Nos. 23-1201 and 24-17

In the Supreme Court of the United States

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

v.

ANTRIX CORP. LTD., ET AL.

DEVAS MULTIMEDIA PRIVATE LIMITED, PETITIONER

v.

ANTRIX CORP. LTD., ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

The Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1391(f), 1441(d), 1602 *et seq.*, provides that foreign states, including their agencies and instrumentalities, 28 U.S.C. 1603(a) and (b), are immune from the jurisdiction of federal and state courts in civil actions, unless the Act provides an exception to that immunity or immunity is waived by certain international agreements. 28 U.S.C. 1604. Subsection (a) of the Act's provision governing jurisdiction over civil actions against foreign states provides that federal district courts shall have original jurisdiction over claims coming within one of the Act's exceptions to immunity. 28 U.S.C. 1330(a). Subsection (b) of that provision further provides 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 [28 U.S.C.] 1608." 28 U.S.C. 1330(b). The question presented is:

Whether, as a statutory matter, the FSIA requires that a plaintiff that has sued a foreign state under an FSIA exception to foreign sovereign immunity and that has served the foreign state under 28 U.S.C. 1608 must also establish that the foreign state has had minimum contacts with the forum before the district court may exercise personal jurisdiction over the foreign state.

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INTEREST OF THE UNITED STATES

This case concerns the standard for establishing personal jurisdiction over a foreign state in a civil action in the United States. Civil litigation against foreign sovereigns in federal and state courts can have significant foreign-relations implications for the United States and can affect the reciprocal treatment of the United States in the courts of other nations. The United States thus has a substantial interest in this case.

STATEMENT

1. a. This case arises from a contractual dispute between petitioner Devas Multimedia Private Ltd. (De-

vas) and respondent Antrix Corp. (respondent). Devas is a private corporation established by a group of American investors and executives under the laws of the Republic of India. 23-1201 Pet. App. (Pet. App.) 17a, 53a. Respondent—an Indian corporation that markets goods and services for the Indian government's space agencies —is wholly owned, and has much of its leadership appointed, by the Government of India. *Id.* at 14a-15a, 53a.

In 2005, respondent entered into a contract with Devas (20-36024 C.A. E.R. (E.R.) 246-253) to build, launch, and operate two communications satellites, from which respondent would provide Devas with leased communications bandwidth that Devas would then use to provide audio, video, and information services across India. *Id.* at 246. The contract's mandatory arbitration provision applies to "any dispute or difference between the [p]arties" under the contract. *Id.* at 251-252. It provides that any resulting arbitral decision or award "shall be final, binding and conclusive on the Parties and entitled to be enforced to the fullest extent permitted by Laws and entered in any court of competent jurisdiction." *Id.* at 252; see Pet. App. 18a (reproducing provision).[1]

In 2011, respondent terminated the contract. Pet App. 18a. Devas then commenced arbitration proceedings under the International Chamber of Commerce rules of arbitration. *Id.* at 18a-19a. In 2015, an arbitral panel seated in New Delhi, India, found that respondent had "wrongfully repudiated" the contract and entered a final arbitral award awarding Devas $562.5 million plus interest. *Id.* at 20a (citation and brackets omitted); see E.R. 54-156 (arbitral award).

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[1] The contract defines "Laws" to mean "all laws, statutes, rules, regulations, ordinances, by-laws and other pronouncements having the effect of law of India." D. Ct. Doc. 2-1, at 129 (Sept. 13, 2018).

b. The United States and India are parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), *done* June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997. Both nations have agreed under the Convention to recognize and enforce arbitral awards concerning "commercial" legal relationships made "in the territory of [any other] Contracting State." *Id.* Art. I(3), 21 U.S.T. 2519; see *id.* note, 21 U.S.T. 2563, 2566. The Convention provides that, with certain exceptions, each contracting state "shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon." *Id.* Arts. III and V, 21 U.S.T. 2519-2520.

Congress implemented the New York Convention in 1970 by directing that the Convention "shall be enforced in United States courts in accordance with [9 U.S.C. 201-208]." 9 U.S.C. 201. If a party to arbitration timely applies for an order confirming an "arbitral award falling under the Convention," a district court "shall confirm the award" unless "it finds one of the grounds [specified in the Convention] for refusal or deferral of recognition or enforcement of the award." 9 U.S.C. 207.

2. In 2018, Devas petitioned the United States District Court for the Western District of Washington to confirm the 2015 arbitral award. 20-36024 Intervenors' C.A. Supp. E.R. (Supp. E.R.) 75-90. Devas argued that jurisdiction and venue were proper under the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1391(f), 1441(d), 1602 *et seq.* Supp. E.R. 77-78.

a. The FSIA provides "the sole basis for obtaining jurisdiction over a foreign state in the courts of this country." *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 434, 443 (1989). The Act's def-

inition of "'foreign state'" applies "[f]or purposes of [28 U.S.C. 1602-1611]" and where otherwise incorporated by reference, as in Section 1330. 28 U.S.C. 1603(a). That definition includes a foreign state, "a political subdivision of a foreign state," and "an agency or instrumentality of a foreign state." *Ibid.* An "'agency or instrumentality of a foreign state,'" in turn, is "any entity" (1) which is a "separate legal person, corporate or otherwise"; (2) "which is an organ of a foreign state or political subdivision thereof" or "a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof"; and (3) which is "neither a citizen of a State of the United States," "nor created under the laws of any third country." 28 U.S.C. 1603(b). Under the FSIA, a "foreign state" as thus defined "shall be immune from the jurisdiction" of a federal or state court in a civil action, unless that action is expressly permitted by certain international agreements or by the FSIA's exceptions to foreign sovereign immunity at 28 U.S.C. 1605-1607. 28 U.S.C. 1604; see *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 272-273 (2023).

As relevant here, the FSIA includes an exception to foreign sovereign immunity, enacted in 1988, for certain civil actions brought "either to enforce," or "to confirm an award made pursuant to," "an agreement to arbitrate" that has been "made by the foreign state with or for the benefit of a private party" with respect to "a defined legal relationship" concerning "a subject matter capable of settlement by arbitration under the laws of the United States." 28 U.S.C. 1605(a)(6). That exception applies in four specified contexts, including where "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).

The FSIA's "comprehensive statutory scheme" governing civil actions against foreign states includes provisions addressing, *inter alia*, federal "subject-matter jurisdiction," "personal jurisdiction," and "venue." *Amerada Hess*, 488 U.S. at 435 & n.3 (citation omitted). First, 28 U.S.C. 1330(a) vests federal district courts with "original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in [S]ection 1603(a) * * * 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 [Title 28] or under any applicable international agreement." *Ibid.*

Second, 28 U.S.C. 1330(b) provides that "[p]ersonal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under [Section 1330](a) where service has been made under [28 U.S.C.] 1608." 28 U.S.C. 1330(b).

