

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PROYECTO CCC EMPALME I, S.A.P.I. DE C.V.,

Petitioner,

v.

COMISIÓN FEDERAL DE ELECTRICIDAD,

Respondent.

No. 1:24-cv-09739-LAP

**RESPONDENT COMISIÓN FEDERAL DE ELECTRICIDAD'S OPPOSITION
TO PETITION TO CONFIRM AND ENFORCE FOREIGN ARBITRAL AWARD**

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INTRODUCTION

Comisión Federal de Electricidad (“**Respondent**” or “**CFE**”), an agency or instrumentality of the Government of Mexico, respectfully submits this opposition to the Petition to Confirm and Enforce Foreign Arbitral Award (ECF No. 5) (“**Petition**” or “**Pet.**”) filed by Proyecto CCC Empalme I, S.A.P.I. de C.V. (“**Petitioner**”).

Petitioner successfully pursued litigation in Mexico to confirm the arbitration award (ECF No. 5-2, “**Award**”) at issue in this proceeding, and the Award was recognized at the conclusion of those proceedings by a Mexican court. *See* Declaration of Antonio Grayeb Cervantes (“**Grayeb Decl.**”) ¶ 18. The Mexican court is now overseeing CFE’s efforts to complete payment of the full Award amount, a process that has been lengthy given the necessary regulatory and internal processes. CFE expects that within the next 15 days, that process will be completed and the full Award amount will be paid through the Mexican court. *Id.* ¶¶ 19-20. Payment of the full Award amount will moot this proceeding.

In addition, CFE should not be required to defend against Petitioner’s claims here. This is a Mexican dispute between two Mexican parties. It concerns the construction of a power plant in Mexico, in furtherance of Mexico’s energy policies. The construction contract (“**Contract**”) giving rise to the arbitration (“**Arbitration**”) is written in Spanish and governed by Mexican law. Grayeb Decl. Exhibit (“**Ex.**”) 3, Art. 30.1.¹ The Arbitration was conducted in Spanish, seated in Mexico, and governed by Mexican arbitral law. A Mexican court is now overseeing payment of the Award. Grayeb Decl. ¶ 19. The dispute has no connection to the United States.

The exercise of jurisdiction over CFE also does not satisfy due process requirements and is patently unreasonable. CFE and this matter do not bear a “meaningful relationship” with the

¹ CFE has translated additional portions of the Contract submitted by Petitioner at ECF No. 5-4.

United States. In fact, it appears that Petitioner brought this action to circumvent both Mexican law and the Contract, which do not allow it to seize CFE's assets in Mexico. *Id.* ¶ 8; Ex. 2 (Mexican Federal Code of Civil Procedure, Art. 4); Ex. 3, Art. 30.4. Petitioner is not entitled to relief from this Court for its contractual choices or assistance in its efforts to avoid a Mexican law with which it now disagrees. Petitioner's legal maneuvering underscores why this matter should be left to the Mexican courts.

Venue is also not proper in this District. None of the four statutory options for venue of an action involving a foreign state (28 U.S.C. § 1391(f)(1)-(4)) is satisfied here, given the lack of connection between this dispute and the United States. Indeed, the connection required for venue is stronger than that required for personal jurisdiction.

For these reasons, further explained below, CFE respectfully requests that this Court deny the Petition.

FACTUAL BACKGROUND

I. COMISIÓN FEDERAL DE ELECTRICIDAD IS A STATE AGENCY OF THE GOVERNMENT OF MEXICO.

CFE is an agency of the Government of Mexico. It operates in Mexico, distributing electricity and maintaining and upgrading the national transmission grid. CFE does not own or lease any real estate in the United States, and it is not registered to do business and does not do business in New York. *See* Grayeb Decl. ¶¶ 5-7; Ex. 1 (N.Y. Department of State database).²

The Mexican Federal Code of Civil Procedure disallows attachment of or execution against CFE's assets because it is a state agency. *See* Grayeb Decl. ¶ 8; Ex. 2. CFE otherwise has the same

² CFE's discrete financial transactions touching New York are common among foreign companies operating exclusively outside of the State. CFE has entered into financing agreements and hedging transactions with New York-based financial institutions, and recently engaged the latter to issue Rule 144A/Regulation S bonds to foreign investors. These bonds will be traded on the Luxembourg Stock Exchange. Grayeb Decl. ¶ 7.

position in litigation as any other party, and is obligated to pay judgments issued by Mexican courts, including judgments confirming arbitration awards. Its compliance with arbitration awards is reflected by its recent payment of an arbitration award issued against it, following an arbitration commenced by Greenfield SPV I, S.A.P.I. de C.V. and related entities, which involved the initiation of judicial confirmation in Mexico of the arbitral award. Grayeb Decl. ¶ 9; Notice of Voluntary Dismissal, *Greenfield SPV I, S.A.P.I. de C.V. v. Comisión Federal de Electricidad*, No. 24-cv-06400-JAV (S.D.N.Y. Aug. 25, 2025), ECF No. 23.

On April 16, 2015, CFE and Petitioner signed the Contract in Mexico City. Ex. 3 at 45 (signature page). The Contract was the subject of a public bidding process, which took place in Mexico. Grayeb Decl. ¶ 10.

