Justices' Ruling Will Ease Foreign Arbitral Award Enforcement

By **David Cinotti** (November 19, 2025)

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The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the New York Convention, requires U.S. courts to recognize and enforce arbitral awards made in the territory of another state party to the convention, with specific, narrow exceptions.

But restrictions on the exercise of personal jurisdiction under a traditional due process analysis can frustrate recognition and enforcement of convention awards, because foreign parties that lost foreign arbitrations might have limited contacts with any U.S. state or the U.S. as a whole, and a dispute leading to an arbitration might not arise out of any such contacts.

The U.S. Supreme Court's June decision in Fuld v. Palestine Liberation Organization, however, should make enforcement against foreign award debtors easier.[1] Fuld holds that the familiar minimum contacts standard does not apply to the Fifth Amendment's due process clause.

Although the court did not establish a specific standard for the limits, if any, that the Fifth Amendment's due process clause imposes, Fuld suggests that U.S. courts can constitutionally decide whether to recognize and enforce foreign arbitral awards in accordance with U.S. treaty obligations, regardless of the award debtor's connections to the U.S.

The Supreme Court's Decision in Fuld

In the Promoting Security and Justice for Victims of Terrorism Act, or PSJVTA, Congress provided for personal jurisdiction over the Palestine Liberation Organization and the Palestinian Authority in suits brought under the Antiterrorism Act.

The question in Fuld was whether the exercise of that statutory personal jurisdiction was consistent with due process. The court noted that most of its personal jurisdiction case law addresses the 14th Amendment.

Federal courts follow state law to determine whether they may exercise personal jurisdiction when plaintiffs rely on Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure, which provides that serving a summons establishes the court's personal jurisdiction over a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located."

But Rule 4(k)(1)(C) also permits personal jurisdiction "when [service of process is] authorized by a federal statute," such as the PSJVTA. Through its due process clause, the Fifth Amendment — not the 14th — governs the exercise of personal jurisdiction when a federal statute authorizes service.

The minimum contacts standard, under the Supreme Court's 1945 decision in International Shoe Co. v. Washington and its progeny, defines the lawful authority of each state within its borders under the 14th Amendment. But in Fuld, the court noted that such "interstate

federalism concerns ... do not apply to limitations under the Fifth Amendment upon the power of the Federal Government and the corollary authority of the federal courts."[2]

The court explained that "the Due Process Clause of the Fifth Amendment necessarily permits a more flexible jurisdictional inquiry commensurate with the Federal Government's broader sovereign authority."[3] It declined, however, "to delineate the outer bounds of the Federal Government's power, consistent with due process, to hale foreign defendants into U. S. courts."[4]

Instead, the court held that the PSJVTA clearly fit within that authority, whatever its outer bounds. The court examined the constitutionality of the PSJVTA as an exercise of Congress' and the president's combined international affairs powers under former Justice Robert Jackson's 1952 concurrence in Youngstown Sheet & Tube Co. v. Sawyer.[5]

The court explained that the federal government has strong interests in combating terrorism and permitting victims to pursue justice in domestic courts. The statute was sufficiently limited to those ends.[6]

Additionally, the court avoided deciding whether the Fifth Amendment, like the 14th, permits only reasonable assertions of jurisdiction in particular cases. It concluded that the PSJVTA clearly satisfied the reasonableness factors considered under the 14th Amendment: the burden on the defendant, the interests of the forum and the plaintiff's interest in obtaining relief.[7]

Justice Clarence Thomas, in a concurring opinion joined in part by Justice Neil Gorsuch, argued that the Fifth Amendment's due process clause places no limits on the federal government's power to extend personal jurisdiction over foreign defendants. He asserted that any such limits stem from international law, not the U.S. Constitution, and that Congress has the authority to override those limits.[8]

Justice Thomas also wrote that the court's opinion did not "foreclose the 'maximalist theory of federal jurisdiction'" that he accepted.[9]

Fuld's Application to Enforcement of Foreign Arbitral Awards

Before Fuld, courts held that they could not decide whether to recognize an arbitral award against a foreign party that lacked sufficient contacts either with the state in which the court sat or with the U.S. as a whole.[10]

For example, in its often-cited 2002 decision in Glencore Grain Rotterdam BV v. Shivnath Rai Harnarain Co., the U.S. Court of Appeals for the Ninth Circuit held that a district court lacked personal jurisdiction over an Indian company on a petition to enforce a U.K. arbitral award.

The court noted that personal jurisdiction could be established under Rule 4(k)(1)(A) if a California court could have asserted jurisdiction over the respondent consistent with the 14th Amendment's due process clause, but the respondent lacked sufficient contacts with the state.[11]

The court also considered whether personal jurisdiction was proper under Rule 4(k)(2), which provides that courts have personal jurisdiction on claims arising under federal law if: "(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and (B) exercising jurisdiction is consistent with the United States Constitution and laws."

