it did not reach any of Antrix's other challenges to the confirmation of Devas's award. *Ibid.* And because the court reversed the judgment, it also reversed the order allowing the intervenors to register the judgment and denied Antrix's motion for a limited remand. *Id.* at 8a & n.1.

Judge Miller, joined by Judge Koh, concurred in the disposition as a correct application of circuit precedent but doubted that the Ninth Circuit's minimum-contacts requirement has any basis in the FSIA or the Constitution. *Id.* at 9a. Judge Miller declared that "[n]othing in the text

of the FSIA's long-arm provision describes a minimum-contacts requirement." *Id.* at 10a. He observed that other circuits have held that the FSIA's long-arm provision requires nothing more than proper service and satisfaction of an enumerated exception to immunity. *Ibid.*

Nor could the Constitution support a minimum-contacts rule. Judge Miller agreed with the D.C., Second, and Seventh Circuits that "neither the text of the Constitution, Supreme Court decisions construing the Due Process Clause, nor long standing tradition provide a basis for extending the reach of this constitutional provision for the benefit of foreign states." *Id.* at 9a (cleaned up).

2. The court of appeals denied rehearing en banc over seven dissents. *Id.* at 44a-45a. Judge Bumatay, joined by Judges Callahan, Ikuta, Bennett, R. Nelson, and VanDyke, filed a lengthy opinion, *id.* at 45a, and Senior Circuit Judge O'Scannlain expressed his agreement with Judge Bumatay's dissent, *ibid.*

Judge Bumatay explained that "[t]his case presents a straightforward question": "Despite the FSIA's text, does the Act require plaintiffs to *also* prove 'minimum contacts' to assert personal jurisdiction over a foreign state?" *Id.* at 46a. "Unlike every other federal court, the Ninth Circuit answers 'yes.'" *Ibid.* As Judge Bumatay noted, this decision means that in future cases against foreign states "we lock the courthouse doors to plaintiffs whom Congress expressly granted access. So victims of terrorism, those harmed by violations of international law, and persons who suffered from torture may be barred from seeking justice in our courts." *Id.* at 47a. "The effect of [this] ruling is unquestionably significant" because "[u]nder a proper reading of the FSIA, those plaintiffs should be welcome to bring their claims in [the Ninth Circuit]." *Id.* at 49a-50a.

Judge Bumatay lamented that the court nonetheless adhered to its "erroneous precedent," which was based

upon "the most dubious of guises—legislative history." *Id.* at 47a, 49a. And he decried the decision to "close the courthouse doors" to FSIA plaintiffs, despite the "consensus of circuit courts" rejecting any minimum-contacts requirement. *Id.* at 62a, 67a.

SUMMARY OF ARGUMENT

The FSIA does not require a showing of minimum contacts before a district court may exercise personal jurisdiction over a foreign state. The FSIA's long-arm provision dictates that personal jurisdiction "shall exist" over "every claim" where an immunity exception is established and proper service is made. Nothing in the text supports adding a minimum-contacts test to those express requirements. To the contrary, the Act's mandatory language forbids courts from declining to exercise personal jurisdiction over claims that satisfy the two specified conditions. Unsurprisingly, this Court has repeatedly recognized that personal jurisdiction under the FSIA is automatic when an immunity exception applies and proper service is made.

The Act's structure confirms this result. Congress made the immunity exceptions the linchpin of the jurisdictional scheme and intentionally designed the FSIA so that subject-matter jurisdiction and personal jurisdiction automatically follow whenever a plaintiff states a claim that falls within the Act's carefully calibrated immunity exceptions. Adding a minimum-contacts requirement contradicts this central structural feature of the Act.

The FSIA's history likewise reveals that Congress crafted exceptions requiring varying types of U.S. contacts to trigger jurisdiction. While some of the Act's original exceptions require U.S. contacts that may satisfy a due-process-style minimum-contacts test, Congress determined for later exceptions that a different degree of U.S. contacts was sufficient to confer jurisdiction. The arbitration exception at issue here, for instance, requires

only indirect connections with the United States, allowing enforcement of arbitral awards governed by treaties signed by the United States, regardless of whether the underlying dispute arose out of U.S. contacts. The terrorism exception requires similarly attenuated U.S. connections, allowing jurisdiction over suits by terrorism victims when the plaintiff is a U.S national, regardless of where the terrorist attack occurred or whether it arose out of U.S. contacts. The fact that Congress crafted some immunity exceptions—but not others—to require substantial, suit-related U.S. contacts illustrates that the Act does not contain an overarching minimum-contacts test.

Every circuit to analyze the long-arm provision has refused to interpolate a minimum-contacts requirement into the Act. The D.C., Second, Seventh, and Eleventh Circuits all enforce the Act's text and exercise personal jurisdiction whenever an immunity exception is satisfied, revealing the Ninth Circuit's rule as an extreme and misbegotten outlier.

In the decision below, the court of appeals adhered to a 40-year-old circuit precedent holding that personal jurisdiction over a foreign state must comport with the minimum-contacts standard. That decision improperly ignored the unambiguous text of the long-arm provision in favor of vague and irrelevant legislative history. If anything, that legislative history shows that Congress relied on precisely drafted immunity exceptions to define the scope of jurisdiction under the Act.

The Ninth Circuit's approach has far-reaching consequences. Imposing a minimum-contacts rule would eviscerate the arbitration and terrorism exceptions, which require only indirect contacts with the United States. Certain original exceptions, including the third prong of the commercial-activity exception and the expropriation exception, would also see their textual reach artificially limited by a minimum-contacts test. Sovereign actors would

escape accountability that Congress desired. Courts have no warrant to revise the jurisdictional policy judgments made by the political branches in the FSIA.