II. DURING THE ARBITRATION, PETITIONER REPEATEDLY DEMANDED PAYMENT OF ITS CLAIMED DAMAGES INTO A MEXICAN BANK ACCOUNT.

Under the terms of the Contract, Petitioner was to build a power plant for CFE in Mexico in accordance with certain specifications. To guarantee its performance, Petitioner obtained a letter of credit from HSBC México, S.A., a bank it selected. Grayeb Decl. ¶ 11; Ex. 4 (HSBC México Letter of Credit). CFE was obligated to pay the “Contract Price,” portions of which were denominated in U.S. dollars and payable to a U.S. bank, and portions of which were in Mexican pesos and payable to a Mexican bank. Ex. 3, Arts. 10.1, 10.3. CFE paid the Contract Price. Pet. ¶ 20. Aside from its payment obligation, CFE was also obligated to allow Petitioner access to the construction site, obtain permits, avoid causing delays in the construction, provide documentation to help Petitioner obtain financing, provide fuel for testing, and issue certificates accepting the work. Ex. 3, Arts. 6.1-6.10, 18.1.

The Parties’ dispute arose because CFE claimed that Petitioner did not build the power plant in accordance with specifications. CFE therefore executed on the HSBC México letter of

credit. Award ¶¶ 171-172. Petitioner, meanwhile, claimed that CFE caused it to perform work “not anticipated in the Contract” (*id.* ¶¶ 505-525) and that it incurred costs because CFE caused delays in the project (*id.* ¶¶ 526-560).

Petitioner commenced the Arbitration under the Contract on March 18, 2020. Award ¶ 10. On March 26, 2020, it filed a Petition for Emergency Measures, in which it demanded that CFE “return to HSBC Mexico” the amounts obtained through execution on the letter of credit. *Id.* ¶¶ 11, 16(v) n.11. The emergency arbitrator rejected this demand. *Id.* ¶ 16(v). Petitioner challenged the emergency arbitrator’s decision before the three-arbitrator tribunal appointed to hear the merits of the case, requesting that the tribunal order CFE to “return to HSBC Mexico” the amounts obtained through execution on the letter of credit. *Id.* ¶¶ 31-32. The tribunal also rejected this request. *Id.* ¶ 38.5.

III. PETITIONER DEMANDED PAYMENT OF THE AWARD INTO A MEXICAN BANK ACCOUNT.

The tribunal issued the Award in Petitioner’s favor on March 14, 2023. Award at i. On October 5, 2023, Petitioner sent CFE a formal demand, “Request for Payment, Refund of Guarantees, and Submission of Invoices for Compliance with the Final Award decreed in LCIA Arbitration Case No. 204661.” Grayeb Decl. ¶ 17; Ex. 5. Petitioner demanded that CFE make all payments under the Award to two of its accounts at Banco Santander México S.A. Both accounts were located in Mexico:

IV. Confirmation of Bank Accounts	
<i>As ordered by the Arbitration Tribunal in the Final Award, Empalme hereby confirms its bank accounts for the payment of the aforementioned amounts, these being the following:</i>	
Beneficiary: PROYECTO CCC EMPALME I SAPI DE C.V.	
<u>NATIONAL CURRENCY [PESOS]</u>	
Bank:	Banco Santander México S.A.
Account:	██████████ 3377
Branch:	7781 Branch Hamburgo.
<u>U.S. DOLLARS</u>	
Bank:	Banco Santander México S.A.
Account:	██████████ 1464
Branch:	5817 Branch Homero.

Ex. 5 at 7, 11.

On September 8, 2025, the First District Court for Civil Matters in Mexico City (“District Court”), confirmed the Award and converted it to a Mexican court judgment. Grayeb Decl. ¶ 18. Execution proceedings before the District Court are ongoing, and CFE has been taking the necessary steps to pay the court judgment while providing regular updates to the District Court and Petitioner. CFE has now obtained a deposit certificate from the Banco del Bienestar, which will be used to pay the Award amount into the registry of the District Court. This procedure allows CFE to create an official record of compliance. CFE estimates that it can complete the process of making payment to the District Court registry within 15 days, at which point it will be up to the District Court judge to distribute the payment to Petitioner. *Id.* ¶¶ 19-20.

ARGUMENT

I. THIS COURT LACKS PERSONAL JURISDICTION OVER CFE.

This Court should dismiss the Petition for lack of personal jurisdiction over CFE. “A plaintiff bears the burden of demonstrating personal jurisdiction over a person or entity against whom it seeks to bring suit.” *Penguin Grp. (USA) Inc. v. Am. Buddha*, 609 F.3d 30, 34 (2d Cir.

2010); *Zhongzhi Hi-Tech Overseas Inv. Ltd. v. Shi*, No. 22-CV-6977 (LAP), 2023 WL 4561812, at *2 (S.D.N.Y. July 17, 2023) (Preska, J.) (in action to confirm foreign arbitration award, “petitioner must prove the court has personal jurisdiction over the respondent”). A petition to confirm an arbitration award under the New York or Panama Convention is treated not as a pleading but rather as a Rule 56 summary judgment motion. *See Transamerica Ship Holdings, Ltd. v. Marine Control, Inc.*, No. 25-CV-2827-JAV, 2025 WL 2644141, at *2 (S.D.N.Y. Sept. 15, 2015) (New York Convention); *Productors Mercantiles E Industriales, S.A. v. Faberge USA, Inc.*, 23 F.3d 41, 46 (2d Cir. 1994) (Panama Convention). Therefore, in response to a jurisdictional challenge, the petitioner may not rely on allegations, but instead must make a “factually supported” showing of jurisdiction. *See Dorchester Fin. Sec., Inc. v. Banco BRJ, S.A.*, 722 F.3d 81, 84-85 (2d Cir. 2013). A hearing may be necessary to resolve disputed facts. *Id.*

Here, Petitioner’s contentions concerning the connections between CFE, the parties’ dispute, and the United States are unsupported and in fact belied by the evidence, requiring dismissal of the Petition, or, at the very least, subject to genuine dispute, requiring an evidentiary hearing.