Third, the FSIA's "carefully calibrated scheme * * * addresses venue,'" *Turkiye Halk Bankasi*, 598 U.S. at 273, by specifying four categories of venue for "[a] civil action against a foreign state as defined in [28 U.S.C.] 1603(a)." 28 U.S.C. 1391(f). Venue is proper "in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated." 28 U.S.C. 1391(f)(1). If the action is against "an agency or instrumentality of a foreign state," venue is also proper "in any judicial district in which the agency or instrumentality is licensed to do business or is doing business." 28 U.S.C. 1391(f)(3).

b. Devas alleged that respondent was an "agency or instrumentality of a foreign state," 28 U.S.C. 1603(b), but that Devas's suit fell within Section 1605(a)(6)(B)'s exception to sovereign immunity because Devas sought to confirm an award made pursuant to respondent's arbitration agreement, which is governed by the New York Convention. Supp. E.R. 77-78. Devas alleged that subject-matter and personal jurisdiction therefore were proper under Section 1330(a) and (b). *Id.* at 78. And Devas alleged that "[v]enue is proper" in the Western District of Washington under the FSIA's venue provision, because respondent "engages in business in th[at] district" by contracting with companies having headquarters in the district to sell respondent's "satellite launch" and "space communications services" to customers. *Id.* at 77-78.

Respondent moved to dismiss the petition. Respondent did not dispute that it is a "foreign state" under the FSIA, that service had been properly made, or that the FSIA's arbitral exception applied. Pet. App. 4a, 21a-22a, 54a. Nor did respondent dispute that it was doing business in the district or that venue therein was thus proper under Section 1391(f)(3). Respondent instead argued that the Due Process Clause's constitutional requirement for personal jurisdiction requires "'minimum contacts' with the United States" but those contacts had not been established. *Id.* at 21a-22a; see *id.* at 13a.

The district court denied respondent's motion to dismiss. Pet. App. 13a-16a. The court concluded that "the due process clause does not apply" on the ground that "[respondent] is not a 'person' for due process purposes because it is effectively controlled by the Government of India," which "exercises 'plenary control' over [respondent]." *Id.* at 13a-14a. The court also declined to

dismiss the action on forum-non-conveniens grounds, stating that post-arbitral-award "investigations and proceedings against [Devas] and its officers and agents in India—including both civil and criminal proceedings—raise * * * concerns about the neutrality of proceedings in India." *Id.* at 15a.

The district court subsequently granted Devas's motion to confirm the arbitral award. Pet. App. 17a-35a. The court determined that it had subject-matter jurisdiction under Section 1330(a) based on the FSIA's arbitral exception in Section 1605(a)(6)(B). *Id.* at 21a. The court further determined that personal jurisdiction over respondent existed under Section 1330(b). *Id.* at 22a. After reiterating its constitutional due-process ruling, *ibid.*, the court alternatively held that there were "'minimum contacts' with the United States" satisfying due process because "the parties' entire course of dealing" showed that "[r]espondent [had] purposely availed itself of the privilege of conducting business activities in the United States." *Id.* at 22a-25a. On the merits, the court found no ground under the New York Convention for refusing to confirm the award. *Id.* at 26a-34a. The court confirmed the award, *id.* at 34a, and, in November 2020, entered a $1.294 billion judgment for Devas, which included pre- and post-award interest, E.R. 5.

c. In January 2021, while respondent's appeal of that judgment was pending, the Government of India, in a proceeding initiated by respondent, placed Devas into liquidation and "appoint[ed] a government official" to assume control of Devas on the ground that Devas had fraudulently conducted its affairs. 22-35103 C.A. E.R. 278-279. The liquidator promptly fired Devas's original counsel in this case. *Id.* at 9, 279.

Two Devas shareholder entities and a United States subsidiary of Devas—the petitioners in No. 23-1201 (intervenors)—were then granted leave to intervene in the district court proceedings here. 22-35103 C.A. E.R. 9, 277, 279, 287. Following discovery related to respondent's assets, the court authorized intervenors to register the court's judgment in the Eastern District of Virginia, where intervenors had discovered one of respondent's debtors, Pet. App. 40a-41a. Respondent and Devas (then, as now, under the liquidator's control) appealed that order. *Id.* at 55a.

4. a. The court of appeals consolidated the appeals and reversed. Pet. App. 1a-12a. The appellate panel observed that "[t]he parties agree that for purposes of the FSIA, [respondent] is a 'foreign state,' service has been made, and an enumerated exception applies." *Id.* at 4a. But the panel determined that, under binding Ninth Circuit precedent, "[p]ersonal jurisdiction under the FSIA requires satisfaction of the traditional minimum contacts standard" borrowed from due-process jurisprudence. *Id.* at 4a-5a (citation and brackets omitted). The court emphasized that its "application of the minimum contacts analysis to actions under the FSIA * * * is statutory rather than constitutional" and does not reflect a determination that "a foreign state is * * * a person" for due-process purposes. *Id.* at 5a. The court explained that its precedent simply reflects a "reading of the FSIA" that relies on "the FSIA's legislative history" to conclude that "the FSIA was intended to be consistent with the minimum contacts analysis." *Ibid.*

The panel further determined that the district court had erred in alternatively ruling that "[respondent] has the requisite minimum contacts with the United States,"

concluding that Devas had failed to "show that [respondent] purposely availed itself of the privilege of conducting activities in the United States." Pet. App. 6a-7a.

b. Judge Miller, joined by Judge Koh, concurred. Pet. App. 9a-12a. Judge Miller noted his agreement that the court of appeals' binding precedent required application of a minimum-contacts analysis as a statutory rather than a constitutional matter, but he found that precedent to be erroneous because "[n]othing in [Section 1330(b)]" supports such "a minimum-contacts requirement." *Id.* at 9a-10a. He explained that personal jurisdiction exists under Section 1330(b)'s "categorical[]" text where, as here, (1) an FSIA "exception[] to foreign sovereign immunity" applies and (2) the foreign state has been "properly served." *Id.* at 10a (citation omitted). Judge Miller also noted his agreement with the holdings of other courts of appeals that foreign states do not have constitutional due-process rights. *Id.* at 9a.

5. The court of appeals denied rehearing en banc. Pet. App. 42a-68a. Judge Bumatay, joined by five active judges, dissented. *Id.* at 46a-68a. Judge Bumatay stated that the "straightforward question" in this case is whether the FSIA—"[d]espite [its] text"—requires proof of "'minimum contacts' to assert personal jurisdiction over a foreign state." *Id.* at 47a. He concluded that nothing in Section 1330(b) requires that inquiry. *Id.* at 47a-49a, 57a-62a. Judge Bumatay further stated that "foreign states" are not entitled to "the protection of minimum contacts under the Fifth Amendment." *Id.* at 49a; see *id.* at 62a-67a. He emphasized that the only question before the court of appeals was whether "minimum contacts" must be proven to "assert personal jurisdiction over foreign states under the FSIA," and that, if the court had resolved that question in the neg-

ative, the case could have been "remanded to the district court" to decide any "other questions" that would arise, such as whether respondent, as a "corporate" entity, "deserves due process protection" even if a "foreign state" like India does not. *Id.* at 56a & n.1.[2]

SUMMARY OF ARGUMENT

I. The court of appeals erred in holding that, as a statutory matter, the FSIA incorporates a "minimum contacts" standard borrowed from constitutional due-process jurisprudence to govern personal jurisdiction over foreign states.

