

**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 SUR-REPLY
TO PETITION TO CONFIRM AND ENFORCE FOREIGN ARBITRAL AWARD**

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INTRODUCTION

Comisión Federal de Electricidad (“**Respondent**” or “**CFE**”) respectfully submits this Sur-Reply with leave of the Court (ECF No. 34) to address the two new arguments presented by Proyecto CCC Empalme I, S.A.P.I. de C.V. (“**Petitioner**”) in its Reply Memorandum of Law (ECF No. 30) (“Reply”).

CFE’s Opposition to the Petition (ECF No. 25) (“Opposition”) makes clear that neither the underlying contractual dispute nor the Mexican arbitration has any connection with the U.S. to satisfy constitutional due process for exercising personal jurisdiction over CFE. *See* Opposition at 5-19. Lacking a substantive response, Petitioner shifted course in its Reply, asserting for the first time that no such U.S. connection is required, purportedly for two reasons: First, Petitioner asserts that a different due process standard applies to proceedings to confirm an arbitral award (“**First New Argument**”). *See* Reply at 1-3. Second, Petitioner asserts that it is irrelevant “whether the underlying dispute has a U.S. nexus” because the operative “‘dispute’ is not the original commercial controversy” but instead “whether a valid award should be reduced to a judgment” (“**Second New Argument**”). Reply at 6.

However, both new arguments contradict black-letter law. The First New Argument misquotes the Supreme Court’s decision in *Shaffer v. Heitner* to conflate personal jurisdiction with *quasi-in-rem* jurisdiction. Petitioner does not assert *quasi-in-rem* jurisdiction in this action, nor could it, since it has not identified or attached any of CFE’s property in this forum. The Second New Argument “has been rejected by every circuit to have considered it,” including the Second Circuit. *Conti II. Container Schiffarts-GmbH & Co. KG M.S., MSC Flaminia v. MSC Mediterranean Shipping Co. S.A.*, 91 F.4th 789, 795 (5th Cir. 2024) (citing, *inter alia*, *Solé Resort, S.A. de C.V. v. Allure Resorts Management, LLC*, 450 F.3d 100 (2d Cir. 2006)).

Petitioner’s misunderstanding of basic civil procedure, coupled with its acknowledgment of the lack of any U.S. connection, also drive its erroneous interpretation of the Supreme Court’s recent decision in *Fuld v. Palestine Liberation Org.*, 606 U.S. 1 (2025).

For the reasons explained below and in the Opposition, CFE respectfully requests that this Court deny the Petition (ECF No. 5).

ARGUMENT

I. PETITIONER CONFLATES PERSONAL JURISDICTION WITH *QUASI-IN-REM* JURISDICTION, WHICH IT DOES NOT SEEK AND CANNOT OBTAIN

Petitioner’s due process argument relies on footnote 36 in *Shaffer v. Heitner*, 433 U.S. 186 (1977), which addresses jurisdiction where the substantive dispute between the parties has already been adjudicated, *see* Reply at 1, but does not apply here. Petitioner quotes footnote 36 but omits critical limiting language (emphasis added):

Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt ***in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter.***

433 U.S. at 210 n.36 (emphasis added).

By conditioning jurisdiction on the defendant’s ownership of property in the forum, *Shaffer* makes clear that the Supreme Court was addressing *quasi-in-rem* jurisdiction over that property, not personal jurisdiction over the defendant. “Quasi in rem jurisdiction is jurisdiction over designated property that results in a judgment affecting the interests of particular individuals in [that] property.” *CME Media Enterprises B.V. v. Zelezny*, 01 CIV. 1733 (DC), 2001 WL 1035138, at *3 (S.D.N.Y. Sept. 10, 2001) (citing *Shaffer*, 433 U.S. at 199 & n.17). *Shaffer* stands for the principle that while “generally the mere presence of property is not enough to establish in rem jurisdiction” and instead a connection between the property and the dispute is also required, “[a]n

exception to this general rule exists [] where quasi in rem jurisdiction is used to attach property to collect a debt based on a claim already adjudicated in a forum where there was personal jurisdiction over the defendant.” *Id.* (citing *Shaffer*, 433 U.S. at 210 & n.36).

Here, Petitioner invokes only *personal* jurisdiction over CFE. *See* Petition ¶¶ 9, 13. It does not seek *quasi-in-rem* jurisdiction and identifies no CFE property in this District that could support such jurisdiction. Furthermore, the exercise of *quasi-in-rem* jurisdiction requires that the identified assets be attached. *See Raad v. Bank Audi S.A.L.*, 1:20 CV-11101 (MKV), 2024 WL 967172, at *8 (S.D.N.Y. Mar. 5, 2024) *affd*, 24-840 CV, 2025 WL 1214139 (2d Cir Apr. 28, 2025), *cert denied*, 146 S Ct 611 (holding that “the case law in this District consistently sets out that quasi in rem jurisdiction is not proper where an order of attachment is not in place and the property at issue has not otherwise been seized” and declining to exercise jurisdiction because plaintiffs’ motion for an order of attachment was denied); *Manichaeen Cap., LLC v. SourceHOV Holdings, Inc.*, No. 20 CIV. 5679 (AKH), 2021 WL 276674, at *2 (S.D.N.Y. Jan. 27, 2021) (denying *quasi-in-rem* jurisdiction because “Plaintiffs did not seek attachment of Defendant’s property allegedly in New York before commencing the instant action”).

