No. 24-17

IN THE
Supreme Court of the United States

DEVAS MULTIMEDIA PRIVATE LIMITED,

Petitioner,

v.

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

Respondents.

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

REPLY FOR PETITIONER

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REPLY FOR PETITIONER

INTRODUCTION

Instead of contesting the circuit split identified by nine judges below, Antrix claims only that the Ninth Circuit's decision is consistent with *other* circuits' holdings and thus constitutes the majority rule. Even if true, that only confirms that the circuits disagree and this Court's review is needed. On the merits, Antrix cannot provide any sound reason for adding a minimum-contacts requirement to the FSIA's clear text. Finally, its vehicle arguments fall flat.

ARGUMENT

I. ANTRIX CONCEDES A SPLIT

The question presented is whether exercising personal jurisdiction under the FSIA requires satisfaction of the minimum-contacts test. Pet. i. After *Republic of Argentina* v. *Weltover, Inc.*, 504 U.S. 607 (1992), four circuits answered this statutory question negatively—a position that conflicts with the decision below. See *Abelesz* v. *Magyar Nemzeti Bank*, 692 F.3d 661, 694 (7th Cir. 2012); *Frontera Res. Azerbaijan Corp.* v. *State Oil Co. of Azerbaijan Republic*, 582 F.3d 393, 396 (2d Cir. 2009); *TMR Energy Ltd.* v. *State Prop. Fund of Ukraine*, 411 F.3d 296, 303 (D.C. Cir. 2005); *S & Davis Int'l, Inc.* v. *Republic of Yemen*, 218 F.3d 1292, 1303 (11th Cir. 2000). Antrix never disputes that the D.C., Second, and Seventh Circuits' decisions conflict with Ninth Circuit precedent. See BIO 23-29. Indeed, Antrix concedes that "a few circuits" apply a rule contrary to the Ninth Circuit's. *Id.* at 3, 26, 29. The conceded split warrants plenary review, and Antrix's attempts to downplay it are unconvincing.

A. Antrix confirms that the circuits sharply disagree

Invoking cases not contained in the petition, Antrix claims that "the panel decision is no outlier" but rather "comports with the rule applied by a majority of circuits." BIO 23, 26. If that were accurate, Antrix has merely confirmed that the circuit split is *deeper* than Devas alleged. Regardless whether the Ninth Circuit is in the majority—or the minority—of a well-developed split, this Court's review is needed. As nine judges below explained, there is a split on the question presented, and Antrix does not contest that the Ninth Circuit's approach conflicts with at least that of the D.C., Second, and Seventh Circuits. Pet. App. 10a-11a, 46a; BIO 25-26.

In any event, the new cases cited by Antrix do not in fact hold that the FSIA's long-arm provision (or its arbitration exception) requires satisfaction of the minimum-contacts test. Some (pre-*Weltover*) cases hold that a minimum-contacts requirement stems from the Due Process Clause, not the FSIA. *Stena Rederi AB* v. *Comision de Contratos del Comite Ejecutivo Gen. del Sindicato Revolucionario de Trabajadores Petroleros de la Republica Mexicana, S.C.*, 923 F.2d 380, 386 n.8, 392 (5th Cir. 1991); *Harris Corp.* v. *Nat'l Iranian Radio & Television*, 691 F.2d 1344, 1352 (11th Cir. 1982); *Velidor* v. *L/P/G Benghazi*, 653 F.2d 812, 817, 819 n.12 (3d Cir. 1981). The remainder address issues other than the requirements of the FSIA's long-arm provision, such as whether the commercial-activity exception to FSIA immunity, 28 U.S.C. § 1605(a)(2), resembles a minimum-contacts requirement. *BP Chems. Ltd.* v. *Jiangsu SOPO Corp.*, 420 F.3d 810, 818 (8th Cir. 2005); *Antoine* v. *Atlas Turner, Inc.*, 66 F.3d 105, 111 (6th Cir. 1995); *Vermeulen* v. *Renault, U.S.A., Inc.*, 985 F.2d 1534, 1545 (11th Cir. 1993); *Gerding* v. *Republic of France*, 943 F.2d 521, 527 (4th Cir. 1991). The Ninth Circuit alone holds that the FSIA contains an overarching minimum-contacts requirement regardless of the terms of individual FSIA exceptions.

B. Antrix's focus on the FSIA's terrorism exception does not dilute the need for review

Antrix next tries to minimize the circuit split by asserting that *Price* v. *Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82 (D.C. Cir. 2002), dealt with the FSIA's "unique" terrorism exception, 28 U.S.C. § 1605A, and other circuits mistakenly extended the D.C. Circuit's analysis to other FSIA exceptions. BIO 26. Not so.

