No. _____

IN THE

Supreme Court of the United States

ARUN KUMAR BHATTACHARYA,

Applicant,

v.

STATE BANK OF INDIA,

Respondent.

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

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APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

To: Associate Justice Amy Coney Barrett, Circuit Justice for the United States Court of Appeals for the Seventh Circuit:

Under this Court's Rules 13.5 and 22, Applicant Arun Kumar Bhattacharya ("Applicant") respectfully requests an extension of thirty (30) days to file a petition for a writ of certiorari. The forthcoming petition will seek review of the decision of the U.S. Court of Appeals for the Seventh Circuit in *Bhattacharya v. State Bank of India*, 70 F.4th 941 (7th Cir. 2023), a copy of which is attached to this application. In support of this application, Applicant states the following:

1. The Seventh Circuit issued its opinion on June 12, 2023. Without an extension, the petition for a writ of certiorari will be due on September 11, 2023. With the requested extension of thirty (30) days, the petition would be due on October 11, 2023. Consistent with Rule 13.5, the instant application is filed more than ten (10) days before the petition for certiorari is currently due. This Court's jurisdiction will be based on 28 U.S.C. § 1254(1).

2. Applicant has retained the undersigned to act as counsel of record in the Supreme Court only after the Seventh Circuit issued its judgment, and counsel of record has multiple, competing obligations around the time that the petition is currently due. The requested extension is thus needed to permit the undersigned counsel to fully investigate the legal questions involved in the case,

and to prepare a petition for certiorari that crystalizes and addresses those issues worthy of the Court's consideration.

3. Applicant requests only half the time otherwise permitted under Rule 13.5 for extensions of time to file a petition for certiorari (as noted above, Applicant requests only a 30-day extension, although extensions of up to 60 days may be granted). For the following reasons, Applicant respectfully submits that the requested extension should be granted.

4. In the decision below, the Seventh Circuit affirmed the district court's dismissal of claims that Applicant brought against Respondent, the State Bank of India, which is a "foreign state" under 28 U.S.C. § 1603 and is thus presumptively immune from civil suit unless an exception to sovereign immunity is established under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1605(a).

5. In affirming dismissal of the case, the Seventh Circuit held that, under the "direct-effect" prong of the FSIA's commercial activity exception, *id.* § 1605(a)(2), a foreign state can be sued in a U.S. court only if the foreign state performed some "legally significant act" in the United States. *Bhattacharya*, 70 F.4th at 945. Thus, according to the Seventh Circuit, "a plaintiff wishing to invoke the commercial activity exception by pointing to a direct effect in the United States must be able to identify language in the agreement that designates the United States as a site for performance on the contract." *Id.* at 944.

6. There are multiple, significant reasons to review the Seventh Circuit's decision. *First*, the decision below implicates a circuit split regarding the criteria

for satisfying the direct-effect test under § 1605(a)(2). Decisions of the Second, Seventh, and Ninth Circuits each apply a different version of the "legally significant act" test. *E.g. id.* at 945 (requiring some act "in the United States" to be legally significant); *Guirlando v. T.C. Ziraat Bankasi A.S.*, 602 F.3d 69, 77 (2d Cir. 2010) (requiring "defendant's conduct that is alleged to have had a direct effect in the United States" to be legally significant); *Terenkian v. Republic of Iraq*, 694 F.3d 1122, 1135 (9th Cir. 2012) (requiring "the effect [in the United States] of the act" outside the United States to be legally significant). By contrast other circuits have either expressly rejected or do not directly require a "legally significant act." *E.g.*, *Voest-Alpine Trading USA Corp. v. Bank of China*, 142 F.3d 887 (5th Cir. 1998); *Keller v. Cent. Bank of Nigeria*, 277 F.3d 811 (6th Cir. 2002); *Gen. Elec. Cap. Corp. v. Grossman*, 991 F.2d 1376 (8th Cir. 1993); *Orient Min. Co. v. Bank of China*, 506 F.3d 980 (10th Cir. 2007); *Araya-Solorzano v. Gov't of Republic of Nicaragua*, 562 F. App'x 901 (11th Cir. 2014). Applicant respectfully requests an extension of thirty (30) days in order to fully research and analyze this divide among the circuits.

