No. 24-759

IN THE
Supreme Court of the United States

WYE OAK TECHNOLOGY, INC.,
Petitioner,

v.

REPUBLIC OF IRAQ AND MINISTRY OF DEFENSE OF THE REPUBLIC OF IRAQ,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

C. ALLEN FOSTER
ERIC C. ROWE
WHITEFORD, TAYLOR & PRESTON LLP
1800 M Street N.W.
Washington, D.C. 20036
Tel.: (202) 659-6800

NEAL KUMAR KATYAL
Counsel of Record
WILLIAM E. HAVEMANN
MILBANK LLP
1850 K. St., N.W.
Washington, D.C. 20006
Tel.: (202) 835-7500
nkatyal@milbank.com

REEDY C. SWANSON
J. ANDREW MACKENZIE
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
Tel.: (202) 637-5600

Counsel for Petitioner

SUPPLEMENTAL BRIEF FOR PETITIONER

Pursuant to Rule 15.8, Petitioner Wye Oak Technology, Inc. submits this supplemental brief to address this Court's recent decision in *CC/Devas (Mauritius) Ltd.* v. *Antrix Corp. Ltd.*, No. 23-1201 (U.S. June 5, 2025) ("*Devas*").

Devas supports Wye Oak's argument that the D.C. Circuit erred by inserting requirements into the Foreign Sovereign Immunities Act's commercial-activity exception that are nowhere to be found in the text that Congress adopted. The Court reaffirmed the fundamental interpretive principle that when construing statutes, including the FSIA, courts must apply the law "as written" rather than "read an[y] additional requirement[s] into" the text Congress adopts. *Devas*, slip op. 10. That principle applies to the FSIA's commercial-activity exception no less than it does the neighboring personal-jurisdiction provision at issue in *Devas*.

I. *Devas* Supports Wye Oak on the First Question Presented.

Devas involved a dispute over the FSIA's personal-jurisdiction provision, which states that " '[p]ersonal jurisdiction over a foreign sovereign state shall exist' whenever (1) an exception to foreign sovereign immunity applies, and (2) the foreign defendant has been properly served." *Id*. at 1 (quoting 28 U.S.C. § 1330(b)). The Ninth Circuit read the provision to impose a silent "third requirement" on top of these two express requirements, *id*.—namely, that "a plaintiff must also prove that the foreign state has made 'minimum contacts' with the United States sufficient to

satisfy the jurisdictional test set forth in *International Shoe Co.* v. *Washington*." *Id*. at 1-2. (citation omitted).

This Court reversed, giving the FSIA's personal-jurisdiction provision its "most natural reading" by rejecting the minimum-contacts requirement. *Id*. at 8. The Court explained that statutes should not be read as though Congress was trying to "hide the ball" in drafting. *Id*. at 9. Congress does not "omit[] from its adopted text requirements that it nonetheless intends to apply." *Id*. at 10 (quoting *Jama* v. *Immigration and Customs Enforcement*, 543 U.S. 335, 341 (2005)). Courts should therefore enforce the law "as written" rather than superimpose "additional requirment[s]" not found in the text adopted through bicameralism and presentment. *Id*.; *see also Ames* v. *Ohio Dep't of Youth Servs.*, 605 U.S. __, 2025 WL 1583264, at *6 (June 5, 2025) (Thomas, J., concurring) ("Judge-made doctrines have a tendency to distort the underlying statutory text, impose unnecessary burdens on litigants, and cause confusion for courts.").

Those foundational interpretive principles apply equally to the direct-effect provision at issue here. Indeed, *Devas* looked to direct-effect precedents in support of its refusal "to add in what Congress left out" in the jurisdiction provision. *Id*. at 9 (citing *Republic of Argentina* v. *Weltover*, 461 U.S. 607, 618 (1992)). The Court reasoned that just as *Weltover* "refus[ed] to read an 'unexpressed requirement' into the FSIA" when construing its direct-effect provision, an unexpressed minimum-contacts requirement should not be grafted into the FSIA's jurisdiction provision. *Id*.

The Court also favorably cited *Rote* v. *Zel Custom Mfg. LLC*, 816 F.3d 383, 394 (6th Cir. 2016), a case cited in Wye Oak's petition on Wye Oak's side of the

split. *See id*. at 11; Pet. 22. *Rote* held that the direct-effect provision does not incorporate a minimum-contacts analysis. *Rote*, 816 F.3d at 394. *Rote*, in turn, relied on Sixth Circuit precedent declining to read a place of performance or other legally significant act requirement into the direct-effect provision. *Id*. (citing *Keller* v. *Cent. Bank of Nigeria*, 277 F.3d 811, 817-818 (6th Cir. 2002)). *Rote* concluded that "[t]aken together, *Weltover* and *Keller*" establish that, when it comes to construing the direct-effect provision, courts "may not read anything *into* the statute, but must, quite simply, read it." *Rote*, 816 F.3d at 394.

A "natural reading" of the direct-effect provision, *Devas*, slip op. at 8, precludes the D.C. Circuit's atextual place-of-performance test for all the reasons stated in Wye Oak's petition. *See* Pet. 24-29; Pet. Reply 8-10.

II. *Devas* Supports Wye Oak on the Second Question Presented.

The Ninth Circuit in *Devas* attempted to support its minimum-contacts gloss on the FSIA's jurisdiction provision with legislative history. The Court rejected that approach, reiterating that "legislative history is not the law." *Devas*, slip op. 11 (quoting *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 523 (2018)) (alteration omitted).

Devas thus confirms the D.C. Circuit's error in relying on legislative history to support its rule on the second question presented. *See* Pet. 34. Just as *Weltover* rejected foreseeability and substantiality requirements imported from legislative history, *Weltover*, 504 U.S. at 618, and *Devas* rejected a minimum-contacts requirement imported from the same legislative history, *Devas*, slip op. 12, the Court should now reject the D.C. Circuit's holding—grounded in the very same

legislative history, *see* Pet. App. 102a—that the only acts that can be considered under the second clause of the FSIA's commercial-activity exception are those "that *the foreign state* has performed in the United States." Pet. App. 99a; *compare Weltover*, 504 U.S. at 618 *with Devas*, slip op. 12 *and* Pet. App. 102a (all citing H. R. Rep. No. 94-1487 (1976)).

III. Further Percolation is Unnecessary, But If The Court Disagrees It Should Grant, Vacate, and Remand in Light of *Devas*.

For all the reasons stated in the petition, this case presents an ideal vehicle to address two important issues that are the subject of open and acknowledged splits. At minimum, however, the Court should grant the petition, vacate the decisions below, and remand to the D.C. Circuit with instructions to reconsider these issues in light of *Devas*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

C. ALLEN FOSTER
ERIC C. ROWE
WHITEFORD, TAYLOR & PRESTON LLP
1800 M Street N.W.
Washington, D.C. 20036
Tel.: (202) 659-6800

NEAL KUMAR KATYAL
Counsel of Record
WILLIAM E. HAVEMANN
MILBANK LLP
1850 K. St., N.W.
Washington, D.C. 20006
Tel.: (202) 835-7500
nkatyal@milbank.com

REEDY C. SWANSON
J. ANDREW MACKENZIE
HOGAN LOVELLS US LLP

555 Thirteenth Street, N.W.
Washington, D.C. 20004
Tel.: (202) 637-5600

Counsel for Petitioner

June 2025