

07-1815-cv

Frontera Resources Azerbaijan Corporation v. State Oil Company of the Azerbaijan Republic

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2008

(Argued: October 27, 2008 Decided: September 28, 2009)

Docket No. 07-1815-cv

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FRONTERA RESOURCES AZERBAIJAN CORPORATION,

Petitioner-Appellant,

-- v. --

STATE OIL COMPANY OF THE AZERBAIJAN REPUBLIC,

Respondent-Appellee.

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B e f o r e : WALKER, PARKER, and RAGGI, Circuit Judges.

Petitioner Frontera Resources Azerbaijan Corporation appeals from the dismissal of its petition to confirm a foreign arbitral award against Respondent State Oil Company of the Azerbaijan Republic ("SOCAR") for lack of personal jurisdiction. We hold that the district court correctly required jurisdiction over either SOCAR or SOCAR's property. We find, however, that the district court erred by holding that foreign states and their agents are entitled to rights under the Due Process Clause. Accordingly, we overrule our holding to the contrary in Texas Trading & Milling Corp. v. Federal Republic of Nigeria, 647 F.2d 300 (2d Cir. 1981), and remand for the district court to reconsider its jurisdictional analysis.

1 VACATED and REMANDED.

2 JAMES E. BERGER, Paul Hastings
3 Janofsky & Walker, LLP, New
4 York, NY, for Petitioner-
5 Appellant.
6

7 JOHN D. WINTER, Patterson
8 Belknap Webb & Tyler LLP, New
9 York, NY, for Respondent-
10 Appellee.
11

12 JOHN M. WALKER, JR., Circuit Judge:

13 Petitioner-Appellant Frontera Resources Azerbaijan
14 Corporation ("Frontera") appeals from the dismissal by the United
15 States District Court for the Southern District of New York
16 (Richard J. Holwell, Judge) of its petition to enforce a Swedish
17 arbitration award against Respondent-Appellee State Oil
18 Corporation of the Azerbaijan Republic ("SOCAR"). The district
19 court granted SOCAR's motion to dismiss for want of personal
20 jurisdiction. See Frontera Res. Azer. Corp. v. State Oil Co. of
21 the Azer. Republic, 479 F. Supp. 2d 376, 388 (S.D.N.Y. 2007). We
22 conclude that SOCAR is not entitled to the Due Process Clause's
23 jurisdictional protections if it is an agent of the Azerbaijani
24 state. Accordingly, we vacate and remand for the district court
25 to reconsider its analysis.

26 **BACKGROUND**

27 Frontera and SOCAR are two companies in the oil industry.
28 Frontera is based in the Cayman Islands, and SOCAR is based in
29 and owned by the Republic of Azerbaijan ("Azerbaijan"). In

1 November 1998, the parties entered into a written agreement (the
2 "Agreement") under which Frontera developed and managed oil
3 deposits in Azerbaijan and delivered oil to SOCAR. In 2000, a
4 dispute arose over SOCAR's refusal to pay for some of this oil,
5 and in response, Frontera allegedly sought to sell oil that was
6 supposed to be sold to SOCAR to parties outside of Azerbaijan
7 instead. In November 2000, after instructing local customs
8 authorities to block Frontera's oil exports, SOCAR seized the
9 oil.

10 In March 2002, the bank that had financed Frontera's
11 involvement in Azerbaijan foreclosed on its loan, forcing
12 Frontera to assign its rights in the project to the bank. In
13 July 2002, the bank settled its claims with SOCAR. Frontera,
14 however, continued to seek payment for both previously delivered
15 and seized oil. Based on its settlement with the bank, SOCAR
16 denied liability to Frontera.

17 After Frontera and SOCAR were unable to settle their dispute
18 amicably, Frontera served SOCAR in July 2003 with a request for
19 arbitration as per the Agreement. In January 2006, after a
20 hearing on the merits with full participation by both parties, a
21 Swedish arbitral tribunal awarded Frontera approximately \$1.24
22 million plus interest.

23 On February 14, 2006, Frontera filed a petition in the
24 Southern District of New York to confirm the award pursuant to

1 Article II(2) of the Convention on the Recognition and
2 Enforcement of Foreign Arbitral Awards ("New York Convention"),
3 opened for signature June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S.
4 38, implemented at 9 U.S.C. § 207. The district court dismissed
5 the petition for lack of personal jurisdiction, on the basis that
6 SOCAR had insufficient contacts with the United States to meet
7 the Due Process Clause's requirements for the assertion of
8 personal jurisdiction. The district court questioned the
9 soundness of according due process protections to SOCAR, a
10 company owned by Azerbaijan, but nonetheless applied the
11 traditional due process test based on our precedent in Texas
12 Trading & Milling Corp. v. Federal Republic of Nigeria, 647 F.2d
13 300 (2d Cir. 1981). The district court also declined to find
14 quasi in rem jurisdiction over SOCAR, because Frontera had not
15 identified specific SOCAR assets within the court's jurisdiction.
16 The district court denied jurisdictional discovery and dismissed
17 Frontera's petition. This appeal followed.