A. The FSIA's jurisdictional provision, 28 U.S.C. 1330, contains two subsections. Subsection (a) grants district courts subject-matter jurisdiction over civil actions against foreign states as to any claim for which an exception to foreign sovereign immunity applies under 28 U.S.C. 1605-1607. Subsection (b) then provides 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 [28 U.S.C.] 1608." 28 U.S.C. 1330(b). Together, those provisions supply personal jurisdiction over a foreign state whenever (1) an FSIA exception to immunity applies and (2) service has been properly made. Nothing in that unambiguous text supports a further statutory minimum-contacts requirement.

B. The court of appeals' contrary conclusion, which rests on legislative history, is flawed. First, legislative history cannot be used to muddy the meaning of the

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[2] While the case was pending on appeal, an Indian court set aside the arbitration award to Devas. See Pet. App. 55a. The courts below have not yet passed on the validity of that Indian court order or its effect on the merits of Devas's action.

FSIA's clear statutory language. And second, the court of appeals misread the pertinent committee report. That report merely reflects the view that the FSIA's original exceptions to foreign sovereign immunity, which Section 1330(b) incorporates by reference, would themselves apply, as a practical matter, only in contexts in which minimum jurisdictional contacts would exist.

C. Respondent contends (Br. in Opp. 16-17) that "most" of the FSIA's exceptions to foreign sovereign immunity in Sections 1605 to 1607 themselves require a sufficient "nexus to the United States" to satisfy any due-process requirements. That is correct. But the conclusion that various FSIA exceptions to immunity impose requirements that *by their own terms* would satisfy a due process "minimum contacts" standard provides no basis for *supplementing* the statutory text with a freestanding non-"statutory" minimum-contacts requirement.

II. This Court should correct the court of appeals' judgment that the FSIA incorporates a traditional minimum contacts analysis as a statutory matter and remand for that court to consider in the first instance whether the Fifth Amendment's due-process requirements apply and, if so, whether they have been satisfied. That disposition would eliminate the division of authority on the statutory question that warranted the Court's review. Several reasons also counsel against the Court addressing those constitutional questions at this time in this case.

III. A. If this Court elects to address constitutional due process at this time, the Court should follow its prior approach of assuming, without deciding, that a foreign state (including an agency or instrumentality thereof) is a 'person' for purposes of the Due Process

Clause, because, even if due-process principles are applicable, personal jurisdiction over respondent is appropriate. The due-process requirement of personal jurisdiction is an individual right that may be waived or forfeited, including through express or implied consent. And in this case, respondent consented to personal jurisdiction by agreeing to a binding arbitration provision in its contract with Devas that provides that any arbitral award shall be entitled to be "entered in any court of competent jurisdiction." Pet. App. 18a. Federal district courts are courts of competent jurisdiction, and no unfairness results from enforcing that contract according to its terms.

B. 1. If this Court elects to go still further, foreign states themselves are not "persons" under the Fifth Amendment's Due Process Clause. This Court has already held that States of the Union are not "persons" under that Clause. Foreign states have even less of a basis to claim due-process rights. The word "person" has not typically been understood to include sovereign states; the relevant drafting history suggests that sovereign states are not protected by the Due Process Clause; and the absence of any relevant role of foreign states in our constitutional structure, as well as the perfect equality of nation states, confirm that our domestic Constitution does not define the rights and duties of the United States with respect to foreign sovereigns.

2. The practical implications of conferring due process rights on foreign states would have been significant. Plenary Legislative and Executive authority is particularly important for the management of disagreements with foreign states. The Constitution therefore leaves to the political Branches the authority to deter-

mine what appropriate process should be followed with respect to foreign states.

3. It is critically important to the United States' own interest in securing reciprocal treatment by foreign sovereigns, however, that foreign states understand that the United States appropriately safeguards their interests through non-constitutional means, including through various protections in the FSIA's comprehensive and carefully calibrated statutory framework.

ARGUMENT

I. THE FSIA DOES NOT REQUIRE A SEPARATE "MINIMUM CONTACTS" ANALYSIS TO ESTABLISH PERSONAL JURISDICTION OVER A FOREIGN STATE

The court of appeals held that—as a "statutory rather than [a] constitutional" matter—the FSIA provides that "'[p]ersonal jurisdiction'" over a foreign state "'requires satisfaction of the traditional minimum contacts standard'" borrowed from constitutional due-process jurisprudence. Pet. App. 4a-5a (citation omitted). That is incorrect. By statute, personal jurisdiction over a foreign state exists if (1) a statutory exception exists to foreign sovereign immunity and (2) the foreign state has been served with process under 28 U.S.C. 1608. See 28 U.S.C. 1330(a) and (b). And because "[t]he parties agree that for purposes of the FSIA, [respondent] is a 'foreign state,' service has been made, and an enumerated exception [to immunity] applies," Pet. App. 4a, the FSIA's statutory prerequisites to personal jurisdiction have been satisfied. That straightforward conclusion is all that this Court need resolve in this case.

A. Personal Jurisdiction Exists Where An FSIA Exception To Immunity Applies And Proper Service Is Made

The FSIA's jurisdictional provision, 28 U.S.C. 1330, has two subsections addressing, respectively, subject-matter jurisdiction and personal jurisdiction. Together, those provisions unambiguously specify that personal jurisdiction exists over a foreign state under the FSIA if, as is undisputed here (Pet. App. 4a), an FSIA exception to foreign sovereign immunity applies and the foreign state has been properly served.

First, Subsection (a) grants district courts "original jurisdiction" over "any nonjury civil action against a foreign state as defined in [S]ection 1603(a)" as to "any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under [28 U.S.C.] 1605-1607" or "under any applicable international agreement." 28 U.S.C. 1330(a). That "unambiguous" language confers federal "subject-matter jurisdiction" over any such action if "one of the [FSIA's] specified exceptions to [foreign] sovereign immunity applies." *Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 489 (1983); see *id.* at 493-494 & n.20. That affirmative grant of jurisdiction "work[s] in tandem" with 28 U.S.C. 1604, which "bars federal and state courts from exercising jurisdiction when a foreign state *is* entitled to immunity," *i.e.*, when no exception to immunity applies. *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989).

Second, Subsection (b) provides 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 [28 U.S.C.] 1608." 28 U.S.C. 1330(b). The first half of that subsection—which expressly limits

personal jurisdiction to those claims for which "jurisdiction [exists] under subsection (a)," *ibid.*—ensures that "personal jurisdiction, like subject-matter jurisdiction, exists only when one of the exceptions to foreign sovereign immunity in [Sections] 1605-1607 applies." *Amerada Hess*, 488 U.S. at 435 n.3. "Thus, if none of the exceptions to sovereign immunity set forth in the Act applies, the District Court lacks both statutory subject-matter jurisdiction and personal jurisdiction." *Verlinden*, 461 U.S. at 485 n.5.

The second half of Subsection (b) further requires that "service [must be] made under [S]ection 1608" to establish "[p]ersonal jurisdiction" over a foreign state. 28 U.S.C. 1330(b). Section 1608, in turn, specifies the FSIA's hierarchy of statutorily required methods for serving a foreign state. 28 U.S.C. 1608(a) and (b); see *Republic of Sudan* v. *Harrison*, 587 U.S. 1, 4-5, 8-13 (2019).