7. *Second*, in cases that touch upon foreign relations, it is particularly important that the American judiciary speaks with one voice. The FSIA clearly implicates key issues in U.S. foreign relations. *Cassirer v. Thyssen-Bornemisza Collection Found.*, 142 S. Ct. 1502, 1509 (2022); *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 493 (1983) ("Actions against foreign sovereigns in our courts raise sensitive issues concerning the foreign relations of the United

States."). *Cf. JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88, 91 (2002) (noting grant of certiorari due to circuit split and "serious issues of foreign relations"). The confusion among lower courts on one of the most invoked exceptions to the FSIA increases the risk of international friction, and additional time is needed for Applicant to research and brief the consequences of the circuit split on this issue so that the Court can fully consider this case.

8. This application should be granted, and the deadline for Applicant to file his petition for a writ of certiorari should be extended to October 11, 2023.

Respectfully submitted,

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Dated: August 21, 2023

APPENDIX

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In the

United States Court of Appeals

For the Seventh Circuit

No. 22-2734

ARUN KUMAR BHATTACHARYA,

Plaintiff-Appellant,

v.

STATE BANK OF INDIA,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:20-cv-3361 — **Andrea R. Wood**, *Judge*.

SUBMITTED MAY 12, 2023* — DECIDED JUNE 12, 2023

Before BRENNAN, SCUDDER, and KIRSCH, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Arun Bhattacharya, a U.S. citizen and Illinois resident of Indian origin, opened a non-resident account with State Bank of India through one of its India-

* We have agreed to decide this case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. See FED. R. APP. P. 34(a)(2)(C).

based branches. When State Bank of India retroactively changed the terms of the account, Bhattacharya sued for breach of contract. The district court dismissed his complaint for lack of subject matter jurisdiction, concluding that the Foreign Sovereign Immunities Act applied to Bhattacharya's claim and immunized the Bank from suit. We agree and affirm.

I

A

The doctrine of foreign sovereign immunity developed at common law as "a matter of grace and comity on the part of the United States." *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 821 (2018) (quoting *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 486 (1983)). In support of these principles, federal courts traditionally "deferred to the decisions of the political branches—in particular, those of the Executive Branch—on whether to take jurisdiction over actions against foreign sovereigns and their instrumentalities." *Verlinden*, 461 U.S. at 486. For the first 150 years of our nation's history, this meant that foreign states generally held absolute immunity from suit in U.S. courts. See *id.*

That changed in 1952. It was then that the State Department responded to foreign governments' increasing engagement in commercial activity by adopting a new, restrictive theory of foreign sovereign immunity. See *Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759, 766 (2019) (citing Letter from Jack B. Tate, Acting Legal Adviser, Dep't of State, to Philip B. Perlman, Acting Att'y Gen. (May 19, 1952), *reprinted in* 26 Dep't State Bull. 984–85 (1952)). This new approach would confer

immunity on foreign governments "only with respect to their sovereign acts, not with respect to commercial acts." *Id.*

In 1976 Congress codified this more restrictive theory of foreign sovereign immunity in the Foreign Sovereign Immunities Act. Pub. L. No. 94-583, 90 Stat. 2891 (codified at 28 U.S.C. §§ 1330, 1602–1611); see also *Verlinden*, 416 U.S. at 488. The FSIA "transferred 'primary responsibility for immunity determinations from the Executive to the Judicial Branch.'" *Jam*, 139 S. Ct. at 766 (quoting *Republic of Austria v. Altmann*, 541 U.S. 677, 691 (2004)).