The Constitution does not require a different result—hardly surprising since foreign sovereign immunity is a question of comity entrusted to the political branches. Nor could constitutional-avoidance principles support judicially revising the FSIA's unambiguous text to include a minimum-contacts test. Because the court of appeals did not consider whether the Due Process Clause entitles Antrix to a minimum-contacts analysis, the Court should remand that issue after reversing the Ninth Circuit's erroneous construction of the FSIA. If the Court reaches the question, the Due Process Clause cannot aid Antrix because a foreign state is not a "person" for purposes of that clause; even if it were, the Fifth Amendment's Due Process Clause, which applies here—unlike the Fourteenth's—does not impose a minimum-contacts test for personal jurisdiction; and the FSIA's arbitration exception satisfies any applicable due-process test because it validly deems a foreign state to have consented to personal jurisdiction when it agreed to arbitrate.

ARGUMENT

I. THE FSIA DOES NOT IMPOSE A MINIMUM-CONTACTS TEST FOR PERSONAL JURISDICTION

The Ninth Circuit's minimum-contacts rule for personal jurisdiction lacks any support in the FSIA. The Act's long-arm provision mandates that personal jurisdiction "shall exist" over "every claim" where there is proper service and subject-matter jurisdiction under an enumerated immunity exception. That nondiscretionary and comprehensive language prohibits courts from declining personal jurisdiction because minimum contacts cannot be established. While some immunity exceptions *themselves* require significant, suit-related U.S. contacts, others do

not. Congress chose to set the level of required contacts through the exceptions, not through an overarching due-process-style minimum-contacts test. The Ninth Circuit's contrary rule ignores the text and relies entirely on selective and irrelevant legislative history. Small wonder that no other court of appeals follows its atextual approach. Engrafting a minimum-contacts requirement onto the FSIA would dramatically disrupt the FSIA's jurisdictional scheme and eviscerate the effectiveness of several immunity exceptions. This Court should reject the Ninth Circuit's indefensible reading of the FSIA.

A. The FSIA's long-arm provision bases personal jurisdiction solely on proper service and satisfying an immunity exception

When interpreting a statutory provision, "we begin where all such inquiries must begin: with the language of the statute itself." *Republic of Sudan* v. *Harrison*, 587 U.S. 1, 8 (2019) (cleaned up). The Court "must enforce plain and unambiguous statutory language according to its terms." *Hardt* v. *Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010). The FSIA's text is pellucid. Its long-arm provision bases personal jurisdiction exclusively on proper service and an exception to immunity. "Because the plain language of [the FSIA] is unambiguous, our inquiry begins with the statutory text, and ends there as well." *Nat'l Ass'n of Mfrs.* v. *Dep't of Def.*, 583 U.S. 109, 127 (2018) (citation and internal quotation marks omitted).

1. The FSIA "prescribes the procedures for obtaining personal jurisdiction over a foreign state." *Republic of Austria* v. *Altmann*, 541 U.S. 677, 691 (2004). "And it is hard to imagine a clearer statute" than the FSIA's long-arm provision. Pet. App. 57a (Bumatay, J.). It declares that "[p]ersonal 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." 28 U.S.C. § 1330(b) (emphases added). "[S]ubsection (a)," in turn, premises subject-matter jurisdiction on satisfying one of the statute's immunity exceptions. *Id.* § 1330(a) ("The district courts shall have original jurisdiction * * * of any nonjury civil action against a foreign state * * * as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605–1607 of this title or under any applicable international agreement."). Thus, personal jurisdiction "shall exist" whenever an immunity exception and proper service have been satisfied. *Id.* § 1330(b).

Congress's chosen language is imperative and admits of no exceptions. Personal jurisdiction "shall" exist if the specified conditions are met. "That presents a simple if-then statement." Pet. App. 57a (Bumatay, J.). "Shall" is mandatory, nondiscretionary language that courts must enforce. *Murphy* v. *Smith*, 583 U.S. 220, 223 (2018) ("[T]he word 'shall' usually creates a mandate, not a liberty," and "tells us that the district court has some nondiscretionary duty to perform."). It does not permit any wiggle room for courts to decline personal jurisdiction where the listed conditions are met or to add new conditions for exercising personal jurisdiction.

Moreover, personal jurisdiction shall exist over "every claim" where those conditions are met. Contemporaneous dictionaries confirm that the term "every" is all-encompassing. *Every*, The American Heritage Dictionary of the English Language 454 (1971) ("Each and all single members of an aggregate; each without exception"); cf. *SAS Inst., Inc.* v. *Iancu*, 584 U.S. 357, 362-363 (2018) (equating "any" to "every" and emphasizing "expansive meaning") (citation and internal quotation marks omitted). That language flatly forbids courts from declining personal jurisdiction over any sub-category of claims that meets the specified conditions, such as claims where minimum

contacts are lacking. Courts *must* exercise personal jurisdiction over *all* claims where subject-matter jurisdiction and service have been satisfied.

This Court has discussed § 1330(b) multiple times and had no trouble recognizing the import of its plain terms. In a seminal FSIA case, the Court observed that "wherever subject matter jurisdiction exists under [§ 1330(a)] and service of process has been made under § 1608 of the Act," "§ 1330(b) provides personal jurisdiction." *Verlinden B.V.* v. *Cent. Bank of Nigeria*, 461 U.S. 480, 485 n.5 (1983). And more recently, the Court proclaimed that the FSIA's long-arm provision "makes personal jurisdiction over a foreign state *automatic* when an exception to immunity applies and service of process has been accomplished in accordance with 28 U.S.C. § 1608." *Samantar* v. *Yousuf*, 560 U.S. 305, 324 n.20 (2010) (emphasis added). The Court need only honor the FSIA's text and its own prior statements to reject the Ninth Circuit's holding.