A. The Exercise of Personal Jurisdiction over CFE Must Comply with Due Process Requirements.

The exercise of personal jurisdiction pursuant to federal statute must comply with the Due Process Clause of the Fifth Amendment. *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 11-12 (2025). Petitioner cites the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. § 1330(b), as the basis for personal jurisdiction over CFE. However, even where an exception to immunity applies, a petitioner is still required to make a showing that Fifth Amendment Due Process requirements are satisfied.

First, CFE has due process rights. Petitioner notes that the “alter egos” of a sovereign, as opposed to agencies or instrumentalities, are not entitled to due process protection. Pet. ¶ 10. However, Petitioner does not contend that Respondent is an “alter ego” of Mexico, let alone carry the high burden of establishing an alter ego relationship. *See Gater Assets Ltd. v. AO Moldovagaz*, 2 F.4th 42, 55 (2d Cir. 2021) (“An alter ego relationship is not easily established”). To establish an alter ego relationship between Mexico and CFE, Petitioner would have to show that it “is so extensively controlled by [Mexico] that a relationship of principal and agent is created” or that “recognizing [CFE]’s separate juridical status ‘would work fraud or injustice.’” *Id.* (quoting *First Nat’l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 628-29 (1983)). Petitioner cannot make this showing. Furthermore, Petitioner twice *concedes* that Respondent is an “agency or instrumentality of Mexico” (Pet. ¶¶ 2, 43). As such, it is entitled to due process protection. *Gater*, 2 F.4th at 65-66.

Second, jurisdiction under the FSIA does not automatically establish a connection with the U.S. sufficient to satisfy due process. Weeks before it decided *Fuld*, the Supreme Court held in *CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.*, 605 U.S. 223 (2025), that the statutory predicates for jurisdiction in the FSIA do not incorporate constitutional due process requirements. *Id.* at 226, 233-34. The Court further observed that only “[s]ome” of the FSIA exceptions “call for considerable domestic nexus”—while others allow a more attenuated link with the U.S. *Id.* at 233 (citing 28 U.S.C. §§ 1605(a)(2)-(4)). Though the Court left open in *Devas* whether the Fifth Amendment’s Due Process Clause separately requires a showing of constitutionally-sufficient ties to the United States, the Court in *Fuld* subsequently answered that question: the statutory conferral of jurisdiction by federal statute is not, on its own, enough to sustain the exercise of jurisdiction under the Fifth Amendment. *Fuld*, 606 U.S. at 11-12. *Fuld* did not exempt the FSIA or any other

statute from this requirement. *See Rashid v. Qatar Airways Group Q.C.S.C.*, No. 25-cv-10109-ADB, 2025 WL 3687755, at *4 (D. Mass. Dec. 19, 2025) (noting that “[a]lthough the FSIA itself does not require additional jurisdictional analysis, . . . [s]ome courts have recognized that entities owned by a foreign sovereign should be afforded due process rights and, accordingly, have conducted a constitutional analysis to determine whether personal jurisdiction exists over a foreign state-owned defendant,” and proceeding to conduct the constitutional analysis) (citation omitted).

B. This Dispute Does Not Have a “Meaningful Relationship” with the United States.

Fifth Amendment due process does not require a showing of “minimum contacts,” but rather courts must engage in “a more flexible jurisdictional inquiry.” *Fuld*, 606 U.S. at 16. The *Fuld* Court declined to define the contours of that inquiry, but unambiguously confirmed that a connection between the defendant, the dispute, and the U.S. is still required. *Id.* at 18 (refusing to embrace “maximalist theory of federal jurisdiction” that “imposes *no* territorial limits on personal jurisdiction”). In *Fuld*, the Supreme Court affirmed the exercise of personal jurisdiction pursuant to a federal statute conferring jurisdiction over “conduct closely related to the United States that implicate[d] important foreign policy concerns.” *Id.* at 19. Crucial to the Court’s decision was its finding that the statute tied jurisdiction to conduct bearing a “meaningful relationship to the United States.” *Id.* at 23; *see also Orient Plus Int’l Ltd. v. Baosheng Media Grp. Holdings Ltd.*, No. 1:24-cv-00744-JLR, 2025 WL 3022826, at *4-7 (S.D.N.Y. Oct. 29, 2025) (“meaningful relationship” requires “sufficient nexus” between the dispute, the defendant, and the U.S.). The Supreme Court expressly declined to find that “more attenuated assertions of jurisdiction” support due process requirements. *Fuld*, 606 U.S. at 18.

The basis for personal jurisdiction over CFE is undoubtedly more attenuated than the jurisdictional basis in *Fuld*. *Fuld* involved claims by U.S. nationals against defendants who

deliberately incentivized terrorist attacks against the U.S. or maintained an “office, headquarters, [or] premises” in the U.S. *Id.* at 8-9, 21. On the other hand, this dispute has no connection to the U.S. Petitioner is a foreign company, CFE does not have a presence here, and CFE did not engage in or direct any conduct to the U.S. in connection with the matters at issue in the Arbitration. Instead, the dispute is between two Mexican parties, one of which is an agency or instrumentality of the Mexican Government, pursuant to a contract performed in Mexico, which was the subject of an arbitration seated in Mexico and governed by Mexican law. *See* Pet. ¶ 43 (Contract “involved performance abroad, namely in Mexico”). The dispute concerns Mexican domestic energy policy and does not implicate U.S. foreign policy. Accordingly, the exercise of jurisdiction over CFE does not satisfy Fifth Amendment due process requirements.