To aid courts in their new role, the Act provides "a comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state or its political subdivisions, agencies, or instrumentalities." *Verlinden*, 461 U.S. at 488. This includes a presumption that foreign sovereigns and their instrumentalities are immune from suit in U.S. courts. See 28 U.S.C. § 1604; see also *Turkiye Halk Bankasi A.S. v. United States*, 143 S. Ct. 940, 946 (2023). The only exceptions to this general grant of foreign sovereign immunity are codified in the Act itself. See *Rubin*, 138 S. Ct. at 822 (explaining that the FSIA provides "certain express exceptions" to foreign sovereign immunity).

B

Bhattacharya's appeal concerns an exception for foreign sovereigns engaged in commercial activity. The FSIA does not grant foreign sovereigns or their instrumentalities immunity when

> 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.

28 U.S.C. § 1605(a)(2).

Before diving into the various substantive components of the commercial activity exception, it is important to pause on the meaning of one of its key terms. The FSIA defines "commercial activity" as "either a regular course of commercial conduct or a particular commercial transaction or act" and further provides that "[t]he 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." 28 U.S.C. § 1603(d). The Supreme Court has interpreted this to mean that a foreign sovereign's actions are commercial for purposes of this exception when it acts "not as regulator of a market, but in the manner of a private player within it." *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 614 (1992).

Now for the substance of the commercial activity exception. By its terms, the exception applies—and federal courts retain jurisdiction—in three kinds of situations: (1) if a lawsuit is based on commercial activity carried on in the United States; (2) if it is based on an act performed in the United States in connection with commercial activity elsewhere; or (3) if it is based on an act outside the territory of the United States in connection with commercial activity elsewhere and the act caused a direct effect in the United States. See 28 U.S.C. § 1605(a)(2).

If we focus on the third situation where the exception applies, we find three elements that must be established. There must be an extraterritorial act, a connection to extraterritorial commercial activity, and a direct effect in the United States. See *Weltover*, 504 U.S. at 611.

This case involves this third situation, and more specifically the third element—the presence of a direct effect in the United States. In its 1992 *Weltover* decision, the Supreme Court provided a starting point for understanding what the term "direct effect" means. The Court determined that Argentina's unilateral rescheduling of bond payments had a direct effect in the United States because the plaintiffs had designated New York bank accounts as the place for payment, so New York was "the place of performance for Argentina's ultimate contractual obligations." *Id.* at 619. *Weltover* thus stands for the proposition that a sovereign's actions affecting accounts held in the United States qualify as acts in connection with commercial activity that have a direct effect for purposes of the FSIA.

Other circuits, relying on *Weltover*, have found that the existence or absence of a designated place of payment in the United States is often decisive in the direct effect analysis. See, *e.g.*, *Atlantica Holdings v. Sovereign Wealth Fund Samruk-Kazyna JSC*, 813 F.3d 98, 108–09 (2d Cir. 2016) ("Based on *Weltover*'s holding, courts have consistently held that, in contract cases, a breach of a contractual duty causes a direct effect … so long as the United States is the place of performance for the breached duty."); *R&R Int'l Consulting LLC v. Banco do Brasil, S.A.*, 981 F.3d 1239, 1244 (11th Cir. 2020) (finding a direct effect where the affected bonds—by their terms—could be redeemed for payment in a bank's Miami branch); *Valambhia v.*

United Republic of Tanzania, 964 F.3d 1135, 1142 (D.C. Cir. 2020) (finding no direct effect where the parties "had no arrangement that called for Tanzania's use of a [U.S.] bank account or invited the Valambhias to demand payment within the United States").

Though we have not yet had occasion to weigh in on this issue, we think the approach taken by our fellow circuits is sound. We therefore conclude that—at least in a dispute that, like this one, involves straightforward allegations of breach of contract—a plaintiff wishing to invoke the commercial activity exception by pointing to a direct effect in the United States must be able to identify language in the agreement that designates the United States as a site for performance on the contract.

II

With this legal framework in place, we review Bhattacharya's claim against State Bank of India.

A

State Bank of India operates branches in India and all over the world, including three in the United States. Among other options available to its clients, State Bank of India offers non-resident accounts to senior citizens of Indian origin living outside India. These accounts are offered only through the Bank's India-based branches; they do not have any connection with the Bank's overseas branches. State Bank of India does, however, conduct individual and commercial banking activity through its overseas branches, including those in the United States.