2. A plain-text reading of the long-arm provision accords with the FSIA's "carefully calibrated scheme." *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 273 (2023); see also *id.* at 275 ("[T]he Court must read the words Congress enacted in their context and with a view to their place in the overall statutory scheme.") (citation and internal quotation marks omitted). As one scholar has aptly explained, "[t]he FSIA * * * intertwines issues of personal and subject matter jurisdiction over foreign states with that of sovereign immunity." 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, 120 (2001). Section 1604 grants presumptive immunity for foreign states, subject to enumerated exceptions. 28 U.S.C. § 1604. When an exception strips the foreign state of its immunity, then § 1330(a) automatically confers subject-matter jurisdiction on the district courts. *Argentine*

Republic v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989); see also *Verlinden*, 461 U.S. at 493-494 ("At the threshold of every action in a District Court against a foreign state, * * * the court must satisfy itself that one of the exceptions applies" because "subject matter jurisdiction in any such action depends on the existence of one of the specified exceptions to foreign sovereign immunity.") (citation omitted). And because personal jurisdiction turns on the existence of subject-matter jurisdiction, personal jurisdiction necessarily rises or falls with satisfaction of one of the enumerated immunity exceptions. *E.g.*, *Amerada Hess*, 488 U.S. at 435 n.3 ("Thus, personal jurisdiction, like subject-matter jurisdiction, exists only when one of the exceptions to foreign sovereign immunity in §§ 1605–1607 applies."); *Verlinden*, 461 U.S. at 485 n.5 ("[B]oth statutory subject matter jurisdiction * * * and personal jurisdiction turn on application of the substantive provisions of the Act.").

As a result, the immunity exceptions "are central to the Act's functioning," *Altmann*, 541 U.S. at 691, and their "statutory requirements * * * are the linchpin of the [FSIA's] jurisdictional design," Caplan, *The Constitution and Jurisdiction over Foreign States: The 1996 Amendment to the Foreign Sovereign Immunities Act in Perspective*, 41 Va. J. Int'l L. 369, 406 (2001). Immunity, subject-matter jurisdiction, and personal jurisdiction "are all carefully interconnected" through the immunity exceptions. H.R. Rep. No. 94-1487, at 14 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6604, 6612. Adding a minimum-contacts requirement for personal jurisdiction defies Congress's choice to link immunity, subject-matter jurisdiction, and personal jurisdiction to satisfaction of an immunity exception. In this way, the Ninth Circuit's rule breaks the common thread tying together the statute's jurisdictional scheme.

3. Reflecting the exceptions' centrality to jurisdiction, Congress carefully prescribed the type of U.S. contacts that it deemed sufficient to trigger jurisdiction under each exception. Courts do violence to that design when they impose an overarching "minimum contacts" requirement drawn from private litigation to displace the contacts Congress specified. While some immunity exceptions may satisfy the familiar due-process tests for jurisdiction, others do not. Cf. *Walden* v. *Fiore*, 571 U.S. 277, 283-284 (2014) (To establish "the 'minimum contacts' necessary to create specific jurisdiction," "the defendant's suit-related conduct must create a substantial connection with the forum State."); *Mallory* v. *Norfolk S. Ry. Co.*, 600 U.S. 122, 138 (2023) (plurality op.) ("express or implied consent" to suit establishes personal jurisdiction). The role of courts is to enforce each exception according to its terms, not to force an ill-fitting, due-process-style straitjacket onto all of them.

Congress drafted the original FSIA "aware of concern that our courts might be turned into small international courts of claims, open to all comers to litigate any dispute which any private party may have with a foreign state anywhere in the world." *Verlinden*, 461 U.S. at 490 (cleaned up). So "Congress protected against this danger * * * by enacting substantive provisions requiring some form of substantial contact with the United States" or the foreign state's waiver of immunity. *Id.* at 490 & n.15; accord H.R. Rep. No. 94-1487, at 13 ("[E]ach of the immunity provisions in the bill, sections 1605-1607, requires some connection between the lawsuit and the United States, or an express or implied waiver by the foreign state of its immunity from jurisdiction.").

Specifically, the original FSIA exceptions covered cases involving:

- the foreign state's waiver of immunity, 28 U.S.C. § 1605(a)(1),

- the foreign state's commercial activity in, or having an effect in, the United States, *id.* § 1605(a)(2),
- the foreign state's taking of property in violation of international law when the expropriated property or property exchanged for it has a nexus to commercial activity in the United States, *id.* § 1605(a)(3),
- rights in inherited and gift property and immovable property located in the United States, *id.* § 1605(a)(4), and
- the foreign state's commission of a non-commercial tort in the United States, *id.* § 1605(a)(5).[4]

Many cases brought under these original exceptions would likely comport with the due-process tests that apply to non-sovereign litigants under the Fourteenth Amendment.

When Congress enacted the arbitration exception 12 years later, however, it did not require substantial U.S. contacts. Instead, Congress deemed a lesser degree of U.S. connection sufficient to open the courts to certain arbitral-enforcement actions. The arbitration exception provides jurisdiction over actions to confirm or enforce an arbitral award if:

- "the arbitration takes place or is intended to take place in the United States," 28 U.S.C. § 1605(a)(6)(A),
- "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

[4] The original FSIA also contained exceptions for certain actions involving maritime liens, 28 U.S.C. § 1605(b), and certain counterclaims, *id.* § 1607.

recognition and enforcement of arbitral awards," *id.* § 1605(a)(6)(B),

- "the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607," *id.* § 1605(a)(6)(C), or
- "[the waiver exception in § 1605(a)(1)] is otherwise applicable." *Id.* § 1605(a)(6)(D).

