No. 25-1358

In the Supreme Court of the United States

NHK SPRING CO., LTD.; NHK INTERNATIONAL CORPORATION; NHK SPRING (THAILAND) CO., LTD.; NAT PERIPHERAL (DONG GUAN) CO., LTD.; NAT PERIPHERAL (H.K.) CO., LTD.,

Petitioners,

v.

SEAGATE TECHNOLOGY LLC; SEAGATE TECHNOLOGY (THAILAND) LTD.; SEAGATE SINGAPORE INTERNATIONAL HEADQUARTERS PTE., LTD.; SEAGATE TECHNOLOGY INTERNATIONAL,

Respondents.

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

REPLY BRIEF OF PETITIONERS

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The decision below is the first in history to hold that foreign purchasers can bring U.S. antitrust claims against foreign defendants for foreign transactions, based solely on the fact that aspects of those transactions were agreed to in the United States. In reaching that novel conclusion, the panel expressly broke from the Seventh Circuit's decision in *Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816 (7th Cir. 2015), defied this Court's precedent, and disregarded the plain text of the FTAIA.

Rather than defend the Ninth Circuit's radical expansion of the FTAIA's domestic-effects exception, Respondents argue that the panel did not mean what it said. According to Respondents, the panel held only that the FTAIA allows a foreign purchaser to bring suit where the price that the foreign purchaser pays for price-fixed goods is based on inflated domestic prices for which those goods were sold in the United States. On Respondents' view, the Ninth Circuit assigned little weight to the fact that the allegedly inflated prices in this case were set by negotiations that took place in part in the United States.

The problem with Respondents' position is that they have never suggested that the prices paid by their foreign procurement entities were based on prices that any company paid domestically. Indeed, while "companies (other than Seagate Technology LLC) overpaid for the suspension assemblies bought here in the states," the panel recognized those sales "did not directly injure Seagate Technology LLC because it did not buy the suspension assemblies here—its foreign entities did abroad." Pet. App. 22a. And while the panel referred to "U.S. prices," *id.* at 24a, that reference necessarily meant U.S.-negotiated price terms, *see* Pet. 21.

Respondents' other arguments for denying review also fail. Respondents suggest that the Seventh Circuit's decision in *Motorola* is distinguishable from the panel opinion here, but the two are in fact irreconcilable—as Respondents anticipated when they urged that the Ninth Circuit "should not follow [*Motorola*] because that ruling disregards the FTAIA's text and controlling Supreme Court precedent." Resp. C.A. Br. 41. Respondents also contend that the panel opinion is consistent with statutory text and precedent, but that argument depends on Respondents' strained interpretation of the Ninth

Circuit's decision. Finally, Respondents purport to identify several vehicle problems, but none stands up to scrutiny: a ruling in Petitioners' favor on the question presented would be dispositive of virtually all claims in this case.

This Court should grant the petition and reverse the Ninth Circuit's unprecedented application of U.S. antitrust law to wholly foreign transactions.

A. THE CIRCUIT SPLIT IS UNAMBIGUOUS AND SQUARELY PRESENTED

As Petitioners have explained (Pet. 16-21), the Ninth Circuit expressly broke from *Motorola* by holding that domestic price setting can give rise to antitrust claims based on foreign sales even where no intervening domestic transactions take place. *Motorola* squarely rejected an attempt to hold foreign manufacturers liable for foreign sales to foreign affiliates, even though the terms of those sales were set in the United States, because "the cartel-engendered price increase . . . occurred entirely in foreign commerce." 775 F.3d at 819. The panel here disagreed with that approach, concluding instead that Respondents could recover for "the foreign injury suffered by Seagate Thailand and Seagate Singapore because they adopted . . . rigged U.S. pric[es] in buying the suspension assemblies." Pet. App. 28a. And it dismissed *Motorola*'s contrary reasoning on the ground that the Seventh Circuit "did not substantially grapple with the FTAIA's language or the case law construing that statutory text." *Id.* at 27a.

Respondents now try to rewrite the opinion below to avoid that unambiguous circuit split. According to Respondents (at 14), "the Ninth Circuit did *not* hold that domestic negotiations are sufficient to bring a price-fixing claim within the ambit of the Sherman Act." Rather, Respondents suggest (at 14), the panel held only that

Petitioners "fixed the prices of suspension assemblies in the United States" and that the injuries to Seagate Thailand and Seagate Singapore "arose from those fixed U.S. prices." Because (Respondents say) the panel concluded that prices of SAs sold in the United States may have given rise to Respondents' foreign injuries, it did not hold that domestic price setting was sufficient to satisfy the domestic-effects exception.