It follows that Section 1330(b) "makes personal jurisdiction over a foreign state automatic when [1] an exception to immunity applies and [2] service of process has been [properly] accomplished." *Samatar* v. *Yousuf*, 560 U.S. 305, 324 n.20 (2010). Nothing in the FSIA's unambiguous text permits the imposition of any further statutory prerequisite to personal jurisdiction, much less a type of "minimum contacts analysis" borrowed from due-process jurisprudence that the court of appeals imposed as a "statutory rather than [a] constitutional" matter, Pet. App. 4a-5a.

B. The FSIA's Legislative History Provides No Basis For An Independent "Minimum Contacts" Requirement

The court of appeals determined that its contrary precedent rests on "a reading of the FSIA's legislative history" suggesting that Congress intended the FSIA

to be "consistent with the minimum contacts analysis." Pet. App. 5a. That reliance on legislative history is deeply flawed for two reasons.

First, as the foregoing discussion has shown, nothing in the FSIA's unambiguous text imposes any separate, freestanding requirement of "minimum contacts" between a foreign state and the United States as a predicate for personal jurisdiction over the foreign state. That should end the interpretive inquiry. "Even those [Members of the Court] who sometimes consult legislative history will never allow it to be used," as here, "to 'muddy' the meaning of 'clear statutory language.'" *Food Mktg. Inst.* v. *Argus Leader Media*, 588 U.S. 427, 436 (2019) (citation omitted).

Second, as Judge Bumatay recognized, the Ninth Circuit's precedent simply misreads the legislative history. Pet. App. 48a, 60a-62a. The relevant House of Representatives committee report that the precedent invokes does not contemplate a freestanding "minimum contacts" analysis that supplements the inquiries expressly specified in FSIA's text. The report simply reflects the view that the exceptions to immunity enacted in 1976 applied, as a practical matter, only in contexts in which the committee believed "minimum jurisdictional contacts" would exist.

The committee report states that Section 1330(b) "embodie[s]" the "due process requirement" of "minimum jurisdictional contacts" because it "incorporat[es] these jurisdictional contacts *by reference*." H.R. Rep. No. 1487, 94th Cong., 2d Sess. 13 (1976) (emphasis added). More specifically, the report states that Section 1330(b) provides for personal jurisdiction only if there is "original jurisdiction under section 1330(a)"; that jurisdiction under Section 1330(a) exists only where the

underlying "claim [is one] for which the foreign state is not entitled to immunity"; and that, "[s]*ignificantly, each of the immunity provisions in the bill,* [*S*]*ections 1605-1607,* * * * *prescribe*[*s*] *the necessary contacts* which must exist before our courts can exercise personal jurisdiction" by requiring either "some connection between the lawsuit and the United States[] or an express or implied waiver" of immunity. *Ibid.* (emphasis added); accord S. Rep. No. 1310, 94th Cong., 2d Sess. 13 (1976). The report thus reflects the view that the FSIA's original exceptions to foreign sovereign immunity, which Section 1330(b) incorporates by reference, generally apply in circumstances that would constitute minimum contacts under a due-process analysis. The report "says nothing about a minimum-contacts analysis over and above satisfying a statutory exception" in Sections 1605-1607. Pet. App. 61a-62a (Bumatay, J., dissenting). Had Congress intended to impose a requirement for a separate minimum-contacts analysis, it would have enacted text to that effect.

C. The FSIA's Exceptions To Foreign Sovereign Immunity Do Not Impose An Independent Statutory "Minimum Contacts" Requirement

1. The Court's minimum-contacts jurisprudence has developed under the Fourteenth Amendment, which prohibits "any State" from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, § 1. Under this Court's decisions, if a defendant is a "person" having such rights, *ibid*, the Fourteenth Amendment permits "a State [to] authorize its courts to exercise personal jurisdiction over an out-of-state defendant" where "the defendant has 'certain minimum contacts with [the State] such that the maintenance of the suit does not offend 'tradi-

tional notions of fair play and substantial justice.'" *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 923 (2011) (quoting *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945)) (brackets in original). That restriction on "state [judicial] power" is grounded in an "'individual liberty interest'" protected by the Due Process Clause, *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 471-472 & n.13 (1985) (citation omitted), although it also reflects the territorial "limits" of each individual State's authority within our "federal system," *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980).

The Fourteenth Amendment's limit on personal jurisdiction often applies indirectly in civil actions in federal court because, by rule, service of a summons "establishes personal jurisdiction over a defendant" who would be "subject to the jurisdiction of a court of general jurisdiction in the [S]tate where the district court is located," Fed. R. Civ. P. 4(k)(1)(A). See *Daimler AG* v. *Bauman*, 571 U.S. 117, 125 (2014). The same rule, however, also provides that such service will, in addition, confer personal jurisdiction over a defendant whenever (1) "authorized by a federal statute" or (2) the underlying claim "arises under federal law" and the exercise of "jurisdiction is consistent with the United States Constitution and laws." Fed. R. Civ. P. 4(k)(1)(C) and (2).

A plurality of the Court has recognized that "a defendant may in principle be subject to the jurisdiction of the courts of the United States but not of any particular State." *J. McIntyre Mach., Ltd.* v. *Nicastro*, 564 U.S. 873, 884 (2011). But the Court has reserved the "question whether the Fifth Amendment imposes the same [type of] restrictions" as the Fourteenth Amend-

ment regarding "the exercise of personal jurisdiction by a federal court." *Bristol-Myers Squibb Co.* v. *Superior Ct.*, 582 U.S. 255, 269 (2017); see, *e.g.*, *Omni Capital Int'l, Ltd.* v. *Rudolf Wolff & Co.*, 484 U.S. 97, 102 n.5 (1987). Cf. Stephen E. Sachs, *The Unlimited Jurisdiction of the Federal Courts*, 106 Va. L. Rev. 1703, 1704-1710 (2020) (rejecting national-minimum-contacts rule applied by the courts of appeals as incorrect; arguing that Congress may authorize federal courts to exercise personal jurisdiction over any defendant if the authorizing legislation falls within Congress's enumerated powers).

2. Invoking Fourteenth Amendment jurisprudence, respondent argues (Br. in Opp. 16-17) that "most" of the FSIA's substantive exceptions to foreign sovereign immunity in Sections 1605 to 1607 require a sufficient "nexus to the United States" to satisfy any due-process requirements. We agree. Cf. *Verlinden*, 461 U.S. at 490 (noting that Congress enacted "substantive provisions requiring some form of substantial contact with the United States" in Section 1605's original 1976 exceptions to immunity).[3] But the conclusion that exceptions

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[3] "Under the original [1976] FSIA, * * * it was generally understood that in order for immunity to be lost, there had to be some tangible connection between the conduct of the foreign defendant and the *territory* of the United States." *Price* v. *Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 89 (D.C. Cir. 2002). Thus, although one original exception rested on a foreign state's explicit or implicit "waive[r]" of its immunity, 28 U.S.C. 1605(a)(1), the "normal pattern of the Act" was to "requir[e] some form of contact with the United States" as a condition for lifting immunity. *Verlinden*, 461 U.S. at 490 n.15; see 28 U.S.C. 1605(a)(2) ("commercial activity" exception requiring, at a minimum, a "direct effect in the United States"), (3) (expropriation exception requiring that expropriated property or property exchanged therefor is either "present in the

to immunity include text imposing requirements that *by their own terms* would satisfy a due process "minimum contacts" requirement does not provide license to *supplement* the statutory text with a freestanding non-"statutory" minimum-contacts requirement.