The requirement of attachment also applies in proceedings to recognize/confirm and enforce an foreign arbitration award. *See Equipav S.A. Pavimentação, Engenharia e Comercio Ltda. v. Bertin*, 22 CIV. 4594 (PGG), 2024 WL 196670, at *7 (S.D.N.Y. Jan. 18, 2024) (exercising *quasi-in-rem* jurisdiction because “Equipav [] obtained an order of attachment concerning Bertin’s assets located in this District”); *CME*, 2001 WL 1035138 at *5 (exercising *quasi-in-rem* jurisdiction only over funds remaining in attached New York bank account); *Land, Air & Sea Transport v. El Nasr Min. Co.*, No. 06 Civ. 13482 (GBD), 2008 WL 612732 at *2 (S.D.N.Y. Mar. 4, 2008) (“Defendant’s property has been attached in this District such that there

exists *quasi in rem jurisdiction*.”); see also *Société Nationale D’Operations Pétrolières de la Côte D’Ivoire v. MRS Holdings Ltd.*, 24-CV- 80363, 2024 WL 6968988, at *7, *10 (S.D. Fla. Dec. 18, 2024) (referring to *quasi-in-rem* jurisdiction as “attachment jurisdiction”). Even the law review article cited by Petitioner (Reply at 1, 6) acknowledges, in a portion of the article that Petitioner fails to cite, that such proceedings require “personal jurisdiction over the debtor or the attachment of the debtor’s property.” Silberman & Simowitz, *Recognition and Enforcement of Foreign Judgments and Awards: What Hath Daimler Wrought?*, 91 N.Y.U. L. Rev. 344, 353 (2016).

Petitioner has not attached any CFE property and likely could not do so, because it would have to satisfy the requirements of *both* CPLR § 6201 *et seq.* (governing orders of attachment) *and* 28 U.S.C. § 1610(d) (listing exceptions to sovereign immunity from pre-judgment attachment).

Because Petitioner invokes only personal jurisdiction over CFE, due process requires a connection between the dispute and the forum. Absent such a connection, the Petition must be denied.

II. AWARD CONFIRMATION PROCEEDINGS ARE NOT EXCEPTED FROM THE U.S. NEXUS REQUIREMENT

There is no exception to the due process requirements for the exercise of personal jurisdiction in an award confirmation action. Petitioner’s contrary argument that due process does not require a connection between the underlying dispute and the forum, Reply at 6, “has been rejected by every circuit to have considered it.” *Conti II. Container Schiffarts-GmbH & Co. KG M.S.*, 91 F.4th at 795 (citing, *inter alia*, *Solé Resort, S.A. de C.V. v. Allure Resorts Management, LLC*, 450 F.3d 100 (2d Cir. 2006)). These circuits “consider a defendant’s contacts related to the underlying dispute that led to the arbitral award [as well as] contacts related to the arbitration proceeding itself.” *Id.* at 796; see also *Solé Resort*, 450 F.3d at 106 (“parties’ conduct in negotiating, consummating, and performing the contract which ultimately led to the challenged

arbitration” needed to satisfy requirements for long-arm personal jurisdiction under state-law and “federal due process requirements”).

As CFE’s Opposition makes clear, and as the Reply effectively concedes, the only country to which the underlying dispute and the arbitration are connected is Mexico, not the United States.

III. **THESE ERRORS ARE COMPOUNDED BY PETITIONER’S MISREADING OF *FULD***

Petitioner’s reading of the Supreme Court’s recent decision in *Fuld* follows the same pattern – misstating the law to avoid confronting the absence of any connection between the dispute and the U.S. Petitioner asserts that *Fuld* deems it sufficient that a statute “tie[s] jurisdiction to ‘specific, narrow conduct.’” Reply at 4 (purportedly citing *Fuld*, 606 U.S. at 16-19). However the quoted language comes from the syllabus, not the Court’s opinion. *See* 606 U.S. at 4. The opinion itself holds that the statute at issue “ties federal jurisdiction to ***conduct closely related to the United States.***” *Id.* at 18 (emphasis added); Opposition at 8.

Petitioner similarly cites what it calls “the most relevant post-*Fuld* decision in this District” (Reply at 3 (citing *Orient Plus Int’l Lt. v. Baosheng Media Grp. Holdings Ltd.*, 808 F. Supp. 3d 609, 619-20 (S.D.N.Y. 2025)), while omitting the portion of the decision that underscores the required U.S. connection. The court explained that the nexus inquiry turns on “factors such as the ‘defendant’s citizenship or residency, the location of the acts allegedly giving rise to the suit and whether those acts could be expected to or did produce an effect in the United States.’” *Orient Plus*, 808 F. Supp. at 620. Those considerations confirm that CFE is *not* subject to jurisdiction here.

CONCLUSION

The Court should therefore dismiss the Petition.

Dated: May 14, 2026

Respectfully submitted,

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