These indirect connections with the United States often would not satisfy a due-process-style minimum-contacts test. For example, § 1605(a)(6)(B)'s treaty provision, which supported jurisdiction here, applies regardless of any purposeful activity by the judgment debtor directed at the United States. See *Ford Motor Co.* v. *Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 359 (2021) (minimum contacts with the forum "must be the defendant's own choice and not random, isolated, or fortuitous") (citation and internal quotation marks omitted).

The arbitration exception was rooted in Congress's view that when a foreign state agrees to arbitrate in one of the four covered circumstances it waives immunity and consents to jurisdiction to enforce any resulting award in U.S. courts. While "a number of courts had interpreted agreements to arbitrate as implied waivers of immunity" under the original FSIA waiver exception, 28 U.S.C. § 1605(a)(1), "other courts had disagreed with this interpretation." Halverson, *supra*, at 124, 177; see also *id.* at 177 n.263 (collecting cases). The arbitration exception "was designed to resolve this conflict between courts, and to comply with the United States's obligations under international agreements relating to the recognition and enforcement of foreign arbitral awards." *Id.* at 124.[5]

[5] The legislative history confirms Congress intended to clarify that a foreign state's agreement to arbitrate amounts to a waiver of sovereign immunity in subsequent suits to enforce the arbitral award. See

The terrorism exception—enacted in 1996—likewise requires only attenuated connections with the United States. That exception authorizes jurisdiction where a state sponsor of terrorism commits specified acts against a victim who is a U.S. national, armed-forces member, or government employee or contractor. 28 U.S.C. § 1605A(a)(1), (2)(A)(i)-(ii). The exception applies regardless of where the terrorist attack occurred or if it had any direct effects in the United States. Because "the only required link between the defendant nation and the territory of the United States is the nationality of the claimant," the terrorism exception "allows personal jurisdiction to be maintained over defendants in circumstances that do not appear to satisfy the 'minimum contacts' requirement of the Due Process Clause." *Price* v. *Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 90 (D.C. Cir. 2002); see *Walden*, 571 U.S. at 286 ("Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the random, fortuitous, or attenuated contacts he makes by interacting with other persons affiliated with the State.") (citation and internal quotation marks omitted).

The FSIA's text, structure, and history therefore reveal that Congress prescribed the requisite degree of U.S. contacts in each immunity exception, rather than through the long-arm provision. And Congress made a range of policy judgments about the type of contacts—and their

---

134 Cong. Rec. 32328 (1988) (statement of Rep. Moorhead) (Congress amended the FSIA to ensure that foreign states could not use sovereign immunity "to frustrate the effect [of] an agreement to arbitrate or to interfere with the enforcement of an arbitral award entered against a foreign state."); 132 Cong. Rec. 28000 (1986) (statement of Sen. Lugar) (Congress sought to "give more explicit guidance to judges in dealing with these issues" and "perfect the [FSIA] to provide explicitly for the enforcement of arbitral agreements or awards.").

relatedness to the underlying suit—that are necessary to sustain jurisdiction under the various exceptions. When Congress sought to facilitate arbitration enforcement or vindicate the rights of terrorism victims, it determined that attenuated U.S. contacts were sufficient to support jurisdiction. Congress's decision to require substantial, suit-related contacts for some exceptions but not others shows that its choices were intentional. *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("Where 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 or exclusion.") (cleaned up). And Congress's aim to "establish[] a comprehensive framework" for "exercis[ing] jurisdiction over * * * foreign state[s]," *Republic of Argentina* v. *Weltover, Inc.*, 504 U.S. 607, 610 (1992), weighs heavily against inserting an overarching constitutional test without clear textual warrant. Consequently, the Ninth Circuit erred by failing to "resist [Antrix's] suggestion to read [minimum contacts] language into" the FSIA's long-arm provision when Congress declined to include it. *Republic of Sudan*, 587 U.S. at 12.

4. Every other court of appeals has correctly held that the FSIA's long-arm provision does not impose a minimum-contacts requirement. These courts instead enforce the FSIA's command that personal jurisdiction is coextensive with the Act's immunity exceptions. The D.C. Circuit has squarely held that the long-arm "provision clearly expresses the decision of the Congress to confer upon the federal courts personal jurisdiction over a properly served foreign state—and hence its agent—coextensive with the exceptions to foreign sovereign immunity in the FSIA." *TMR Energy Ltd.* v. *State Prop. Fund of Ukraine*, 411 F.3d 296, 303 (D.C. Cir. 2005). The Second, Seventh, and Eleventh Circuits agree. *Gater Assets Ltd.* v. *AO Moldovagaz*, 2 F.4th 42, 49 (2d Cir. 2021); *Abelesz* v. *Magyar*

Nemzeti Bank, 692 F.3d 661, 694 (7th Cir. 2012); *S & Davis Int'l, Inc.* v. *Republic of Yemen*, 218 F.3d 1292, 1303 (11th Cir. 2000). In short, "[e]very circuit that has analyzed the FSIA has refused to find a statutory minimum-contacts requirement under § 1330(b)," while "the Ninth Circuit stands alone." Pet. App. 58a, 66a (Bumatay, J.).