In 2012, and while living in Chicago, Bhattacharya opened a non-resident account with State Bank of India. He deposited

his retirement pension into the account and purchased certificates of deposit that promised to earn a fixed rate of interest, plus an additional 1.5% that rolled over into new certificates of deposit when the original certificates reached maturity. But in 2020 State Bank of India informed Bhattacharya that the Reserve Bank of India (India's central bank) had eliminated the increased 1.5% interest earnings for any accounts held by nonresident Indian senior citizens. This rate reduction had apparently gone into effect in 2012, so State Bank of India told Bhattacharya that it would retroactively debit his account for the extra 1.5% interest payments he had been receiving for the eight years he had his account.

Bhattacharya objected and, in the course of challenging the Bank's actions, learned more upsetting news. He found out that in 2017 State Bank of India began applying a variable interest rate—rather than the fixed interest rate he was promised in 2012—to his certificates of deposit. So he understandably complained and demanded copies of all interest records for his account dating back to 2017. State Bank of India refused his request and, according to Bhattacharya, retaliated against him for his complaints by freezing his account, liquidating his certificates of deposit, and transferring his funds into a locked, non-interest-bearing account.

Bhattacharya sued State Bank of India for breach of contract in federal court in Illinois. Later he amended his complaint to add a demand for an accounting of all interest, as well as a claim that the Bank violated American consumer-protection laws. State Bank of India moved to dismiss the complaint, asserting that the FSIA stripped the district court of jurisdiction over the case. Bhattacharya acknowledged the Bank's status as an instrumentality of a foreign sovereign but

argued that his claims fell within the FSIA's commercial activity exception. He contended that State Bank of India's activities—including its operation of U.S. branches, its marketing efforts to U.S. citizens, and its actions taken with respect to his non-resident account—directly affected him in the United States and therefore fit within the FSIA's commercial activity exception.

B

In a careful and thorough opinion, the district court concluded that the commercial activity exception did not apply, so it held that it lacked jurisdiction over Bhattacharya's claims against State Bank of India. At the outset, the district court agreed with both parties and found that the FSIA applies to State Bank of India because the Indian government is the Bank's majority shareholder. See 28 U.S.C. § 1603(a), (b)(2); *Turkiye Halk Bankasi*, 143 S. Ct. at 946–47.

The district court went on to find that Bhattacharya's suit was not based upon commercial activity carried on in the United States. It explained that Bhattacharya never held an account with one of the Bank's U.S. branches, and the contested actions—the withdrawals and interest rate changes—resulted from regulatory actions taken by India's central bank. Bhattacharya may have suffered financial loss in his account, the court recognized, but financial injury to a U.S. citizen is insufficient unless the foreign state performed some "legally significant act" in the United States—a showing that Bhattacharya had not made. See *Rush-Presbyterian-St. Luke's Med. Ctr. v. Hellenic Republic*, 877 F.2d 574, 581–82 (7th Cir. 1989).

III

On appeal Bhattacharya contends that the district court misapplied the direct effect provision of the commercial activity exception. He maintains that State Bank of India's actions had a direct effect in the United States as evidenced by its operation of U.S.-based branches, the advertisement of its accounts to U.S. citizens, and the "enormous loss and mental agony" it has caused him. Bhattacharya highlights the Bank's solicitation practices inviting U.S. citizens to open non-resident accounts as a direct effect of its commercial activity.

The district court was correct to conclude that these activities—without more—are insufficient to establish a direct effect in the United States. Bhattacharya's non-resident account is maintained in India, and the relevant transactions were with the Bank's India-based branches. Bhattacharya did not allege that his suit related to any account held with a U.S.-based branch of the Bank or was otherwise related to any actions the Bank had taken here. Nor did he point to any agreement with State Bank of India that established the United States as the site of performance. To the contrary, Bhattacharya's contract agreement established his account with Indian branches of the Bank.

Because the district court got the analysis exactly right, we AFFIRM.