The problem with Respondents' revisionist account is that the panel rejected the possibility that any U.S. sales gave rise to Respondents' injuries abroad. The panel recognized that Petitioners sold SAs domestically to companies "other than Seagate Technology LLC," but explained that those sales "did not directly injure Seagate Technology LLC because it did not buy the suspension assemblies here—its foreign entities did abroad." Pet. App. 22a. Moreover, Respondents have expressly disclaimed (at 23-24) an "arbitrage theory" that domestic sales of SAs to other companies caused Respondents to pay higher prices abroad. And while "[a] few SAs [were] directly imported for testing and product development purposes," Pet. App. 8a n.2, Respondents have never suggested that the prices paid for those prototypes bore any relation to the prices paid for mass-produced SAs abroad. Nor can Respondents rely (at 14-15) on the panel's reference to "U.S. prices," Pet. App. 24a, as that reference necessarily meant U.S.-negotiated price terms, *see* Pet. 21.

Respondents should not be permitted to avoid further review by reimagining the decision below and the underlying record.[1] As Petitioners have explained (Pet.

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[1] If this Court were to deny review, Respondents would be estopped on remand from adopting a different interpretation of the Ninth Circuit's decision. *See Pegram v. Herdrich*, 530 U.S. 211, 227 n.8

13-14), the panel concluded that the domestic-effects exception could be satisfied here by a showing that negotiations and agreements to pricing terms in the United States gave rise to higher prices for transactions in Thailand and Singapore.[2] That conclusion directly contradicts *Motorola*, which held that domestically set contractual terms are *not* sufficient to satisfy the domestic-effects exception when the actual transactions occurred overseas.

Respondents contest that reading of *Motorola*, seeking to distinguish it from the decision below. They argue (at 17) that the Seventh Circuit did not meaningfully discuss the price negotiations at issue and therefore could not have weighed in on the question presented here. But there was no doubt that the price negotiations in *Motorola* took place in the United States or that the price terms were set here. *See* 775 F.3d at 822 (noting that Motorola's foreign subsidiaries "issued purchase orders at the price and quantity determined by Motorola in the United States").

(2000) ("Judicial estoppel generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.").

[2] Even Respondents appear at times to recognize as much. *See* Br. in Opp. 24 (arguing that foreign affiliates were "injured because, 'as a matter of company policy and contractual requirements,' the (rigged) U.S. price and quantity terms governed the sales to Seagate Thailand and Seagate Singapore" (citation omitted)). Respondents suggest (at 16) that the panel could not have held that domestic price setting was sufficient to trigger application of U.S. antitrust law to sales abroad because it rejected Respondents' separate argument that the FTAIA does not apply where price-fixing conduct takes place in the United States. In rejecting Respondents' argument, however, the panel simply held that allegations of domestic price-fixing conduct are not *per se* exempt from the FTAIA. *See* Pet. App. 16a n.3.

Respondents also suggest (at 17-18) that the only domestic effect at issue in *Motorola* was the price of finished cellphones. To the contrary, Motorola argued that the "Defendants affected U.S. commerce by setting a single, artificially-inflated price in the United States that applied to all Motorola LCD purchases around the globe." Appellant's Opening Brief at 32, *Motorola*, 775 F.3d 816. That is materially identical to Respondents' argument here that the PSA and RFQs set "*one* price" for SAs that applied globally. Pet. App. 24a. But the Seventh Circuit, unlike the panel here, rejected that argument as insufficient to trigger the domestic-effects exception; U.S.-based negotiations did not change the fact that "the cartel-engendered price increase in the components . . . occurred entirely in foreign commerce." 775 F.3d at 819.

Respondents' other efforts to distinguish *Motorola* fail too. Respondents note (at 19) that *Motorola* involved damages issues that are not present here, but those issues were irrelevant to the Seventh Circuit's FTAIA holding. *See* 775 F.3d at 820 ("Whether or not Motorola was harmed indirectly, the immediate victims of the price fixing were its foreign subsidiaries . . . ."). Respondents also highlight (at 19-20) *Motorola*'s standing discussion, but as Petitioners have explained (Pet. 20), the Seventh Circuit's decision rested on its interpretation of the FTAIA. And Respondents try (at 20) to cabin the panel's disagreement with *Motorola* to a single "atextual comment" in the Seventh Circuit's opinion, but the Ninth Circuit criticized *Motorola* more generally on the grounds that it "did not substantially grapple with the FTAIA's language or the case law construing that statutory text." Pet. App. 27a.