C. None of the FSIA Exceptions Cited by Petitioner Satisfies Due Process Requirements.

Petitioner invokes three exceptions of the FSIA to assert jurisdiction over CFE: the “commercial activities,” “waiver,” and “arbitration” exceptions. None of them meet due process requirements, while the “commercial activities” exception is not even satisfied.

1. Alleged “Commercial Effects” in the U.S.

Petitioner invokes the “direct effect” prong of the “commercial activity” exception of the FSIA to assert jurisdiction over CFE. Pet. ¶ 8 (citing 28 U.S.C § 1605(a)(2)). This exception to foreign sovereign immunity requires that “the action is based upon” “an act outside the territory of the United States in connection with a commercial activity of the foreign state [outside of the United States] that “causes a direct effect in the United States.” Petitioner does not and cannot show that this action is “based upon” an act taken by CFE that caused a “direct effect” in the United States. Therefore, the claim does not satisfy the FSIA “commercial activity” exception or the Fifth Amendment.

a. The Alleged Nonpayment into a New York Bank Account

Petitioner asserts that “[p]ursuant to [Article] 10.1 of the Contract, CFE was required to remit all payments under the Contract to a designated bank account located in New York,” and its purported “failure to fully make payments in New York as required satisfies the due process standard for jurisdiction.” *Id.* ¶ 11. The claim fails for three reasons: *first*, the evidence belies Petitioner’s assertion; *second*, the claim does not satisfy the FSIA’s “commercial activity” exception (*cf. id.* ¶ 8); and *third*, even if it satisfied the FSIA and established a statutory basis for jurisdiction, Fifth Amendment due process requirements still would not be satisfied because this dispute does not have a “meaningful relationship” with the U.S.

There was no nonpayment into a New York account. Article 10.1 does not require “all” payments to be made into a New York bank account, as Petitioner claims. Pet. ¶¶ 8, 11. Instead, Article 10.1 requires only a portion of “the Contract Price or the applicable Termination Value” to be paid in New York. Ex. 3, Art. 10.1. As Petitioner acknowledges, CFE paid the Contract Price (Pet. ¶ 20), and the Termination Value does not apply because the Contract was not terminated. *See* Award ¶ 618(O) (rejecting Petitioner’s request to “declare the termination of the Contract”). Therefore, CFE did not fail to make a contractually required payment in New York.

The damages Petitioner claimed in the Arbitration were not part of the Contract Price, but concerned, for example, the funds paid out to CFE through the HSBC México letter of credit and work Petitioner claimed it completed that was “not anticipated in” the Contract. *See* Award ¶¶ 171(E), 505-525. Thus, the payment modality in Article 10.1 did not apply, as acknowledged by Petitioner when it repeatedly and explicitly requested an order that CFE pay the claimed damages “to HSBC Mexico.” *Id.* ¶¶ 16 n.11, 31-32.

More importantly, at issue in this action is the nonpayment of amounts due under the ***Award*** (Pet. ¶¶ 30(a)-(j)), and Petitioner demanded that these payments be made ***in Mexico***. *See* Ex. 5 at

7, 11 (demanding that payments required by the Award be made to Petitioner’s accounts at “Banco Santander México S.A.,” at branches “5817 Branch Homero” and “7781 Branch Hamburgo” in Mexico).

Nonpayment does not satisfy any FSIA exception. Even if CFE had failed to make a required payment in New York, which it did not, the “direct effect” prong of the FSIA’s “commercial activities” exception, would not be satisfied for two independent reasons:

First, the “direct effect” prong of the “commercial activities” exception is not satisfied by nonpayment into a U.S. bank account unless the sovereign was “require[d]” or “contractually obligat[ed]” to pay into a U.S. bank account with respect to “the breached duty.” *Kensington Int’l Ltd. v. Itoua*, 505 F.3d 147, 159 (2d Cir. 2007); *Rogers v. Petroleo Brasileiro, S.A.*, 673 F.3d 131, 139-40 (2d Cir. 2012); *Atlantica Holdings, Inc. v. Sovereign Wealth Fund Samruk-Kazyna JSC*, 813 F.3d 98, 108-09 (2d Cir. 2016). It is not enough that related payments were made or required to be made into a U.S. account. *See Transatlantic Schifffahrtskontor GmBh v. Shanghai Foreign Trade Corp.*, 996 F.Supp.326, 333 (S.D.N.Y. 1998) (contract required “freight” payments, but not “demurrage” payments, to be made in New York, and complaint alleged failure to make demurrage payments); *Viewpoint Pros. LLC v. Nat’l Inv. Co.*, No. 16-CV-1468-LTS, 2017 WL 4122620, at *1-3 (S.D.N.Y. Sept. 14, 2017) (while payments under letter of credit were required to be made in New York, plaintiff’s claim was based on different payment obligations that arose after letter of credit expired). As explained above, CFE was not “require[d]” (*Kensington*, 505 F.3d at 159) or “contractually obligat[ed]” (*Rogers*, 673 F.3d at 139) to make the payments that gave rise to this action in the United States.