In *Price*, the D.C. Circuit squarely held that as a statutory matter, "personal jurisdiction over a foreign state exists for every claim over which the court has subject

matter jurisdiction." 294 F.3d at 89. While "the *original statute's* immunity exceptions prescribed the necessary contacts which must exist before our courts can exercise personal jurisdiction" in a way that corresponds to a due-process test (such as commercial activity "caus[ing] a direct effect in the United States," 28 U.S.C. § 1605(a)(2)), later FSIA amendments (such as the terrorism exception) allowed personal jurisdiction to be established without showing forum contacts that would satisfy due process. *Id.* at 90 (cleaned up) (emphasis added); see also *id.* at 95.

Thus, *Price*'s foundational rationale was rooted in the FSIA's long-arm provision—which equates personal jurisdiction with satisfying an immunity exception—and was not limited to the FSIA's terrorism exception. Indeed, the D.C. Circuit applies *Price*'s rule that the FSIA's long-arm provision does not require minimum contacts to uphold personal jurisdiction whenever the arbitration exception is satisfied. *TMR Energy*, 411 F.3d at 303. Other circuits do the same. See *Gater Assets Ltd.* v. *AO Moldovagaz*, 2 F.4th 42, 49 (2d Cir. 2021); *S & Davis*, 218 F.3d at 1303. In any event, whether or not these cases erred in extending *Price*'s holding to the arbitration exception, as Antrix claims, they unquestionably created a circuit split that warrants this Court's review.[1]

Antrix and Devas agree that conflicting decisions "have undermined an otherwise uniform body of law."

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[1] Antrix suggests that there is no split *over the terrorism exception*, speculating that a future Ninth Circuit panel could distinguish the decision below and follow *Price*'s approach. BIO 27-28. That is both wrong and beside the point. The decision below accurately explains that circuit precedent requires a traditional minimum-contacts inquiry for *all* FSIA cases. Pet. App. 4a. As importantly, Antrix does not and cannot dispute that a split exists over whether minimum contacts are required to invoke *the arbitration exception*.

BIO 29. Only this Court can remedy the variability in what should be a uniform area of foreign-relations law. Pet. 17.

II. ANTRIX CANNOT DEFEND THE DECISION BELOW

"[I]t is hard to imagine a clearer statute" than the FSIA's long-arm provision. Pet. App. 57a (Bumatay, J.). "Personal jurisdiction over a foreign state *shall* exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title." 28 U.S.C. § 1330(b) (emphasis added). It was undisputed below that the arbitration exception to immunity applied and Antrix had been validly served. Pet. App. 13a, 21a-22a. Antrix can defend its reading of the FSIA only by invoking irrelevant legislative history and adding words to the statute.

A. Legislative history does not support the decision below

Inverting the canonical order, Antrix focuses first on legislative history—and only on the history behind the FSIA's 1976 enactment. BIO 13-16. This approach ignores that the arbitration exception was not added until 1988. See Pet. 3-4, 13. Use of the original FSIA's legislative history—always a weak foundation for statutory interpretation—is "even more dubious" here. Pet. App. 61a (Bumatay, J.). What is more, Antrix's legislative history shows only that Congress intended the original FSIA's exceptions to apply when minimum contacts could be shown. Congress effectuated that goal, however, not by including a minimum-contacts requirement in the long-arm provision, but by drafting the enumerated exceptions to require U.S. connections that would generally satisfy the due-process test for minimum contacts. *Id.* at 60a; Pet. 12-13.

The legislative history behind the arbitration exception cuts against Antrix. BIO 6. It reveals that Congress wanted an expansive arbitration exception to ease enforcement of arbitral awards against foreign states, including

in circumstances that went beyond the pre-existing waiver exception. *Ibid.*; Pet. 18-19. The legislative history certainly does not reflect any secret intent to include a minimum-contacts requirement in the arbitration exception that was not contained in the text.

In this regard, the arbitration exception's history parallels that of the terrorism exception, which Antrix seems to concede does not require minimum contacts. BIO 7, 28. In both instances, Congress chose to pursue a policy goal of facilitating suits against foreign states by crafting exceptions that do not require suits to arise from direct effects in the United States. Pet. 13. Antrix offers no reason why the arbitration exception should be read to silently incorporate a minimum-contacts requirement while the terrorism exception jettisons it.