Respondents themselves have previously recognized that *Motorola* supports an approach contrary to the one embraced by the panel below. In their Ninth Circuit briefing, Respondents argued that the panel "should not follow [*Motorola*] because that ruling disregards the FTAIA's text and controlling Supreme Court precedent." Resp. C.A. Br. 41. And in moving to certify their interlocutory appeal, Respondents argued that several district court decisions had held that "the 'effects exception' applies" in cases where "the supply terms . . . for the transactions are bid, negotiated, and agreed to inside the United States, but the products are paid for and initially delivered outside the country." 2 C.A. E.R. 47. Critically, Respondents asserted that *Motorola* "held the opposite on the same facts." *Id.* Having persuaded the Ninth Circuit to follow the approach taken in the district court decisions Respondents favored rather than the contrary approach from *Motorola*, Respondents cannot now credibly disclaim the very conflict that they relied on in urging immediate review below.

B. THE DECISION BELOW IS WRONG

Petitioners have also explained that the decision below is wrong. *See* Pet. 21-24. The domestic-effects exception permits U.S. antitrust suits only where the defendant's conduct "has a direct, substantial, and reasonably foreseeable effect . . . on trade or commerce which is not trade or commerce with foreign nations" and "such effect" then "gives rise to" the plaintiff's claim. 15 U.S.C. § 6a(1)(A), (2). Here, the parties' negotiations and the price terms set forth in the PSA and RFQs were not effects—let alone effects "on trade or commerce which is not trade or commerce with foreign nations," 15 U.S.C. § 6a(1)(A)—and the panel accordingly erred in holding that the exception might apply.

Respondents once again try to defend the decision below by reimagining it. They contend (at 23) that the panel held that the domestic effect of Petitioners' conduct was "the higher U.S. price" of SAs, rather than merely price terms set in the United States for overseas transactions. And they assert (at 23) that this effect gave rise to the injuries that Seagate Thailand and Seagate Singapore suffered abroad, because "Seagate's foreign subsidiaries ha[d] no discretion to negotiate prices different from those specified in the" RFQs. As Petitioners have explained, however, the panel did not hold that the price of SAs sold in the United States was the domestic effect that gave rise to Respondents' foreign injuries. *See* pp. 3-5, *supra*. And without that premise, Respondents' defense of the panel opinion falls apart.

Respondents also suggest in the alternative (at 24) that "a distorted bidding process and the resulting contract with Seagate" are themselves domestic effects that could satisfy the FTAIA's exception. But as the panel explained, the alleged "conspiracy (illicit meetings, illegal bids, and so on) count[s] as *conduct*," not effects. Pet. App. 22a n.4 (emphasis added). And regardless, even if the negotiations and price setting were "effects," they would not be effects "on trade or commerce which is not trade or commerce with foreign nations," because the price terms were for SAs that Seagate entities would be purchasing entirely abroad. *See* Pet. 22-23.

C. THIS CASE IS AN IDEAL VEHICLE TO RESOLVE AN IMPORTANT QUESTION

If left uncorrected, the decision below will license precisely the sort of "unreasonable interference with the sovereign authority of other nations" that *Empagran* directed courts to avoid. *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 164 (2004). In addition to opening the floodgates to Sherman Act suits by foreign plaintiffs over wholly foreign transactions, *see* Pet. 26-28, the panel opinion will heighten the risk that other countries apply their laws to transactions that take place entirely in the United States. As amicus the International Center for Law & Economics ("ICLE") has explained, the United States and its major trading partners have achieved "a workable, reciprocal" relationship that grounds each country's jurisdiction in the location of anticompetitive effects. *See* ICLE Br. 3. By purporting to find "U.S. jurisdiction over foreign-to-foreign sales whenever a negotiation touches American soil," the panel opinion threatens to "unravel[] that equilibrium by inviting every other nation to do the same to American firms." *Id.*

Respondents barely grapple with the consequences of the panel's decision. Rather, they purport (at 25-29) to identify several vehicle issues that they claim could hinder this Court's review. Those arguments, however, are no more persuasive than the ones addressed above and do not mitigate in any way the need for this Court's review.