B. The Ninth Circuit's approach overrides the FSIA's clear text

Rather than enforcing the long-arm provision's unambiguous statutory text, the court below followed the rule articulated in *Thomas P. Gonzalez Corp.* v. *Consejo Nacional De Produccion De Costa Rica*, 614 F.2d 1247, 1255 (9th Cir. 1980), requiring that personal jurisdiction over a foreign state must comport with the minimum-contacts standard. Pet. App. 4a. In a case involving the FSIA's commercial-activity exception, 28 U.S.C. § 1605(a)(2), the *Gonzalez* court observed that "[t]he words 'direct effect' in [that] clause * * * have been interpreted as embodying the minimum contacts standard of" *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), and its progeny. 614 F.2d at 1255. The court then declared that "[t]he legislative history of the Act confirms that the reach of § 1330(b)"—the FSIA's long-arm provision—"does not extend beyond the limits set by the *International Shoe* line of cases." *Ibid.* "Based on these flimsy data points, *Gonzalez* broadly proclaimed: 'Personal jurisdiction under the Act requires satisfaction of the traditional minimum contacts standard.'" Pet. App. 57a (Bumatay, J.) (quoting 614 F.2d at 1255).

Gonzalez violated a cardinal rule of statutory interpretation. When the text is unambiguous, resort to legislative history is prohibited. *Matal* v. *Tam*, 582 U.S. 218, 232-233 (2017) ("[O]ur inquiry into the meaning of the statute's text ceases when the statutory language is unambiguous," and "resort to legislative history * * * [is not]

appropriate.") (citation and internal quotation marks omitted). *Gonzalez* therefore "is a relic from a bygone era of statutory construction." See *Food Mktg. Inst.* v. *Argus Leader Media*, 588 U.S. 427, 437 (2019) (citation and internal quotation marks omitted). In any case, *Gonzalez*'s rationale fails on its own terms.

First, *Gonzalez* illogically reasoned that because the commercial-activity exception, 28 U.S.C. § 1605(a)(2), supposedly contains a minimum-contacts test, then the long-arm provision must impose that test for all other FSIA exceptions.[6] But the commercial-activity exception is just one of many exceptions that provide subject-matter and personal jurisdiction when satisfied. Each immunity exception must be interpreted according to its own text. Holding that the commercial-activity exception "creates a universal minimum-contacts requirement for § 1330(b)" and all exercises of personal jurisdiction "makes no textual sense." Pet. App. 58a (Bumatay, J.).

Second, the cited legislative history merely asserted that "[t]he requirements of minimum jurisdictional

---

[6] *Gonzalez*'s premise that the "direct effect" element of the commercial-activity exception "embod[ies] the minimum contacts standard" is also questionable. 614 F.2d at 1255. In *Republic of Argentina* v. *Weltover, Inc.*, 504 U.S. 607 (1992), this Court declined to resolve whether the "direct effect" element of the commercial-activity exception incorporates the minimum-contacts test, *id.* at 619-620, but it did "reject the suggestion that § 1605(a)(2) contains any unexpressed requirement of 'substantiality' or 'foreseeability,'" *id.* at 618. Since *Weltover*, at least one court has held that the "direct effect" element of the commercial-activity exception does not incorporate the minimum-contacts test. *Rote* v. *Zel Custom Mfg. LLC*, 816 F.3d 383, 392-395 (6th Cir. 2016); see also *id.* at 395 & n.8 ("[T]he Ninth Circuit's approach, in this post-*Weltover* period, is not persuasive," and that court "stand[s] alone in expressly incorporating the 'minimum contacts' test wholesale."). And the Seventh Circuit has similarly held that "the 'commercial activity' inquiry under the FSIA is not congruent with a general personal jurisdiction inquiry." *Abelesz*, 692 F.3d at 694.

contacts and adequate notice are embodied in the [FSIA's long-arm] provision" because the FSIA's enumerated immunity exceptions, which are incorporated by reference into § 1330(b), require "some connection between the lawsuit and the United States, or an express or implied waiver by the foreign state of its immunity from jurisdiction." H.R. Rep. No. 94-1487, at 13-14. Thus, the Committee Report "shows only that Congress believed that the contacts set forth in the [original] immunity provisions *satisfy* due-process requirements." *Rote*, 816 F.3d at 398 (White, J., concurring) (emphasis added); see also Pet. App. 60a (Bumatay, J.) ("The Report was just noting that the FSIA's enumerated exceptions by themselves satisfy" due-process requirements.). The Report never claimed that the long-arm provision superimposes a due-process-style test on immunity exceptions that contain widely varying jurisdictional metrics.

At most, the legislative history reflects that Congress effectuated its original goal of limiting the Act's reach not by including a minimum-contacts requirement in the long-arm provision but by drafting enumerated exceptions that generally satisfy the due-process test. Congress, of course, added the arbitration exception long after the FSIA's original enactment (and eight years after *Gonzalez*), and that exception requires only indirect contact with the United States. See *supra* pp. 24-25. The arbitration exception's addition "more than a decade after the Committee Report[] mak[es] application of a minimum-contacts test here even more dubious." Pet. App. 61a (Bumatay, J.). The enactment of the terrorism exception, which likewise requires only an attenuated connection with the United States, see *supra* p. 26, underscores this point. In adding those new exceptions, Congress did not amend the long-arm provision mandating that satisfying any exception "shall" establish personal jurisdiction. Ninth Circuit

precedent and the judgment below override that plain text.

C. Imposing a non-textual minimum-contacts requirement would drastically restrict the FSIA's intended reach

1. The Ninth Circuit's rule upsets Congress's scheme for allowing suit against foreign states whenever an immunity exception applies. That is more than a procedural problem; it creates deleterious real-world consequences, effectively immunizing sovereign wrongdoing Congress sought to reach. By their plain terms, certain exceptions were intended to encompass at least some conduct outside the United States that does not arise out of the foreign state's minimum contacts with this Nation. For example, it is undisputed that Devas sought to enforce an arbitral award against Antrix under the New York Convention—"a treaty * * * in force for the United States calling for the recognition and enforcement of arbitral awards"—bringing Devas's suit squarely within § 1605(a)(6)(B). That should have been sufficient for both subject-matter and personal jurisdiction. But the Ninth Circuit held that Devas was *also* required to establish that the suit arose out of Antrix's contacts with the United States, something it could not do. Pet. App. 4a-7a. Erecting this additional barrier frustrates Congress's goal of easing the enforcement of eligible arbitral awards in U.S. courts, consistent with U.S. treaty obligations.