The Ninth Circuit rejected that alternative basis for jurisdiction because the respondent did not have sufficient contacts with the U.S. as a whole, either.[12]

Finally, the court rejected quasi in rem jurisdiction based on property located in the forum, because the petitioner failed to identify any specific property belonging to the respondent in California.[13]

That theory arises from Shaffer v. Heitner,[14] a 1977 14th Amendment case in which the Supreme Court stated in a footnote that "there would seem to be no unfairness in allowing an action to realize on [a] 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."[15]

Invoking quasi in rem jurisdiction might avoid the need to establish an award debtor's contacts with the U.S. in some cases, but award creditors might want to convert foreign awards to U.S. judgments even when the award debtor does not have known U.S. assets at the time of the recognition action — because, among other reasons, the Federal Arbitration Act imposes a three-year statute of limitations for recognition of a New York Convention award.[16]

After Fuld, courts should approach personal jurisdiction in award recognition proceedings differently. When petitioners rely on Rule 4(k)(1)(A), which incorporates state long-arm jurisdiction, the 14th Amendment analysis remains applicable. But Fuld offers two potential avenues for petitioners seeking to benefit from its ruling.

First, petitioners might seek to rely on Rule 4(k)(1)(C), the rule that applied in Fuld. Section 9 of the FAA authorizes personal jurisdiction on an application to confirm an award,[17] stating that serving notice of an application to confirm an arbitral award brings the adverse party within the court's jurisdiction as though the adverse party had appeared generally.[18]

Section 9, along with the rest of Chapter 1 of the FAA, applies in cases governed by the New York Convention to the extent it does not conflict with the convention, or provisions of Chapter 2 of the FAA, which implements the convention.[19] The New York Convention and Chapter 2 do not contain provisions concerning service or personal jurisdiction.

The problem is that Section 9 authorizes service by U.S. marshal — the norm in 1925, when Chapter 1 of the FAA was enacted — within a U.S. judicial district; it is silent on service abroad.[20] The U.S. Court of Appeals for the Second Circuit noted in 2022, in Commodities & Minerals Enterprise Ltd. v. CVG Ferrominera Orinoco CA, that "it would seemingly conflict with the New York Convention to require parties to use a mode of service that cannot be executed."[21]

Instead, the Second Circuit has held that, in New York Convention cases, Section 9 authorizes service of notice of a confirmation petition in the same manner as serving a summons and complaint under Rule 4.[22] Rule 4, of course, provides means to serve process outside the U.S.[23]

The Ninth Circuit has disagreed, holding in 2024 in Voltage Pictures LLC v. Gussi SA de CV that Section 6 of the FAA — which provides that applications under the FAA are to be made "in the manner provided by law for the making and hearing of motions"[24] — governs service in convention cases, and permits extraterritorial service on award-debtors of

recognition petitions by the means specified in Rule 5(b) of the Federal Rule of Civil Procedure for serving motions.[25]

Under either approach, a petitioner could argue that either Section 9 or Section 6 of the FAA qualifies as a statute that authorizes service on foreign award-debtors under Rule 4(k)(1)(C).[26]

Second, petitioners seeking recognition and enforcement of foreign awards may invoke Rule 4(k)(2) if the respondent is not subject to suit in the courts of general jurisdiction of any state. A petition to recognize and enforce a foreign award arises under federal law.[27]

Circuit courts have held that Rule 4(k)(2) applies when the defendant declines to specify a state where it is subject to jurisdiction,[28] or when the plaintiff certifies that it is not aware of a state in which the defendant is subject to suit and the defendant fails to rebut that certification.[29] If either Rule 4(k)(1)(C) or Rule 4(k)(2) applies, the Fifth Amendment governs the constitutionality of exercising personal jurisdiction.[30]

Before Fuld, courts asserted — in the words of the U.S. Court of Appeals for the Eleventh Circuit in Jekyll Island-State Park Authority v. Polygroup Macau Ltd. — that "[t]he analysis under the two [Due Process Clauses] is mostly the same. The only major difference is that where the Fifth Amendment applies, the court weighs the defendant's contacts with the United States as a whole, rather than with a single state."[31]

Under Fuld, however, minimum contacts is not the standard under the Fifth Amendment. Rather, award creditors may argue that personal jurisdiction is proper regardless of the award debtor's or the arbitration's connections to the U.S., and that there is no need for a petition to arise out of or relate to contacts with the U.S.

As in Fuld, the exercise of personal jurisdiction in recognition cases implicates the political branches' authority in international relations. In ratifying and implementing the New York Convention, the president and Congress exercised their respective authorities over foreign affairs and international commerce, determining that recognition and enforcement of foreign arbitral awards serve U.S. interests.

For example, President Lyndon Johnson, in his 1968 statement transmitting the New York Convention to the Senate for advice and consent, noted that the treaty promotes international trade and investment, and "strengthens the concept of safeguarding private rights in foreign transactions."[32] The convention also requires reciprocal recognition of awards made in the U.S., and protects U.S. citizens' rights to enforce awards globally.