1. Respondents begin by asserting that the FTAIA's application in this case—and thus the relevance of the question presented—depends on whether the district court holds on remand that Seagate LLC can bring indirect purchaser claims based on the allegedly price-fixed SAs that it purchased and imported downstream of Seagate Thailand and Seagate Singapore. *See* Br. in Opp. 25-26; Pet. App. 30a-31a. By Respondents' own admission, though, Seagate LLC's indirect purchaser claims would apply only to a "portion of the commerce at issue," Br. in Opp. 26, because only a portion of the SAs that Petitioners sold to Seagate Thailand and Seagate Singapore ended up in the United States. Indeed, "most of the suspension assemblies purchased by Seagate Thailand and Seagate Singapore never entered the United States at any point,"

Pet. App. 11a, and Seagate LLC could not recover for those sales under U.S. antitrust law even on an indirect purchaser theory. The only basis for Respondents to recover for them in U.S. court is instead the Ninth Circuit's mistaken interpretation of the FTAIA; if this Court reverses the decision below, any claims arising out of those sales will be barred.

2. Respondents next argue (at 26-27) that this case is a poor candidate for review because it involves "unique" facts and arises at the summary-judgment stage. As Petitioners have explained, though, there is nothing unique about multinational companies setting contract terms in the United States for transactions that will be executed between foreign companies entirely abroad. *See Motorola*, 775 F.3d at 822 (foreign subsidiaries "issued purchase orders at the price and quantity determined by Motorola in the United States"); *see also* Pet. 27 (collecting cases). And this Court regularly grants review of cases at the summary-judgment stage where, as here, the question presented is a purely legal one. *See, e.g.*, *Watson v. RNC*, 146 S. Ct. 2165 (2026). It is inconsistent, moreover, for Respondents to argue now that review of the question presented is premature, when they successfully sought certification below under 28 U.S.C. § 1292(b) on the ground that the application of the FTAIA was a controlling issue of law that should be resolved before litigation proceeded. *See* 2 C.A. E.R. 49.

3. Respondents also contend (at 27-28) that review is improper because the panel did not decide whether Petitioners' alleged price-fixing conspiracy "ha[d] a direct, substantial, and reasonably foreseeable effect . . . on import trade or import commerce with foreign nations," which in turn "g[ave] rise to" Respondents' claim. 15 U.S.C. § 6a(1)(A), (2). That argument, however, is not

meaningfully different from Respondents' primary argument regarding the domestic-effects exception. Seagate Thailand and Seagate Singapore paid for and received the allegedly price-fixed SAs overseas, several sales and manufacturing steps upstream of their importation. Respondents' alleged injuries therefore "*precede[d]* any domestic effect in the causal chain," and any downstream effects on importation cannot "give[] rise to" their upstream injuries, because the "direction of causation runs the wrong way." *Lotes Co. v. Hon Hai Precision Indus. Co.*, 753 F.3d 395, 414 (2d Cir. 2014). If this Court holds that U.S. price setting cannot by itself give rise to U.S. antitrust claims for foreign sales under the domestic-effects exception, it will follow *a fortiori* that subsequent effects on importation cannot give rise to such claims either.

4. Finally, Respondents argue (at 28) that "the equities" counsel against review. That, too, is incorrect. Petitioners pled guilty to, and accepted responsibility for, the offense with which they were charged by the U.S. government. *See* 3 C.A. E.R. 308-331. And they currently face civil actions in the United States and abroad for alleged misconduct based on the plea agreement. *See* Pet. 10 (collecting cases). If Respondents were injured by purchases of SAs in the United States, they may be able to recover for those injuries domestically. And if Respondents were injured by purchases of SAs in other countries, they may be able to recover for those injuries abroad—something Respondents are already attempting through their parallel civil action in Japan seeking recovery for the exact same transactions. But what Respondents should not be permitted to do is recover in U.S. courts, under U.S. antitrust law, for every SA that Petitioners ever sold pursuant to terms established in the PSA and RFQs, even if those SAs never entered the

United States. *See* ICLE Br. 17 ("Piling on with treble recovery for such foreign effects was never intended by Congress . . . ."). Because the decision below would authorize that result, this Court should intervene.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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August 5, 2026