II. THIS COURT SHOULD REMAND FOR THE COURT OF APPEALS TO RESOLVE ANY QUESTIONS OF CONSTITUTIONAL DUE PROCESS IN THE FIRST INSTANCE

This Court need not go further than deciding that the court of appeals erred in holding that the FSIA incorporates "a traditional minimum contacts analysis" as a "statutory" matter. Pet. App. 4a-5a. Correcting that error will eliminate the division of authority on the statutory question that warranted this Court's review. See *id.* at 59a (Bumatay, J., dissenting) (noting that conflict). Moreover, the United States agrees with respondent and Devas that "[t]he Court should not rush to take up th[e] [additional] question" of whether—as a "constitutional" matter—a foreign state enjoys due-process protections that may limit personal jurisdiction. Br. in Opp. 20; see Devas Br. 18, 34. The Court should instead remand to allow the court of appeals to resolve any relevant constitutional contentions in the first instance.

The court of appeals emphasized that its "statutory" holding did not resolve "if a foreign state is [or is] not a person" that would be "entitled to a minimum contacts

United States" or owned or operated by a foreign state's agency or instrumentality "engaged in a commercial activity in the United States"), (4) (exception for cases involving rights in either "property in the United States" acquired by gift or succession or "immovable property situated in the United States"), and (5) (exception for tortious personal injury, death, or property damage or loss "occurring in the United States").

analysis through the Constitution." Pet. App. 5a. And although two members of the panel expressed the view that a "foreign state[]" is not a "'person'" entitled to due-process rights under the Fifth Amendment, *id.* at 9a (Miller, J., concurring), that observation was not the basis for the court's judgment, which rested on the determination that personal jurisdiction was lacking because statutorily required "minimum contacts with the United States" had not been established, *id.* at 6a-8a. The panel, and the full court if appropriate, should be given the opportunity in the first instance to address any Fifth Amendment constraints before this Court considers the question itself. *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view.").

Several other reasons also counsel against addressing that constitutional question in this case at this time. First, this Court has thus far refrained from resolving whether or to what extent the Fourteenth Amendment's limits on the exercise of state-court personal jurisdiction should apply under the Fifth Amendment in federal court. See pp. 18-19, *supra*.[4] Second, in this case, Congress, in the exercise of its commerce and foreign affairs powers, made a judgment—both in the FSIA and in the statute implementing the New York Convention—concerning categories of cases that may properly be heard in the courts of the United States. That judgment warrants respect in addressing due pro-

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[4] This Court recently granted certiorari to review a Second Circuit decision holding unconstitutional under the Fifth Amendment an Act of Congress that provides for personal jurisdiction over specified foreign entities for acts of terrorism abroad. *Fuld* v. *Palestine Liberation Org.*, 82 F.4th 74 (2023), cert. granted, Nos. 24-20, 24-151 (Dec. 6, 2024).

cess in this setting, which is distinct from the cases in which the Court has analyzed limitations on the powers of States and state courts under the Fourteenth Amendment. Third, the Court has not resolved whether "a foreign state is a 'person' for purposes of the Due Process Clause," *Republic of Argentina* v. *Weltover, Inc.*, 504 U.S. 607, 619 (1992) ("[a]ssuming, without deciding," that issue), and this Court's resolution of that question could have significant implications for the United States' exercise of its foreign affairs power. Fourth, this case does not even involve a foreign state itself as a party; respondent is a corporation with a legal identity distinct from India. The question whether such an "agency or instrumentality of a foreign state," 28 U.S.C. 1603(b), has due process rights even if the foreign state itself does not is a further question that has not been resolved below. Cf. Pet. App. 56a & n.1 (Bumatay, J., dissenting) (suggesting that the district court could resolve that question after appellate resolution of "the *sole question*" before the court concerning "personal jurisdiction over foreign states").[5] These are weighty issues that this Court should address only where necessary and only in a case in which a court of appeals has already resolved them, fully articulated its relevant reasoning, and applied its legal holdings to the facts of the case in a manner that would facilitate this Court's plenary review.

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[5] Some courts of appeals have determined that foreign-state agencies or instrumentalities possess due-process rights even though foreign states do not. See, *e.g.*, *GSS Grp. Ltd.* v. *National Port Auth.*, 680 F.3d 805, 809, 814-815 (D.C. Cir. 2012). The rationale underlying those decisions has, however, been called into question. *Id.* at 817-819 (Williams, J., joined by Randolph, J., concurring).

III. PERSONAL JURISDICTION OVER A FOREIGN STATE IN THIS ARBITRATION CONTEXT IS CONSISTENT WITH CONSTITUTIONAL DUE PROCESS

Even if due-process principles are applicable in this context, personal jurisdiction over respondent is appropriate based on respondent's arbitration agreement. If this Court elects to address constitutional due process at this time, therefore, the Court should follow its prior approach of "[a]ssuming, without deciding, that a foreign state"—including an agency or instrumentality thereof—"is a 'person' for purposes of the Due Process Clause," *Weltover*, 504 U.S. at 619, and should find any due-process requirement satisfied. If the Court elects to rule more broadly, however, it should hold that foreign states themselves are not "persons" entitled to due-process protection under the Fifth Amendment.

A. Respondent Consented To Personal Jurisdiction In Its Contract With Devas

The due-process "requirement of personal jurisdiction" is an "individual right" and a personal defense that may be waived or forfeited. *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703-705 (1982); see *Mallory* v. *Norfolk S. Ry.*, 600 U.S. 122, 144 (2023) (plurality opinion). And where a defendant's actions are fairly understood to "amount to a legal submission to the jurisdiction of the court, whether voluntary or not," personal jurisdiction exists over that defendant. *Insurance Corp.*, 456 U.S. at 704-705. As a result, a "'variety of legal arrangements [have been taken to] represent express or implied consent' to personal jurisdiction" of the court, including "signing a contract with a forum selection clause." *Mallory*, 600 U.S. at 145-146 & n.10 (plurality opinion) (quoting dissenting opinion, which quotes *Insurance Corp.*, 456 U.S. at 703);

see *id.* at 167 (Barrett, J., dissenting). Respondent's contract with Devas is such an arrangement. Under that contract, respondent consented to personal jurisdiction in district court arbitral-award-enforcement proceedings.

"Arbitration," of course, "is strictly 'a matter of consent.'" *Granite Rock Co.* v. *International Bhd. of Teamsters*, 561 U.S. 287, 299 (2010) (citation omitted). Under the FSIA, disputes about the formation of an arbitration agreement are jurisdictional because an agreement to arbitrate is a factual predicate for the Act's arbitral exception to a foreign state's jurisdictional immunity from suit. 28 U.S.C. 1604, 1605(a)(6); see *LLC SPC Stileks* v. *Republic of Moldova*, 985 F.3d 871, 877 (D.C. Cir. 2021). But where, as here, there is no dispute that the parties consented to arbitrate, "agreements to arbitrate are enforced according to their terms." *Volt Info. Scis., Inc.* v. *Board of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989).