Second, even if CFE were required to make the payments in the United States (which it was not), a failure to pay would not satisfy the “direct effect” test, because the “ultimate objective

of the contract” was not “the payment of funds in the United States.” *Filetech S.A. v. France Telecom, S.A.*, 212 F.Supp.2d 183, 196-97 (S.D.N.Y. 2001) (declining jurisdiction under FSIA); *see also MMA Consultants I, Inc. v. Republic of Peru*, 245 F.Supp.3d 486, 513 (S.D.N.Y. 2017) (same). The “ultimate objective of the contract” between Petitioner and CFE was the construction of a power plant in Mexico, and CFE was to perform in Mexico, including by allowing entry into the construction site, providing fuel for testing, obtaining permits, facilitating construction and financing, and issuing acceptance certificates. *See* Ex. 3, Arts. 6.1-6.10, 18.1. Petitioner relies on *Hanil Bank v. PT. Bank Negara Indonesia, (Persero)*, 148 F.3d 127, 134 (2d Cir. 1998) (Pet. ¶ 8), but that case (and its progeny) is distinguishable, because it involved an ***exclusively financial*** transaction, namely a bank’s failure to reimburse another bank, in the latter’s New York account, pursuant to a letter of credit (*id.* at 129-30). Because “the ultimate objective of the contract” was “the payment of funds in the United States,” the “direct effect” prong of the commercial activities exception was satisfied. *Filetech*, 212 F.Supp.2d at 197 (distinguishing *Hanil*); *MMA Consultants*, 245 F.Supp.3d at 513. The Contract here did not have as its objective the issuance of a financial product in the United States, and therefore the “direct effect” test is not satisfied.

The nonpayment also does not satisfy the Fifth Amendment. Even if the “direct effect” test were satisfied, which it is not, and even if CFE had agreed to pay the relevant funds into a New York bank account, which it did not, Petitioner still would be required to demonstrate that Fifth Amendment due process requirements are satisfied. Petitioner cannot meet its burden. The “mere agreement to pay funds to a bank account in New York does not establish constitutionally sufficient minimum contacts.” *Transatlantic*, 996 F.Supp. at 335; *see also L’Europeenne de Banque v. La Republica de Venezuela*, 700 F.Supp.114, 125 (S.D.N.Y. 1988) (“an agreement to make payments in the forum” insufficient); *Casio Comput. Co. v. Sayo*, No. 98-CV-3772-WK,

2000 WL 1877516, at *26 (S.D.N.Y. Oct. 13, 2000) (“Although . . . the wire transfers reached bank accounts in the United States, such conduct by defendants does not satisfy the level of minimum contacts required.”). This is especially true when, as with the Contract, the payments are to “ensure compliance with contract terms negotiated and executed outside of [the forum],” *In re Terrorist Attacks on Sept. 11, 2001*, No. 03-MDL-1570-GBD-SN, 2025 WL 2485412, at *7 (S.D.N.Y. Aug. 28, 2025) (alteration in original) (quoting *Hill v. HSBC Bank plc*, 207 F.Supp.3d 333, 339 (S.D.N.Y. 2016)); *see also id.*, at *8 (paying salary of U.S.-based employee through U.S. bank account insufficient to support jurisdiction). While the new “meaningful relationship” standard is more flexible than “minimum contacts,” it cannot reach a dispute regarding a project centered entirely in Mexico, even if payments ancillary to this (non-financial) project were allegedly supposed to pass through the U.S.

b. U.S. Dollar-Denominated Obligations

Petitioner also claims that CFE is subject to personal jurisdiction because “CFE also agreed (in the Contract of which it was the principal drafter) to denominate all of its payment obligations under the Contract in U.S. dollars.” Pet. ¶ 11. However, the facts belie Petitioner’s assertion, which lacks legal support in any case. Even Petitioner stops short of asserting that an FSIA exception is satisfied in these circumstances. *See id.* ¶ 8.

The Contract contemplates payment by CFE in both U.S. dollars and Mexican pesos. *See* Ex. 3, Arts. 10.1 (accrued value added tax shall be paid in Mexican pesos); 10.3 (part of invoice to be paid in Mexican pesos). And Petitioner’s valuation reports in the Arbitration were denominated in Mexican pesos. *See* Award ¶¶ 272, 274, 405 n.302, 473. Even if CFE had agreed to make all payments in U.S. dollars, which it did not, “[s]imply transacting in U.S. dollars does not make a [defendant] amenable to suit in New York.” *In re Fairfield Sentry Ltd.*, No. 10-13164 (JPM), 2024 WL 61469, at *9 (Bankr. S.D.N.Y. Jan. 4, 2024) (quoting *Spetner v. Palestine Inv. Bank*, 70 F.4th

632, 643 (2d Cir. 2023)). “Otherwise, jurisdiction would be established for any financial transaction conducted in U.S. dollars that is routed through New York, regardless of whether it was purposeful.” *Henkin v. Qatar Charity*, No. 21-CV-5716-AMD-VMS, 2023 WL 2734788, at *7 (E.D.N.Y. Mar. 31, 2023).

c. Enforcement of Performance Guarantee

Finally, Petitioner contends that the Court may exercise personal jurisdiction over CFE because “[Article] 11.1 of the Contract provides that any guarantee issued pursuant to the Contract can be issued by a New York bank,” and “CFE’s enforcement of this guarantee *in New York* was subject to extensive briefing during the Arbitration and played a major role in the Final Award.” Pet. ¶ 11 (emphasis added). Here too, the facts belie Petitioner’s assertions. Article 11.1 permitted but did not require the performance guarantee to be issued by a New York bank, and at Petitioner’s election, the performance guarantee was issued by a Mexican bank, HSBC México, S.A. *See* Grayeb Decl. ¶ 11; Ex. 4 (HSBC México Letter of Credit). Moreover, CFE’s enforcement of the guarantee “in New York” played *no role* in the Arbitration or Award. There is no mention in the Parties’ Arbitration briefing or the Award of the location of the bank account to which HSBC México, S.A. transferred funds for the performance guarantee. *See* Award ¶¶ 208-250. In fact, the only bank mentioned in connection with the enforcement of the guarantee was HSBC México, to which Petitioner repeatedly and explicitly demanded that the amounts paid to CFE be returned. Award ¶¶ 16 n.11, 31-32. That the receiving bank was in New York was entirely fortuitous and irrelevant to the underlying dispute. Petitioner is precluded from taking a contrary position in this proceeding. *See Dapelo v. Banco Nacional de Mexico*, No. 91-cv-0093-JSM, 1993 WL 159943, at *3-4 (S.D.N.Y. May 11, 1993) (precluding party from making an argument inconsistent with position it took during an arbitration); *see also Karaha Bodas Co., LLC v. Persahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 294 (5th Cir. 2004) (same).