2. The Ninth Circuit's rule also thwarts plaintiffs suing under the terrorism exception, which requires only a showing that a state terrorism sponsor committed a terrorist act that harmed a U.S. person, 28 U.S.C. § 1605A—regardless of whether the act occurred in the United States or had any direct effects in the United States. *Price*, 294 F.3d at 90; Halverson, *supra*, at 167 ("In contrast with the exceptions to immunity listed in the 1976

statute, the antiterrorism amendment has no jurisdictional nexus requirement other than a requirement that either the claimant or the victim be a U.S. national at the time that the criminal act was perpetrated."). Many victims who can satisfy this exception will not also be able to show that the terrorist's acts arose out of "suit-related conduct [that] create[s] a substantial connection" between the defendant and the United States. *Walden*, 571 U.S. at 284. Indeed, the typical terrorism case "involve[s] injury or death having its direct effect outside U.S. territory," and "[i]n such cases, the traditional minimum contacts * * * simply do not exist." Caplan, *supra*, at 411-412; see also Pet. App. 47a (Bumatay, J.) ("So victims of terrorism, those harmed by violations of international law, and persons who suffered from torture may be barred from seeking justice in our courts."). The Ninth Circuit's rule violates "one of the most basic interpretive canons, that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Rubin* v. *Islamic Republic of Iran*, 583 U.S. 202, 213 (2018).

3. The Ninth Circuit's rule also threatens to limit the effectiveness of even some *original* FSIA exceptions. For example, the third prong of the commercial-activity exception applies if the action is based "upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States." 28 U.S.C. § 1605(a)(2). It thus "embrace[s] commercial conduct abroad having direct effects within the United States." H.R. Rep. No. 94-1487, at 19; see *Weltover*, 504 U.S. at 611. This Court and others have resisted holding that the mere U.S. "direct effect" of an overseas action in connection with overseas commerce necessarily satisfies the minimum-contacts test. See *Weltover*, 504 U.S. at 617-620; *supra* p. 29 n.6. Indeed, even when a defendant "direct[s] his

conduct" at plaintiffs in the forum, "[t]he proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." *Walden*, 571 U.S. at 289-290.

Similarly, the expropriation exception permits suit when the expropriated property or property exchanged for it is (1) "present in the United States in connection with a commercial activity carried on in the United States by the foreign state" or (2) "is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States." 28 U.S.C. § 1605(a)(3). This exception requires "a nexus between the disputed property and a defendant's commercial activity in the United States," *Simon* v. *Republic of Hungary*, 77 F.4th 1077, 1115 (D.C. Cir. 2023), cert. granted, 144 S. Ct. 2680 (2024), and cert. denied sub nom. *Friedman* v. *Republic of Hungary*, 144 S. Ct. 2686 (2024), but it requires neither that the suit arise out of the defendant's commercial activity in the United States nor that the act of expropriation have a connection to such commercial activity. See *Cassirer* v. *Kingdom of Spain*, 616 F.3d 1019, 1033 (9th Cir. 2010) (en banc) (holding that second clause of expropriation exception does not require specific-jurisdiction-type nexus between the commercial activity and the suit). While § 1605(a)(3) "contemplates suits regarding exterritorial takings so long as the nexus requirement in the exception is satisfied," *Comparelli* v. *Republica Bolivariana De Venezuela*, 891 F.3d 1311, 1325 (11th Cir. 2018), the Ninth Circuit's minimum-contacts requirement would limit the expropriation exception to rare instances where the expropriation arose out of meaningful, U.S.-directed activity by the foreign-state defendant. This outcome would foreclose heartland nationalization cases that have been litigated under the expropriation exception. See *id.* at 1316-1317

(Venezuela's seizure of company and assets located in that country); see also H.R. Rep. No. 94-1487, at 19-20 ("The term 'taken in violation of international law' would include the nationalization or expropriation of property without payment of the prompt adequate and effective compensation required by international law.").

* * *

The Court should enforce the text of the FSIA's long-arm provision, which makes personal jurisdiction consonant with the absence of immunity and the existence of subject-matter jurisdiction. That approach—which lower courts besides the Ninth Circuit have consistently applied—honors the political branches' comprehensive judgment about when foreign states may be sued in U.S. courts.

II. The Due Process Clause Does Not Require A Minimum-Contacts Analysis For Suits Against Foreign States

A. The judgment below rests on Ninth Circuit precedent holding that the FSIA imposes a minimum-contacts test for personal jurisdiction. Pet. App. 3a-5a; see *Gonzalez*, 614 F.2d at 1255. The court of appeals did not address whether the Due Process Clause independently entitles Antrix to a minimum-contacts analysis. If Antrix raises the Due Process Clause as an alternative ground for affirmance, this Court should remand that issue after reversing the Ninth Circuit's erroneous construction of the FSIA. See *United States* v. *Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 494 (2001) ("Nor do we consider the underlying constitutional issues today. Because the Court of Appeals did not address these claims, we decline to do so in the first instance."). After all, this Court's "usual practice [is not] to adjudicate either legal or predicate factual questions in the first instance." *CRST Van Expedited, Inc.* v. *EEOC*, 578 U.S. 419, 435 (2016).