B. The FSIA's text does not require a minimum-contacts analysis

Turning at last to text, Antrix argues for the first time that a minimum-contacts requirement for enforcing arbitral awards derives from the arbitration exception itself. BIO 16-20. It contends that each FSIA exception "require[s] some connection between the parties, the dispute, and the United States," and the arbitration exception "follows the same model as the prior exceptions." *Id.* at 17, 19. This is a shift in position for Antrix, for it was undisputed below that the arbitration exception was satisfied. Pet. App. 21a.

Antrix is correct to belatedly recognize that the FSIA's long-arm provision bases personal jurisdiction solely on satisfying the terms of an immunity exception, BIO 17, but it is quite mistaken to suggest that the arbitration exception incorporates a minimum-contacts requirement. Rather, the statute provides jurisdiction for actions to enforce an arbitral award that meet one of four requirements. 28 U.S.C. § 1605(a)(6) ((A) arbitration takes place

or is intended to take place in the United States, (B) agreement or award is governed by treaty in force for United States calling for enforcement of award, (C) underlying claim could have been brought in U.S. court under FSIA, or (D) waiver exception is applicable). Antrix does not contend that these indirect connections with the United States prescribe a due-process style minimum-contacts test, and they plainly do not. For example, § 1605(a)(6)(B)'s treaty provision, which supported jurisdiction here, applies regardless of any purposeful activity by the judgment debtor directed at the United States. Yet Antrix ignores these explicit requirements in favor of "implicit" understandings that supposedly support an unexpressed minimum-contacts requirement. BIO 19. Congress could have articulated the "presence" requirements Antrix seeks to insert into the arbitration exception, but it did not do so, just as it omitted them from the terrorism exception. Congress's decision to require minimum contacts for some exceptions but not others shows that this omission was intentional. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983).

Resisting the unambiguous text, Antrix argues that Devas's interpretation will "illogical[ly]" permit enforcement suits where the United States has a minimal interest and force foreign states to undergo "intrusive" discovery into the location of assets. BIO 2, 28-29, 31. But Antrix misfires in asserting that the United States lacks an interest in arbitration-enforcement suits that do not arise out of U.S. assets or activities. Actions that meet one of the four requirements for the arbitration exception, by definition, implicate United States' interests deemed sufficient by Congress. See 28 U.S.C. § 1605(a)(6). In this regard, the arbitration exception is analogous to the terrorism exception, which allows jurisdiction where the victim is a U.S. national, armed-forces member, or government employee or contractor, even if the terrorist attack occurred

overseas and had no effects in the U.S. *Id.* § 1605A; see *Price*, 294 F.3d at 90 ("[T]he only required link between the defendant nation and the territory of the United States is the nationality of the claimant."). The requirements to invoke the arbitration and terrorism exceptions reflect reasonable choices by Congress to protect U.S. interests, without the need to engraft a non-textual minimum-contacts requirement.

Antrix, moreover, overlooks that an award holder may not always know the location of foreign assets at the case's outset. Antrix's position would bar judgment creditors at the threshold and thwart their ability to enforce rightfully obtained arbitral awards—an illogical outcome itself. Pet. 18-20. Anyway, as a practical matter, a party will not bring an enforcement action unless it has a good-faith belief that assets are located in the forum. Such was the case here. *Id.* at 19 (noting that Devas pleaded its belief that Antrix had assets in Washington, while later discovery revealed assets in Virginia).

Antrix's discovery concerns are similarly overblown. This Court has rejected protests that post-judgment discovery into foreign states' assets will "cause a substantial invasion of foreign states' sovereignty and will undermine international comity" because district courts have discretion to determine whether discovery is warranted and "may appropriately consider comity interests and the burden that the discovery might cause to the foreign state." *Republic of Argentina* v. *NML Capital, Ltd.*, 573 U.S. 134, 146 & n.6 (2014) (cleaned up).

In short, nothing in the history or text of the FSIA, its arbitration exception, or its long-arm provision requires a showing of minimum contacts before a court may assert personal jurisdiction over a foreign state.[2]

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[2] Antrix also contends that the Due Process Clause independently requires a minimum-contacts inquiry. BIO 20-22. However, as Antrix

III. THE PETITION CLEANLY PRESENTS AN IMPORTANT ISSUE

Seeking to avoid review of an acknowledged split over an issue that has produced numerous court of appeals opinions in recent years, Antrix avers that the question presented rarely arises and is "not cleanly presented here." BIO 30, 32. Not so.