The fortuitous use of a New York bank account to enforce a performance guarantee for a foreign project does not satisfy the “direct effect” prong of the FSIA’s commercial activity exception. *Cf.* Pet. ¶ 8 (arguing that this exception applies). In *Int’l Hous. Ltd. v. Rafidain Bank Iraq*, 893 F.2d 8, 12 (2d Cir. 1989), the Second Circuit found that a defendant’s enforcement of an overdraft guarantee by directing that funds be deposited in its New York account was “not a sufficiently ‘direct effect in the United States’ to support FSIA jurisdiction” because the New York bank was “a passive conduit indifferent to the nature or terms of the underlying transaction.” The same analysis applies here.

The exercise of jurisdiction based on CFE’s receipt of funds in New York pursuant to the performance guarantee also does not satisfy due process requirements. By definition, a U.S. contact to which the Parties themselves assigned no meaning in the underlying Arbitration cannot support a “meaningful relationship” between the U.S., CFE, and this action to confirm the Arbitration Award. *Cf. Fuld*, 606 U.S. at 23.

2. Waiver of Immunity

Petitioner also asserts that CFE is subject to personal jurisdiction here because it waived sovereign immunity within the meaning of the FSIA, 28 U.S.C. § 1610(a)(1). However, a waiver of sovereign immunity does not, as Petitioner claims, “constitute[] a waiver by CFE of any personal jurisdiction defense.” Pet. ¶ 14. Article 30.4 of the Contract provides for a waiver by both parties of “any right of immunity which either one of them or their assets may have or acquire in the future (whether characterized as sovereign immunity or any other type of immunity).” Ex. 3, Art. 30.4. The Second Circuit has rejected the argument that such a waiver of immunity extends to personal jurisdiction defenses. In *Capital Ventures Int’l v. Republic of Argentina*, 552 F.3d 289, 294 (2d Cir. 2009), the court found that Argentina’s contractual waiver of “‘immunity (sovereign or otherwise)’ ... does not waive other objections to suit that Argentina might have, such as

objections based on lack of personal jurisdiction, [or] improper venue.” CFE has not waived its due process rights.

3. *Arbitrating Abroad*

Petitioner also invokes the “arbitration” exception in the FSIA, which allows for the exercise of jurisdiction over a foreign state in an action to confirm an arbitration award. 28 U.S.C. § 1605(a)(6); *cf.* Pet. ¶ 6. In *Devas*, the Supreme Court recognized that the “arbitration” exception, unlike the “commercial activities” exception to the FSIA, does not require any “domestic nexus,” or connection between a dispute and the United States. 605 U.S. at 233. Therefore, a case that satisfies the “arbitration” exception does not automatically satisfy Fifth Amendment due process requirements. That requires a separate analysis. And in this proceeding, for the reasons explained at Sections I.A-I.C.1, *supra*, due process requirements are not satisfied because there is no “meaningful relationship” between the U.S., CFE, and this action.

D. The Court’s Exercise of Jurisdiction in this Entirely Mexican Dispute Would Not be Reasonable.

Due process under the Fifth Amendment also requires that the exercise of jurisdiction be “reasonable” under the circumstances. *In re Platinum & Palladium Antitrust Litig.*, 61 F.4th 242, 269, 273 (2d Cir. 2023) (citing *Met. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 568 (2d Cir. 1996)).³ It is not reasonable here.

The reasonableness inquiry considers five factors:

- (1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff’s interest in obtaining convenient and effective relief; (4) the interstate judicial system’s interest in obtaining the

³ *Fuld* assumed without deciding that Fifth Amendment due process includes a “reasonableness” inquiry analogous to what is required under the Due Process Clause of the Fourteenth Amendment. *Fuld*, 606 U.S. at 23-24 (citing *Asahi Metal Industry Co. v. Superior Court of Cal.*, 480 U.S. 102, 115 (1987)). It did not disturb the prior settled law of this Circuit requiring this inquiry.

most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies.

Met. Life, 84 F.3d at 568 (citing *Asahi*, 480 U.S. at 113-14). Courts routinely find the exercise of personal jurisdiction unreasonable where both parties are from foreign countries, the subject matter of the dispute and relevant evidence are located abroad, and the dispute is governed by foreign law. *See, e.g., Zhongzhi*, 2023 WL 4561812, at *5 (Preska, J.) (personal jurisdiction precluded by due process concerns where action was between two foreign parties to confirm arbitration award issued in Hong Kong); *Chaiken v. VV Pub. Corp.*, 119 F.3d 1018, 1029 (2d Cir. 1997); *Sherwin-Williams Co. v. C.V.*, No. 14-CV-6227-RA, 2016 WL 354898, at *5 (S.D.N.Y. Jan. 28, 2016); *Tymoshenko v. Firtash*, No. 11-CV-2794-KMW, 2013 WL 1234943, at *5 (S.D.N.Y. Mar. 27, 2013); *Porina v. Marward Shipping Co., Ltd.*, No. 05-CV-5621-RPP, 2006 WL 2465819, at *8-9 (S.D.N.Y. Aug. 24, 2006). All five factors weigh against exercising jurisdiction over CFE.