Nor is the Due Process Clause relevant to the proper interpretation of the FSIA. Even if that clause arguably required a minimum-contacts analysis for foreign states, constitutional-avoidance principles would not authorize adding a minimum-contacts test to the FSIA. That is because the Court may avoid constitutional issues solely when a "plausible construction" with an "arguable statutory foundation" is available. *Jennings* v. *Rodriguez*, 583 U.S. 281, 296-297 (2018). Only an impermissible "rewrit[ing]" of the FSIA could insert a minimum-contacts test into the long-arm provision. *Id.* at 298. The Court should therefore construe the Act according to its terms and remand the constitutional question for the court of appeals to address in the first instance. See *id.* at 312 (following this course).

B. In any event, the Due Process Clause cannot aid Antrix because a foreign state is not a "person" for purposes of that clause. Even if it were, the Fifth Amendment's Due Process Clause, which applies here—unlike the Fourteenth's—does not impose a minimum-contacts test for personal jurisdiction. And, finally, the FSIA's arbitration exception satisfies any applicable due-process test because it validly deems a foreign state to have consented to personal jurisdiction when it agreed to arbitrate.

1. In the wake of *Republic of Argentina* v. *Weltover, Inc.*, 504 U.S. 607 (1992), every circuit has held that foreign states are not "persons" protected by the Due Process Clause. Pet. App. 9a-10a (Miller, J.), 62a (Bumatay, J.). In *Weltover*, "Argentina argue[d] that a finding of jurisdiction in this case would violate the Due Process Clause of the Fifth Amendment." 504 U.S. at 619. Finding it unnecessary to reach that issue, the Court "[a]ssum[ed], without deciding, that a foreign state is a 'person' for purposes of the Due Process Clause." *Ibid.* But, by citing *South Carolina* v. *Katzenbach*, 383 U.S. 301, 323-324 (1966), for the proposition that "States of the Union are not 'persons' for

purposes of the Due Process Clause," *ibid.*, the Court "strongly hinted" at its views on the personhood of foreign states, Pet. App. 62a (Bumatay, J.). This Court's signal in *Weltover* followed from its earlier explanation that "foreign sovereign immunity is a matter of grace and comity on the part of the United States, * * * not a restriction imposed by the Constitution." *Verlinden*, 461 U.S. at 486.

The courts of appeals followed this Court's suggestion. A decade after *Weltover*, the D.C. Circuit held that "foreign states are not 'persons' protected by the Fifth Amendment" and therefore have no right to a minimum-contacts analysis in determining personal jurisdiction. *Price*, 294 F.3d at 96. First, as a textual matter, "in common usage, the term 'person' does not include the sovereign." *Ibid.* (quoting *Will* v. *Michigan Dep't of State Police*, 491 U.S. 58, 64 (1989)). Second, if the word "person" in the Due Process Clause does not encompass the States of the Union, see *Katzenbach*, 383 U.S. at 323-324, then "absent some compelling reason to treat foreign sovereigns more favorably than 'States of the Union,' it would make no sense to view foreign states as 'persons' under the Due Process Clause," *Price*, 294 F.3d at 96. Indeed, "[i]t would be highly incongruous 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." *Ibid.* Third, looking to "history and tradition," "[n]ever has [this] Court suggested that foreign nations enjoy rights derived from the Constitution"; "[r]ather, the federal judiciary has relied on principles of comity and international law to protect foreign governments in the American legal system." *Id.* at 97. Lastly, "serious practical problems might arise" if "foreign states may cloak themselves in the protections of the Due Process Clause"—among other things, "the power 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." *Id.* at 99.

For these reasons, the D.C. Circuit concluded that "[n]either the text of the Constitution, Supreme Court decisions construing the Due Process Clause, nor long standing tradition provide a basis for extending the reach of this constitutional provision for the benefit of foreign states." *Ibid.* Other circuits concurred. The Second Circuit held that "foreign states do not enjoy due process protections from the exercise of the judicial power because foreign states, like U.S. states, are not 'persons' for the purposes of the Due Process Clause." *Gater Assets*, 2 F.4th at 49. The Seventh Circuit "agree[d]" with the D.C. and Second Circuits that "foreign states are not 'persons' entitled to rights under the Due Process Clause." *Abelesz*, 692 F.3d at 694.

No court of appeals has deviated from the post-*Weltover* "consensus" that "foreign states are not entitled to the protections of the Due Process Clause." Pet. App. 62a (Bumatay, J.). That conclusion is compellingly reasoned, supported by original meaning, and correct in every respect. See *id.* at 61a-65a; see also Childress III, *Questioning the Constitutional Rights of Foreign Nations*, 88 Fordham L. Rev. Online 60, 70 (2019) ("It seems unlikely that the framers of the Fifth Amendment would have viewed foreign states as persons given that foreign sovereigns were treated as completely immune from suit at the time of the founding."); Glannon & Atik, *Politics and Personal Jurisdiction: Suing State Sponsors of Terrorism under the 1996 Amendments to the Foreign Sovereign Immunities Act*, 87 Geo. L.J. 675, 692 (1999) ("If * * * 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."); Damrosch, *Foreign States and the*

Constitution, 73 Va. L. Rev. 483, 521-522 (1987) (Because foreign states and the United States have always interacted as juridical equals, "it would have been inconceivable [to the Founders] for foreign states to claim entrenched rights under a constitutional law to which they were in no way subject."). Thus, in the unlikely event the Court were to resolve a "splitless" issue in the first instance, it should affirm the district court's holding that foreign states are not "persons" under the Due Process Clause. See Pet. App. 13a-14a.