Here, respondent consented to personal jurisdiction in this case by explicitly agreeing that any resulting arbitral award shall be binding and conclusive and shall be entitled to be "entered in *any court* of competent jurisdiction," Pet. App. 18a (quoting the contract) (emphasis added). Federal district courts are clearly courts of competent jurisdiction by virtue of the New York Convention, to which both India and the United States are parties; Congress's implementing legislation, which grants district courts jurisdiction over proceedings falling under the Convention, 9 U.S.C. 203; and the FSIA's arbitral exception to the jurisdictional immunity of foreign states, 28 U.S.C. 1605(a)(6).

No unfairness results from enforcing respondent's contract according to its terms. Respondent is a sophis-

ticated entity that engages in complex commercial transactions. And if respondent had desired to limit enforcement of any arbitral award resulting from that contract to the courts of, for instance, the Republic of India, it could have readily done so by insisting on a more circumscribed arbitral-award provision.

This Court in *C&L Enterprises, Inc.* v. *Citizen Band Potawatomi Indian Tribe*, 532 U.S. 411 (2001), unanimously upheld the enforcement of an arbitral award under analogous circumstances involving tribal sovereign immunity. The Tribe in *C&L Enterprises* had entered into a commercial contract containing an arbitration provision in which the Tribe expressly agreed to the "enforcement of [resulting] arbitral awards 'in any court having jurisdiction thereof.'" *Id.* at 414-415. The contract also identified preexisting arbitration rules to govern the arbitral proceedings, and those rules similarly provided that "'the arbitration award may be entered in any federal or state court having jurisdiction thereof.'" *Id.* at 419 (citation omitted). Oklahoma law vested jurisdiction to enforce such arbitration agreements in "any court of competent jurisdiction of th[e] state." *Id.* at 419-420 (citation omitted). Under those circumstances, the Court held that, through the contract's arbitration provision, "the Tribe clearly consented to arbitration and to the enforcement of arbitral awards in Oklahoma state court," and thereby waived its sovereign immunity from such a suit. *Id.* at 418, 423 (citation omitted).

In this case, the FSIA itself displaced respondent's foreign sovereign immunity from suit. But like the Tribe in *C&L Enterprises*, respondent entered into a contract expressly permitting entry of arbitral awards in any court of competent jurisdiction, and thereby

"consented to * * * enforcement of arbitral awards in [federal district] court." 532 U.S. at 423. That consent would fully support personal jurisdiction over respondent here, assuming *arguendo* that the Due Process Clause applies.

B. A Foreign State Is Not A "Person" Entitled To Fifth Amendment Due-Process Rights

The district court determined that respondent is, in effect, a foreign state—and therefore "is not a 'person' for due process purposes"—because the Government of India wholly owns, finances the activities of, and "exercises 'plenary control' over [respondent]," which is "'housed'" within Indian government agencies "'for the purposes of staffing, premises and all organizational support.'" Pet. App. 13a-15a (citations omitted). The court of appeals did not address that determination. Petitioners nevertheless renew (Intervenors Br. 30-34; Devas Br. 35-38) their argument that foreign states do not possess due-process rights. If this Court addresses that argument, it is the position of the United States that a foreign state is not entitled to protection under the Fifth Amendment's Due Process Clause. That Clause provides: "nor shall any person * * * be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. The Fifth Amendment's text, the broader constitutional structure, and the relevant drafting history demonstrate that a foreign state is not a "person" under that Clause. We do not, however, take a position at this juncture on the ultimate application of the Due Process Clause to an agency or instrumentality of a foreign state. See p. 22 & n.5, *supra*.

1. The Framers would not have understood the word "person" in this context to include a foreign state. To

be sure, as a purely linguistic matter, "person" could be used in some contexts to refer to a sovereign state. See, *e.g.*, *Chisholm* v. *Georgia*, 2 U.S. (2 Dall.) 419, 455-456 (1793) (opinion of Wilson, J.) (describing "a State" of the Union as "an *artificial* person"); *id.* at 472 (opinion of Jay, C.J.) (stating that "a nation or State-sovereign is the person or persons in whom [sovereignty] resides"); see also Ingrid Wuerth, *The Due Process and Other Constitutional Rights of Foreign Nations*, 88 Fordham L. Rev. 633, 676-679 (2019). But see Donald Earl Childress III, *Novel Perspectives on Due Process Symposium: Questioning the Constitutional Rights of Nations*, 88 Fordham L. Rev. Online 60, 63-73 (2019) (disputing Professor Wureth's analysis).

But the word "'person'" in "common usage" has not typically "include[d] the sovereign" and, for that reason, "statutes employing the phrase [have been] ordinarily" though not always "construed to exclude it." *United States* v. *Cooper Corp.*, 312 U.S. 600, 604-605 (1941); see *Vermont Agency of Natural Res.* v. *United States ex rel. Stevens*, 529 U.S. 765, 780-781 (2000). The specific context at issue, including legal history and structural considerations, rather than just the "literal text" alone, is therefore important. See *Alden* v. *Maine*, 527 U.S. 706, 719-720 (1999) (interpreting Eleventh Amendment); *Cooper Corp.*, 312 U.S. at 605 (emphasizing that "subject matter" and "context" inform the proper interpretation).

The context here provides a clear answer. This Court has already held 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." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 323 (1966).

And foreign states have even less of a basis than States to claim due-process rights.

The "'constitutional structure'" and the lack of any relevant role of foreign states "in the constitutional plan" is significant. See *PennEast Pipeline Co.* v. *New Jersey*, 594 U.S. 482, 505-506 (2021) (citation omitted). Unlike States and the United States itself, "[t]he foreign State lies outside the structure of the Union." *Principality of Monaco* v. *Mississippi*, 292 U.S. 313, 330 (1934). Foreign states, unlike the States, have accepted "no general obligation to abide by the constitutional norms." Lori Fisler Damrosch, *Foreign States and the Constitution*, 73 Va. L. Rev. 483, 522 (1987). "[N]or are there any effective means to place [them] on parity with the United States or the [S]tates for purposes of enforcement of particular norms." *Ibid.* And because a foreign state's reciprocal treatment of the United States is neither prescribed in our domestic charter nor could be guaranteed if it were, the Framers would have had no reason to impose constitutional limits on the United States' *own* authority to deal with foreign states—limits which would have been effectively unalterable by the political Branches vested with our Nation's national-security and foreign-affairs authority.