1. Burden on CFE. The exercise of personal jurisdiction would impose a significant burden on CFE, a company organized and based in Mexico that does not have day-to-day operations here. Grayeb Decl. ¶¶ 4-7. “Forcing a wholly foreign company with no day-to-day operations to litigate in New York is no small burden.” *Sherwin-Williams*, 2016 WL 354898, at *5 (quotation omitted); *see also Asahi*, 480 U.S. at 114 (courts must give “significant weight” to the “unique burdens placed upon one who must defend oneself in a foreign legal system”).

2. Interests of the Forum State. “New York and even the United States in general has little interest in resolving this issue, as neither party is domiciled in the U.S., and the arbitration occurred abroad.” *Zhongzhi*, 2023 WL 4561812, at *5 (Preska, J.) (internal citations omitted); *see also Tymoshenko*, 2013 WL 1234943, at *6 (“[T]he United States has a very limited interest in adjudicating this case. Both [plaintiff] and [defendant] are foreign residents, and all conduct underlying [plaintiff’s] claims occurred abroad. In cases where the plaintiff is not a resident of a

particular forum, ‘the forum’s legitimate interests in the dispute have considerably diminished.’”) (citation omitted).

3. Plaintiff’s Interest in Obtaining Convenient and Effective Relief. Petitioner does not allege that it can obtain more convenient and effective relief in the United States rather than in Mexico, where the Award has already been confirmed, resulting in a court judgment that CFE is required to pay, and ongoing court supervision of CFE’s efforts to make full payment of the Award within the next 15 days. *See* Grayeb Decl. ¶¶ 18-20; Ex. 2 (Mexican Federal Code of Civil Procedure, Art. 4). In fact, CFE recently complied with a similar Mexican arbitration award that was subject to Mexican confirmation proceedings. *See* Notice of Voluntary Dismissal, *Greenfield*, No. 24-cv-06400-JAV (S.D.N.Y. Aug. 25, 2025), ECF No. 23; Grayeb Decl. ¶ 9. Accordingly, there is no need for litigation here. Moreover, “Mexico, whose laws govern the parties’ agreement [and the Arbitration], is undoubtedly the most suitable forum for settling contested issues of Mexican law.” *Sherwin-Williams*, 2016 WL 354898, at *6; *see also Zhongzhi*, 2023 WL 4561812, at *5 (Preska, J.) (“Of course, Petitioner has an interest in obtaining relief, but not in New York. By agreeing to arbitrate in Hong Kong, both parties consented to jurisdiction there.”).

4. Interstate Judicial System’s Interest in Efficiency. “In evaluating this factor, courts generally consider where witnesses and evidence are likely to be located.” *Met. Life*, 84 F.3d at 574. All witnesses and evidence concerning the Arbitration, as well as the underlying dispute, are in Mexico, and the evidence is all in Spanish. *See, e.g.*, ECF Nos. 5-2 – 5-9.

5. Substantive Social Policies. “When the entity that may be subject to personal jurisdiction is a foreign one, courts consider the shared interests of the *nations* in advancing substantive policies.” *Gucci Am., Inc. v. Weixing Li*, No. 10-CV-4974 (RJS), 2015 WL 5707135, at *9 (S.D.N.Y. Sept. 29, 2015). “Great care and reserve should be exercised when extending our

notions of personal jurisdiction into the international field.” *Asahi*, 480 U.S. at 115 (citation omitted). Under the Mexican Federal Code of Civil Procedure, Art. 4, the property and assets of CFE, as a government agency, are not subject to execution. Grayeb Decl. Ex. 2. This limitation is clear in the law and also in the Contract, which provides that “pursuant to Article 4 of the Federal Code of Civil Procedure, a Mexican court may not order a preventive attachment, an attachment in aid of the enforcement of a judgment, or a writ of enforcement against any of the property or assets of [CFE].” Contract, Art. 30.4. Yet Petitioner seeks to use this proceeding to seize any assets that CFE may have in the U.S. The Court should not condone Petitioner’s strategy of circumventing Mexican law and the Contract through this proceeding. No “substantive social policies would be furthered by permitting this case to be heard in [the United States],” *Met. Life*, 84 F.3d at 575, because Petitioner is attempting to *undermine* Mexican substantive policies, including freedom of contract and the protection of government assets.

Under each of the *Asahi* factors, it would be unreasonable for this Court to exercise jurisdiction over this Mexican dispute.

II. VENUE IS NOT PROPER IN THIS DISTRICT.

Petitioner asserts without explanation that “venue in this district is proper pursuant to 9 U.S.C. §§ 204, 301, 302 and 28 U.S.C. § 1391.” Pet. ¶ 15. None of these provisions support venue here. Section 204 of the Federal Arbitration Act (9 U.S.C. § 204) provides that an award confirmation action under the New York Convention may be brought either in (i) the district containing the place of arbitration “if such place is within the United States,” or (ii) anywhere that would be proper under the general venue statute. Sections 301-302 apply this provision to the Panama Convention.

The “district containing the place of arbitration” option is inapplicable here because the Arbitration took place in Mexico. Therefore, Petitioner must rely on the general venue statute,

which also does not provide for venue in this District. The general venue statute contemplates four possible venues for actions against a foreign state:

- (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 [the FSIA];
- (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.