2. Even if foreign states are persons for purposes of the Due Process Clause, minimum contacts would not be required under the Fifth Amendment.[7] Rather, "the original understanding of the Fifth Amendment's Due Process Clause" conveyed that "the political branches may dictate what process is afforded to foreign sovereigns." Pet. App. 65a (Bumatay, J.); see also *id.* at 65a-66a. This Court has reserved judgment on "whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court" as the Fourteenth Amendment does on a state court. *Bristol-Myers Squibb Co.* v. *Superior Ct. of Cal.*, 582 U.S. 255, 269 (2017); see also *J. McIntyre Mach., Ltd.* v. *Nicastro*, 564 U.S. 873, 884 (2011) (plurality op.) ("Because the United States is a distinct sovereign, a defendant may in principle be subject to the jurisdiction of the courts of the United States but not of any particular State."). Even so, "an emerging consensus shows that," as originally understood, the Fifth Amendment does not impose minimum-contacts limits on personal jurisdiction, especially as to "foreign-based

---

[7] The Fifth Amendment—not the Fourteenth—applies here because service of process is authorized by a federal statute. Fed. R. Civ. P. 4(k)(1)(C); *Gater Assets*, 2 F.4th at 54 & n.5; cf. *Weltover*, 504 U.S. at 619.

defendants." Pet. App. 65a-66a (Bumatay, J.).

As Professor Sachs has explained, "[f]or the first 150 years of the Republic, today's conventional view of personal jurisdiction wasn't so conventional. Though the early Congress refrained from exercising its full powers, the recognized doctrines of jurisdiction worked very differently for state and federal courts." Sachs, *The Unlimited Jurisdiction of the Federal Courts*, 106 Va. L. Rev. 1703, 1706 (2020). In those early days, congressional power to set the boundaries of a federal court's personal jurisdiction was thought to be unlimited. *Ibid.*; see also *id.* at 1710-1727. As Justice Story opined, Congress possesses authority to have "a subject of England, or France, or Russia, having a controversy with one of our own citizens, * * * summoned from the other end of the globe to obey our process, and submit to the judgment of our courts." *Picquet* v. *Swan*, 19 F. Cas. 609, 613 (C.C.D. Mass. 1828) (No. 11,134). In other words, "foreign-based defendants were owed no more than service authorized by Congress before being haled into our federal courts." Pet. App. 66a (Bumatay, J.).

Leading scholars agree that the Fifth Amendment's Due Process Clause was not understood in 1791 to limit a federal court's ability to exercise jurisdiction over foreign defendants or adjudicate disputes arising outside the Nation's borders. See Crema & Solum, *The Original Meaning of "Due Process of Law" in the Fifth Amendment*, 108 Va. L. Rev. 447, 508-510 (2022). That is because "[t]he Fifth Amendment bars the execution of a federal judgment only if the federal court lacked jurisdiction. And Congress gets to answer that latter question * * *." Sachs, *supra*, at 1743.

Several appellate judges have also persuasively urged this view of the Fifth Amendment. See *Fuld* v. *Palestine Liberation Org.*, 101 F.4th 190, 217 (2d Cir. 2024) (Menashi, J., dissenting from denial of rehearing en banc)

(collecting cases), pets. for cert. filed, No. 24-20 (July 3, 2024) and No. 24-151 (Aug. 8, 2024); see also Pet. App. 65a-66a (Bumatay, J.). Whatever the Fourteenth Amendment requires, it is "all backwards" to import those later enacted limits on a state court's personal jurisdiction into an amendment that "came first" and applies to federal courts. Sachs, *supra*, at 1706. Because Congress authorized FSIA jurisdiction whenever proper service and an immunity exception are satisfied, the Fifth Amendment imposes no further restraints on personal jurisdiction.

3. Lastly, even if the Fifth Amendment independently restrains personal jurisdiction over foreign states, minimum contacts still would not generally be required for FSIA suits. "Because the requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived." *Ins. Corp. of Ireland, Ltd.* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982). And "[a] variety of legal arrangements" can "represent express or implied consent to the personal jurisdiction of the court." *Ibid.* Just two Terms ago, the Court reiterated that "consent may be manifested in various ways by word or deed," and reaffirmed that using consent "to ground personal jurisdiction" is entirely consistent with due process. *Mallory*, 600 U.S. at 138 (plurality op.).

The FSIA's arbitration exception validly deems foreign states to have consented to jurisdiction based on their own clearly defined, voluntary actions. See *supra* pp. 24-25. In *Mallory,* the Court rejected a due-process challenge to a Pennsylvania law that deemed out-of-state corporations to have consented to personal jurisdiction by registering to do business in the state. 600 U.S. at 126-127. Likewise, the arbitration exception deems foreign states that have voluntarily entered into arbitration agreements to have consented to subsequent actions to enforce the resulting arbitral awards. That congressional judgment is

neither unfair nor unreasonable. Indeed, permitting a foreign state to avoid confirmation after having agreed to arbitration would reinstate the very abuse that Congress sought to stop through the arbitration exception. See *supra* p. 25 & n.5. Nothing in the Constitution prohibits the waiver-based approach to personal jurisdiction reflected in the FSIA's arbitration exception.

* * *

If the Court reaches the due-process issue in the first instance, it should hold that the Constitution does not impose a minimum-contacts requirement on suits brought against foreign states under the FSIA.

CONCLUSION

The Court should reverse the judgment of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted.

VERN CASSIN
BAKER BOTTS L.L.P.
700 K Street, N.W.
Washington, DC 20001
(202) 639-7700

AARON M. STREETT
Counsel of Record
CHRISTOPHER E. TUTUNJIAN
BAKER BOTTS L.L.P.
910 Louisiana Street
Houston, TX 77002
(713) 229-1234
aaron.streett@bakerbotts.com

Counsel for Petitioner Devas Multimedia Private Limited

December 2024