A. The question presented is important

Antrix asserts that this issue will infrequently arise because in arbitral-enforcement cases the presence of the foreign state's assets in the forum can satisfy the minimum-contacts requirement. BIO 30. But Antrix ignores that a party seeking to enforce an award often will not know where the defendant's assets are located and may need to engage in discovery after suing in a forum where it believes assets can be found. Pet. 19. That is precisely what happened here, *ibid.*, yet Antrix has no response.

Antrix's suggestion that arbitration-exception cases raising minimum-contacts issues are uncommon in the Ninth Circuit, BIO 30-31, misses the forest for the trees. The panel's decision was grounded in circuit precedent requiring a minimum-contacts inquiry for all FSIA cases, which surely deters litigants from filing in that jurisdiction. By contrast, other circuits regularly address arbitral-enforcement petitions without requiring minimum contacts. Pet. 9-11. Plus, as Judge Bumatay explained, the Ninth Circuit's minimum-contacts requirement would

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concedes, the Ninth Circuit did not reach that question, and this Court need not either. *Id.* at 27 n.15; see Pet. 14-16. The Court can address the statutory question presented and remand the constitutional question. See *United States* v. *Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 494 (2001) ("Nor do we consider the underlying constitutional issues today. Because the Court of Appeals did not address these claims, we decline to do so in the first instance.").

close the courthouse doors to terrorism victims as well. Pet. App. 47a, 67a.

B. The question is cleanly presented

Antrix erroneously posits two "threshold issues that logically precede" the question presented and "make this case an inappropriate vehicle for the Court to resolve the question posed." BIO 32. Those issues did not prevent the Ninth Circuit from addressing the question presented, nor would they hinder this Court in doing so. They are merely "subsidiary" merits issues that this Court can remand after addressing the question presented. Pet. App. 55a (Bumatay, J.); see Pet. 20-21; *Rodriguez* v. *United States*, 575 U.S. 348, 357-358 (2015) (because court of appeals did not reach it, Court remanded potentially case-dispositive issue for consideration below).

First, Antrix claims that the Indian courts' set-aside of the award while the Ninth Circuit appeal was pending renders the award unenforceable in U.S. courts. BIO 4, 32. But as Antrix begrudgingly concedes, such foreign rulings are not self-executing, and U.S. courts must ultimately determine the enforceability of an award set aside in the primary jurisdiction after confirmation in the United States. *Id.* at 33; Pet. 20-21. Thus, when the Ninth Circuit resolved the case on personal-jurisdiction grounds, it denied Antrix's motion to remand for the district court to evaluate the Indian courts' set-aside ruling. Pet. App. 8a & n.1. This Court can therefore follow its normal practice of deciding the question presented and remanding other issues that went unaddressed below.

Antrix next adverts to its claim that it would be entitled to *constitutional* due process independent of the FSIA because it is merely a state-owned corporation, not a foreign state. BIO 34. The district court rejected this argument, finding Antrix to be the alter ego of India and therefore a foreign state for constitutional purposes. Pet. App. 13a-

14a, 22a; Pet. 5-6. The Ninth Circuit, however, pretermitted the constitutional question of Antrix's status by holding that Antrix would be entitled to minimum-contacts protections under the FSIA. Pet. App. 4a (noting "parties[']agree[ment] that for purposes of the FSIA, Antrix is a 'foreign state'"). Thus, the Court is squarely presented with the circuit-splitting question of whether the FSIA requires a showing of minimum contacts to assert personal jurisdiction over foreign states. After deciding that question, the Court can remand Antrix's claim that it is not a foreign state for constitutional purposes—and therefore entitled to due process regardless of the FSIA—for the Ninth Circuit to resolve in the first instance.[3]

* * *

This Court does not typically wait for a case where the question presented is the only ground on which the respondent could potentially prevail in the underlying litigation. Nor should the Court await a later case here based on Antrix's misnamed "vehicle" arguments. This issue cries out for review *now*, as the dissenting judges below explained. With the Ninth Circuit's doors firmly closed, this issue is unlikely to arise from the Ninth Circuit again—and that court is the only outlier that misinterprets the FSIA to require a showing of minimum contacts.

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[3] Antrix misleadingly maligns the district court's decision on this issue. See BIO 4, 8, 34-35. The district court relied upon Ninth Circuit precedent applying the disjunctive test set forth in *First National City Bank* v. *Banco Para El Comercio Exterior de Cuba* (*Bancec*), 462 U.S. 611 (1983), to find that Antrix was India's alter ego, and therefore concluded that Antrix, like India, "is not a 'person' for due process purposes." Pet. App. 13a-14a; see also *id.* at 22a.

Respectfully submitted.

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