28 U.S.C. § 1391(f).

None of these provisions support venue here. Sub-section (1) requires application of a “substantial contacts test.” *Concesionaria DHM, S.A. v. Int’l Fin. Corp.*, 307 F.Supp.2d 553, 558 (S.D.N.Y. 2004). Prior to *Fuld*, more was required “to establish proper venue than the minimum contacts sufficient to establish personal jurisdiction.” *Patel v. Clane Gessel Studio*, No. 22-CV-10964-GHW-RFT, 2024 WL 1939307, at *5 (S.D.N.Y. Apr. 18, 2024) (citation omitted). And it is certainly the case after *Fuld* that more is required to establish proper venue than the “meaningful relationship” test for personal jurisdiction. The dispute does not have a “meaningful relationship” with New York, and therefore the “substantial contacts test” for venue is not satisfied.

Sub-section (2) does not apply, because this is not an action to enforce a maritime lien under FSIA § 1605(b).

Sub-section (3) does not apply, because CFE, an agency or instrumentality of Mexico, is not licensed to do business and does not do business in this District. Grayeb Decl. ¶¶ 3-7; Ex. 1.

Its discrete transactions with New York banks and brokers do not constitute “doing business” for venue purposes. CFE’s recent issuance of Rule 144A/Regulation S bonds is “deemed to occur outside the United States” as a matter of law. 17 C.F.R. § 230.903(a). And “doing business” under 28 U.S.C. § 1391(f)(3) requires “[s]ignificance and continuity” and not an “isolated instance” of issuing bonds. *Corporación Mexicana De Mantenimiento Integral, S. De R.L. De C.V. v. Pemex*, 832 F.3d 92, 117-18 (2d Cir. 2016) (Winter, J., concurring); *see also id.* (“thirty-five bond issuances” for “\$9.5 billion” satisfied the requirement).

Courts in this district have rejected efforts to establish venue based on a party’s use of the New York financial markets. *See, e.g., Westerman v. Grow*, 198 F.Supp. 307, 308 (S.D.N.Y. 1961) (issuing debentures in New York not “doing business” under former § 1391(c)); *Trizna v. New York, C. & St. L.R. Co.*, 57 F.Supp.484, 485 (S.D.N.Y. 1944) (same for use of New York trustees to issue securities). Courts have made similar findings under N.Y. C.P.L.R. § 301, which establishes general personal jurisdiction over corporations “doing business” in New York, especially when the defendant (like CFE) operates in a non-financial sector, because exercising jurisdiction in these circumstances would mean that “almost every company in the country would be subject to New York’s jurisdiction.” *See Clarke v. Fonix Corp.*, No. 98-CV-6116-RPP, 1999 WL 105031, at *5 (S.D.N.Y. March 1, 1999) (“The solicitation of funds is not [defendant]’s business; ... it is a research and development company. Raising financing is not a form of ‘doing business’ for the purpose of § 301; if it were, then almost every company in the country would be subject to New York’s jurisdiction.”) (internal citation omitted); *see also Glencore AG v. Bharat Aluminum Co. Ltd.*, No. 10-CV-5251-SAS, 2010 WL 4323264, at *7 (S.D.N.Y. Nov. 1, 2010) (listing securities in New York and activities in connection therewith were not “doing business” in New

York).⁴ Thus, CFE does not “do business” in this district within the meaning of 28 U.S.C. § 1391(f)(3).

Finally, sub-section (4) does not support venue here, but rather in the United States District Court for the District of Columbia.

Therefore, this action should be dismissed for improper venue. While this Court retains discretion, “if it be in the interest of justice, [to] transfer” this case to a district with proper venue rather than dismissing it (28 U.S.C. § 1406(a)), dismissal is the proper remedy here. “Considerations counseling against transfer include ... whether a transfer would ‘reward plaintiffs for their lack of diligence in choosing a proper forum.’” *Doe 2 v. Congregation of the Sacred Hearts of Jesus & Mary*, No. 24-2940, 2026 WL 239045, at *1 (2d Cir. Jan. 29, 2026) (citation omitted). The cursory treatment of venue in the Petition reflects that Petitioner was not diligent in choosing this forum.⁵

CONCLUSION

The Court should therefore dismiss the Petition.

⁴ Under the old standard of due process, the Supreme Court found that a defendant who banked in New York was not “doing business within the district in such manner as to warrant the inference that it was present there.” *See Bank of Am. v. Whitney Cent. Nat’l Bank*, 261 U.S. 171, 172-73 (1923).

⁵ The three-year statute of limitations will expire on March 14, 2026 (*see* 9 U.S.C. §§ 207, 302), likely before the Court adjudicates this action. Ordinarily, “[c]ourts in this Circuit overwhelmingly favor transfer where dismissal risks statute-of-limitations prejudice.” *Barrett v. Uber Technologies, Inc.*, No. 24-CV-6304-NSR, 2025 WL 3538599, at *4 (S.D.N.Y. Dec. 10, 2025). However, that consideration does not apply here, because Petitioner will not be left without a remedy: it may seek recognition of the Mexican court judgment in an appropriate U.S. court.

Dated: February 20, 2026

Respectfully submitted,

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WORD COUNT CERTIFICATION

I, Cristián Francos, an attorney duly admitted to practice before this Court, hereby certify that this brief complies with the word count limit set forth in Section 2.B. of the Individual Practices of Judge Loretta A. Preska and Local Rule 7.1(c) of this Court, because it contains 6,992 words, excluding the caption, tables of authorities and contents, signature blocks, and certificates. I have relied on the word count of the word-processing system used to prepare this document.

Dated: February 20, 2026
New York, New York

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By: /s/ Cristián Francos
Cristián Francos