Further supporting the constitutionality of jurisdiction, parties to international arbitrations are aware that the convention requires recognition of resulting awards in the U.S., so they should not be surprised by an application in a U.S. court if they do not comply with an award governed by the convention.

Award creditors may argue, alternatively, that the Fifth Amendment places no restrictions on the exercise of personal jurisdiction, consistent with the maximalist theory supported by Justices Thomas and Gorsuch in Fuld.

Conclusion

In summary, parties seeking to recognize and enforce foreign arbitral awards in the U.S. against nonresident award debtors can rely on Fuld in response to objections to the court's

personal jurisdiction.

Award creditors should not be required to demonstrate that an award debtor has sufficient contacts with a U.S. state or with the U.S. as a whole to obtain recognition of a New York Convention award.

The New York Convention's purpose is to promote the portability of arbitral awards, and dismissing recognition actions for lack of personal jurisdiction undermines compliance with U.S. treaty obligations and U.S. interests in ensuring the enforceability of domestic awards abroad.

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[1] Fuld v. Palestine Liberation Organization, 606 U.S. 1 (2025).

[2] Id. at 15.

[3] Id. at 16.

[4] Id. at 18.

[5] Id. at 19.

[6] Id. at 19-22.

[7] Id. at 20-21.

[8] Id. at 35-45 (Thomas, J., concurring).

[9] Id. at 44.

[10] See e.g., First Inv. Corp. of Marshall Islands v. Fujian Mawei Shipbuilding, Ltd., 703 F.3d 742, 749-50 (5th Cir. 2012); Frontera Res. Azerbaijan Corp. v. State Oil Co. of Azerbaijan Republic, 582 F.3d 393, 397-98 (2d Cir. 2009); Telcordia Tech Inc. v. Telkom SA Ltd., 458 F.3d 172, 178-79 (3d Cir. 2006); Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284 F.3d 1114, 1122-23 (9th Cir. 2002); Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory," 283 F.3d 208, 212-13 (4th Cir. 2002).

[11] Glencore, 284 F.3d at 1123-26.

[12] Id. at 1126-27.

[13] Id. at 1127-28.

[14] Shaffer v. Heitner, 433 U.S. 186 (1977).

[15] Id. at 210 n.36.

[16] 9 U.S.C. § 207; see also Linda J. Silberman and Aaron D. Simowitz, Recognition and Enforcement of Foreign Judgments and Awards: What Hath Daimler Wrought?, 91 N.Y.U. L. Rev. 344, 381 (2016) ("Debtors attempting to avoid the consequences of an arbitral award in the United States need only to keep their assets out of the United States for three years – once the three-year statute of limitations has run, they can get back to business as usual").

[17] "Confirmation" converts a domestic award to a judgment, but the Second Circuit has explained that the FAA's references to confirming awards includes recognition and enforcement of foreign awards. CBF Indústria de Gusa S/A v. AMCI Holdings Inc., 850 F.3d 58, 72 (2d Cir. 2017).

[18] 9 U.S.C. § 9.

[19] 9 U.S.C. § 208.

[20] See 9 U.S.C. § 9.

[21] Commodities & Mins. Enter. Ltd. v. CVG Ferrominera Orinoco CA, 49 F.4th 802, 811 n.6 (2d Cir. 2022); see also Voltage Pictures LLC v. Gussi SA de CV, 92 F.4th 815, 830 (9th Cir. 2024).

[22] Commodities & Mins. Enter., 49 F.4th at 813.

[23] Fed. R. Civ. P. 4(f), (h)(2).

[24] 9 U.S.C. § 6.

[25] Voltage Pictures, 92 F.4th at 831.

[26] See Restatement (Third) U.S. Law of Int'l Comm. Arb. § 4.25 ("Under [the Second Circuit's] view, § 9 authorizes the exercise of jurisdiction over a defendant located in a foreign country, provided the defendant has been properly served pursuant to Rule 4 of the Federal Rules of Civil Procedure").

[27] 9 U.S.C. § 203.

[28] See, e.g., Mwani v. bin Laden, 417 F.3d 1, 11 (D.C. Cir. 2005); Adams v. Unione Mediterranea Di Sicurta, 364 F.3d 646, 651 (5th Cir. 2004).

[29] See, e.g., U.S. v. Swiss Am. Bank Ltd., 191 F.3d 30, 41-42 (1st Cir. 1999).

[30] See Fuld, 606 U.S. at 11 (Rule 4(k)(1)(C)); Jekyll Isl.-State Park Auth. v. Polygroup Macau Ltd., 140 F.4th 1304, 1316 (11th Cir. 2025) (Rule 4(k)(2)).

[31] Jekyll Island-State Park Auth., 140 F.4th at 1316.

[32] Message from the President Transmitting the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Adopted at New York on June 10, 1958 (Apr. 24, 1968).