Furthermore, the United States' "powers of external sovereignty," including the power to determine "diplomatic relations" with foreign states, are "necessary concomitants of nationality" embodied in "the law of nations," which do "not depend upon affirmative grants of the Constitution." *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936). The Constitution merely distributes that inherent authority among the political Branches. And "[a]s a member of the family of nations, the right and power of the United States in that

field are equal to the right and power of the other members of the international family." *Ibid.* This Court thus recognized early in our Nation's history that sovereign nations "possess[] equal rights and equal independence" on the world stage, emphasizing that this "perfect equality and absolute independence" mean that "[o]ne sovereign [is] in no respect amenable to another." *The Schooner Exchange* v. *McFaddon*, 11 U.S. (7 Cranch) 116, 136-137 (1812). The fact that "no sovereign is 'amenable,' or subject to the other," means that "'the rights and duties of the United States and foreign sovereignties *vis-a-vis* one another derive not from the domestic law of either, but from the mutual agreements contained in treaties and the consensus known as customary international law.'" *Constitutionality of Closing the Palestine Information Office*, 11 Op. OLC 104, 107 (1987) (citation omitted). In the context of actions authorized and taken by the political Branches against foreign states, the United States' position has thus been that "foreign states," unlike foreign nationals physically present in United States territory, "have no constitutional rights." *Id.* at 107 n.2.

The Fifth Amendment's drafting history, though sparse, also reflects that foreign states do not have constitutional due-process rights. In 1215, Magna Carta granted rights to each "Freeman" in England similar to the right to life, liberty, and property later safeguarded by the Due Process Clause. *Pacific Mut. Life Ins. Co.* v. *Haslip*, 499 U.S. 1, 28 (1991) (Scalia, J., concurring in the judgment) (citation omitted). By 1354, a statute of King Edward III, which appears merely to restate those protections, had substituted "due process of the law" for the original "the Law of the Land." See *ibid.* (citations omitted). Sir Edward Coke, with whom "[t]he

American Colonists were intimately familiar," thus determined that "the phrase 'due process of law' referred to the customary procedures to which freemen were entitled by 'the old law of England.'" *Id.* at 28-29 (citation omitted). This Court later agreed, concluding that the Fifth Amendment's use of "the words 'due process of law' conveyed 'the same meaning as the words "by the law of the land," in *Magna Charta*.'" *Id.* at 29 (quoting *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 276 (1856)); see *Kerry* v. *Din*, 576 U.S. 86, 91 (2015) (plurality opinion).

Significantly, the rights of "freemen" throughout Magna Carta were rights granted to "the freemen *of our realm*," *i.e.*, of England. Magna Carta ch. 1 (1215) (emphasis added). Due-process antecedents in state constitutions likewise granted such rights to either "freem[e]n" or "subject[s]." *Haslip*, 499 U.S. at 29 (citations omitted). The proposed text of the Fifth Amendment paralleled that language, initially providing due-process rights to any "Freeman" before the term was changed to "person." Max Crema et al., *The Original Meaning of "Due Process of Law" in the Fifth Amendment*, 108 Va. L. Rev. 447, 508 & n.257 (2022). The records of the Fifth Amendment's ratification, however, contain no "comment on [the Due Process] Clause." *Id.* at 507.

2. The practical implications of conferring due process rights on foreign states would have been significant. In our system of separated federal powers, the political Branches exercise "authority over the Nation's foreign relations," "a domain in which the[ir] controlling role * * * is both necessary and proper." *Bank Markazi* v. *Peterson*, 578 U.S. 212, 234-235 (2016). Indeed, this Court has repeatedly concluded that "matters relating

'to the conduct of foreign relations . . . are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Haig* v. *Agee*, 453 U.S. 280, 292 (1981) (citation omitted); see, *e.g.*, *Hernandez* v. *Mesa*, 589 U.S. 93, 104 (2020); *Regan* v. *Wald*, 468 U.S. 222, 243 (1984).

That Legislative and Executive authority is particularly critical for the management of disagreements with foreign states. For example, "[i]n furtherance of their authority over the Nation's foreign relations, Congress and the President have, time and again, as exigencies arose, exercised control over claims against foreign states and the disposition of foreign-state property in the United States" by, for instance, "blocking [foreign-state assets] or governing their availability for attachment." *Bank Markazi*, 578 U.S. at 235. Such actions can provide the President an important "'bargaining chip'" to use when "negotiating the resolution" of conflicts with hostile states. *Dames & Moore* v. *Regan*, 453 U.S. 654, 673 (1981). See, *e.g.*, International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*; Trading with the Enemy Act, 50 U.S.C. 4301 *et seq*. Congress also amended the FSIA in 2008 to withdraw the immunity of any foreign state that the Executive Branch has designated as "a state sponsor of terrorism" from claims based on acts of terrorism that injure or kill Americans, United States military personnel, or United States government employees or contractors anywhere in the world. 28 U.S.C. 1605A(a)(1), (2)(A)(i)-(ii), (c), and (h)(6). The exercise of such authority by the political Branches with respect to foreign states should not be constrained, much less undermined, by a foreign state's claims of *constitutionally* insufficient process.

The Constitution instead leaves it to the political Branches to determine what appropriate process should be followed with respect to foreign states. Those decisions are properly influenced by principles of comity and reciprocity as well as the framework of international law.

3. At the same time, it is critically important to the United States' own interest in securing reciprocal treatment by foreign sovereigns that foreign states understand that the United States appropriately safeguards their interests through non-constitutional means.

For example, although "foreign sovereign immunity is a matter of grace and comity on the part of the United States," the FSIA confirms the immunity of foreign states by default and generally adheres to the restrictive theory of sovereign immunity by providing tailored exceptions that typically permit suit against foreign states based on claims involving "some form of substantial contact with the United States." *Verlinden*, 461 U.S. at 486, 490 & n.15. The FSIA then supplements those circumscribed exceptions within a "comprehensive statutory scheme" for civil actions against foreign states by addressing significant procedural matters such as the proper method of service to provide the foreign state adequate notice, the foreign state's right of "removal," and appropriate "venue[s]" for such actions. *Amerada Hess*, 488 U.S. at 435 n.3; see, *e.g.*, 28 U.S.C. 1391(f), 1441(d), 1608. The "venue provisions" set forth in the FSIA's "carefully calibrated scheme," *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 273 (2023), for instance, logically provide for venue in the district where "a substantial part" of the conduct underlying a claim occurred or where a "substantial part of property" at issue is situated. 28 U.S.C. 1391(f)(1).

Venue for actions "against a foreign state" itself or a "political subdivision thereof" is also proper in the District of Columbia, 28 U.S.C. 1391(f)(4), "where it may be easiest for [it] to defend" and where many "have diplomatic representatives." S. Rep. No. 1310, 94th Cong., 2d Sess. 31 (1976). And in an action against "an agency or instrumentality of a foreign state," the FSIA also provides for venue in a district in which the agency or instrumentality is "licensed to do business or is doing business." 28 U.S.C. 1391(f)(3).[6]

Of course, if a foreign state is made a party to federal litigation, it is entitled to a fair adjudicatory process. Even before the Fifth Amendment was ratified, it was understood that the Constitution's grant of federal "judicial Power," U.S. Const. Art. III, § 1, did not permit federal courts to exercise "arbitrary" power over litigants and, instead, required the impartial adjudicatory application of "rules and precedents" that "define and point out [the judge's] duty in every particular case."

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[6] In 2011, Congress enacted 1391(b)'s three "[g]eneral" venue provisions. 28 U.S.C. 1391(b) (capitalization altered). The text of one of those provisions is materially identical to the FSIA's first venue provision. See 28 U.S.C. 1391(b)(2) and (f)(1). The last of the three general provisions is a catchall, providing that venue is proper in "any judicial district" in which there is "personal jurisdiction" over a defendant if no district exists in which the action may otherwise be brought "as provided in this section." 28 U.S.C. 1391(b)(3). Cf. 28 U.S.C. 1330(b) (conferring personal jurisdiction over foreign states without regard to venue's location). The government argued in one case that Section 1391(b)(3) applies to FSIA actions, but the court did not reach that contention. See *Corporacion Mexicana de Mantenimiento Integral* v. *Pemex-Exploracion y Produccion*, 832 F.3d 92, 104 (2d Cir. 2016); cf. 14D Charles Alan Wright et al., *Federal Practice and Procedure* § 3803, at 48 & n.9 (4th ed. 2013) (noting the "important question" whether "special venue provisions" like the FSIA's Section 1391(f) "displace" Section 1391(b)).

See *Missouri* v. *Jenkins*, 515 U.S. 70, 128-129 (1995) (Thomas, J, concurring) (quoting *The Federalist No. 78*, at 529 (Alexander Hamilton) (Jacob E. Cooke ed., 1961)). Non-constitutional provisions governing federal adjudication likewise ensure that a foreign state is treated fairly in federal court. See, *e.g.*, Fed. R. Civ. P. 1 (rules apply in "all civil actions and proceedings" in district court); see also, *e.g.*, 28 U.S.C. 455; Code of Conduct for United States Judges, Canon 3A and 3C (2019). Just as federal adjudication remains eminently fair to our own States, such adjudication is similarly fair to the foreign states that may be sued under the FSIA.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

1. 28 U.S.C. 1330 provides:

Actions against foreign states

(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.

(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605-1607 of this title.

2. 28 U.S.C. 1391 provides in pertinent part:

Venue generally

(a) APPLICABILITY OF SECTION.—Except as otherwise provided by law—

(1) this section shall govern the venue of all civil actions brought in district courts of the United States; and

(2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.

(b) VENUE IN GENERAL.—A civil action may be brought in—

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

* * * * *

(f) CIVIL ACTION AGAINST A FOREIGN STATE.—A civil action against a foreign state as defined in section 1603(a) of this title may be brought—

(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or

(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.

* * * * *

3. 28 U.S.C. 1441 provides in pertinent part:

Removal of civil actions

* * * * *

(d) ACTIONS AGAINST FOREIGN STATES.—Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

* * * * *

4. Chapter 97 of Title 28 of the United States Code, 28 U.S.C. 1602-1611, provides in pertinent part:

* * * * *

§ 1603. Definitions

For purposes of this chapter—

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (e) of this title, nor created under the laws of any third country.

(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

§ 1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the juris-

diction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or 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;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) 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, (C) 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 (D) paragraph (1) of this subsection is otherwise applicable.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided*, That—

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

* * * * *

§ 1605A. Terrorism exception to the jurisdictional immunity of a foreign state

(a) IN GENERAL.—

(1) NO IMMUNITY.—A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state 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 if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

(2) CLAIM HEARD.—The court shall hear a claim under this section if—

(A)(i)(I) the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains so designated when the claim is filed under this section or was so designated within the 6-month period before the claim is filed under this section; * * *

* * * * *

(ii) the claimant or the victim was, at the time the act described in paragraph (1) occurred—

(I) a national of the United States;

(II) a member of the armed forces; or

(III) otherwise an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment; and

(iii) in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration; * * * [.]

* * * * *

(b) LIMITATIONS.—An action may be brought or maintained under this section if the action is commenced, or a related action was commenced under section 1605(a)(7) (before the date of the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) not later than the latter of—

(1) 10 years after April 24, 1996; or

(2) 10 years after the date on which the cause of action arose.

(c) PRIVATE RIGHT OF ACTION.—A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to—

(1) a national of the United States,

(2) a member of the armed forces,

(3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or

(4) the legal representative of a person described in paragraph (1), (2), or (3),

for personal injury or death caused by acts described in subsection (a)(1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

(d) ADDITIONAL DAMAGES.—After an action has been brought under subsection (c), actions may also be brought for reasonably foreseeable property loss, whether insured or uninsured, third party liability, and loss claims under life and property insurance policies, by reason of the same acts on which the action under subsection (c) is based.

* * * * *

(h) DEFINITIONS.— For purposes of this section—

* * * * *

(6) the term "state sponsor of terrorism" means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)),[1] section 620A of the Foreign Assis-

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[1] See References in Text note below.

tance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism; and

* * * * *

§ 1605B. Responsibility of foreign states for international terrorism against the United States

(a) DEFINITION.—In this section, the term "international terrorism"—

(1) has the meaning given the term in section 2331 of title 18, United States Code; and

(2) does not include any act of war (as defined in that section).

(b) RESPONSIBILITY OF FOREIGN STATES.—A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which money damages are sought against a foreign state for physical injury to person or property or death occurring in the United States and caused by—

(1) an act of international terrorism in the United States; and

(2) a tortious act or acts of the foreign state, or of any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, regardless where the tortious act or acts of the foreign state occurred.

* * * * *

(d) RULE OF CONSTRUCTION.—A foreign state shall not be subject to the jurisdiction of the courts of the

United States under subsection (b) on the basis of an omission or a tortious act or acts that constitute mere negligence.

§ 1606. Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

§ 1607. Counterclaims

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim—

(a) for which a foreign state would not be entitled to immunity under section 1605 or 1605A of this chapter had such claim been brought in a separate action against the foreign state; or

(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

§ 1608. Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of

the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made—

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

§ 1609. Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

§ 1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property—

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), or (5) or 1605(b) of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based, or

(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

(e) The vessels of a foreign state shall not be immune from arrest in rem, interlocutory sale, and execution in actions brought to foreclose a preferred mortgage as provided in section 1605(d).

(f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)),[1] section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

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[1] See References in Text note below.

(B) Subparagraph (A) shall not apply if, at the time the property is expropriated or seized by the foreign state, the property has been held in title by a natural person or, if held in trust, has been held for the benefit of a natural person or persons.

(2)(A) At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A, the Secretary of the Treasury and the Secretary of State should make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state.

(B) In providing such assistance, the Secretaries—

(i) may provide such information to the court under seal; and

(ii) should make every effort to provide the information in a manner sufficient to allow the court to direct the United States Marshall's office to promptly and effectively execute against that property.

(3) WAIVER.—The President may waive any provision of paragraph (1) in the interest of national security.

(g) PROPERTY IN CERTAIN ACTIONS.—

(1) IN GENERAL.—Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including

property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—

(A) the level of economic control over the property by the government of the foreign state;

(B) whether the profits of the property go to that government;

(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;

(D) whether that government is the sole beneficiary in interest of the property; or

(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

(2) UNITED STATES SOVEREIGN IMMUNITY INAPPLICABLE.—Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States Government by reason of action taken against that foreign state under the Trading With the Enemy Act or the International Emergency Economic Powers Act.

(3) THIRD-PARTY JOINT PROPERTY HOLDERS.—Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately

the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.

§ 1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.