18 **DISCUSSION**

19 Frontera contends (1) that a court does not need personal
20 jurisdiction over a party in order to confirm a foreign arbitral
21 award against that party, and (2) that Texas Trading should be
22 overruled, because the Due Process Clause's protections should
23 not apply to foreign states or their instrumentalities. Frontera
24 also challenges the district court's denial of jurisdictional

1 discovery.

2 **I. Personal Jurisdiction over SOCAR**

3 When considering a district court's dismissal for lack of
4 personal jurisdiction, we review its factual findings for clear
5 error and its legal conclusions de novo. See Sunward Elecs.,
6 Inc. v. McDonald, 362 F.3d 17, 22 (2d Cir. 2004).

7 Generally, personal jurisdiction has both statutory and
8 constitutional components. A court must have a statutory basis
9 for asserting jurisdiction over a defendant, see Grand River
10 Enters. Six Nations, Ltd. v. Pryor, 425 F.3d 158, 165 (2d Cir.
11 2005), and the Due Process Clause typically also demands that the
12 defendant, if "not present within the territory of the forum,
13 . . . have certain minimum contacts with it such that the
14 maintenance of the suit does not offend 'traditional notions of
15 fair play and substantial justice.'" Int'l Shoe Co. v.
16 Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer,
17 311 U.S. 457, 463 (1940)). The parties do not challenge the
18 district court's reliance on the Foreign Sovereign Immunities Act
19 ("FSIA"), 28 U.S.C. § 1608(a), as the statutory basis for
20 jurisdiction over SOCAR. See Frontera, 479 F. Supp. 2d at 379-
21 80; see also Argentine Republic v. Amerada Hess Shipping Corp.,
22 488 U.S. 428, 439 (1989) (stating that the FSIA "provides the
23 sole basis for obtaining jurisdiction over a foreign state in
24 federal court"). This appeal instead is focused on the Due

1 Process Clause's place in the district court's analysis.

2 The district court dismissed Frontera's petition because it
3 concluded that SOCAR's contacts with the United States were
4 insufficient to meet the Due Process Clause's demands for
5 personal jurisdiction. Frontera contends that this was in error
6 both because personal jurisdiction is not necessary for the
7 requested relief, and because SOCAR is not entitled to the Due
8 Process Clause's protections. We address each argument in turn.

9 **A. The Need for Jurisdiction**

10 Frontera argues that a district court does not need personal
11 jurisdiction over a respondent to confirm a foreign arbitral
12 award against that party. Yet, Frontera contends, the district
13 court's dismissal of its petition "necessarily rest[ed] upon an
14 assumption" that personal jurisdiction over SOCAR was
15 indispensable. (Appellant's Br. at 38.)

16 We read the district court's decision differently. Although
17 the district court considered whether it could assert personal
18 jurisdiction over SOCAR, it did not make that question
19 dispositive. Instead, after finding SOCAR's contacts with the
20 United States insufficient to establish personal jurisdiction,
21 the district court examined whether it had jurisdiction over any
22 of SOCAR's assets, because "in the absence of minimum contacts,
23 quasi in rem jurisdiction may be exercised to attach property to
24 collect a debt." Frontera, 479 F. Supp. 2d at 387. Thus, by

1 suggesting that the district court required personal
2 jurisdiction, Frontera misunderstands the framework of the
3 court's analysis. And to the extent that Frontera's challenge is
4 to the district court's requirement of either personal or quasi
5 in rem jurisdiction, it is without merit.

6 We have previously avoided deciding whether personal or
7 quasi in rem jurisdiction is required to confirm foreign arbitral
8 awards pursuant to the New York Convention. See Dardana Ltd. v.
9 A.O. Yuganskneftegaz, 317 F.3d 202, 207 (2d Cir. 2003). However,
10 the numerous other courts to have addressed the issue have each
11 required personal or quasi in rem jurisdiction. See, e.g.,
12 Telcordia Tech Inc. v. Telkom SA Ltd., 458 F.3d 172, 178-79 (3d
13 Cir. 2006); Glencore Grain Rotterdam B.V. v. Shivnath Rai
14 Harnarain Co., 284 F.3d 1114, 1120-22 (9th Cir. 2002); Base Metal
15 Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory", 283 F.3d
16 208, 212-13 (4th Cir. 2002); see also Transatl. Bulk Shipping
17 Ltd. v. Saudi Chartering S.A., 622 F. Supp. 25, 27 (S.D.N.Y.
18 1985).

19 Frontera contends that none of these courts addressed the
20 precise argument it advances here: that there is no "positive
21 statutory or treaty basis" for such a jurisdictional
22 requirement.¹ (Appellant's Reply Br. at 11.) The federal

1 ¹ This position is not as novel as Frontera suggests. The Ninth Circuit
2 rejected an identical argument in Glencore Grain. See 284 F.3d at 1121 ("[I]t
3 is not significant in the least that the . . . [New York] Convention lacks
4 language requiring personal jurisdiction over the litigants. We hold that

1 statute that implements the New York Convention requires a court
2 to confirm an award "unless it finds one of the grounds for
3 refusal or deferral of recognition or enforcement of the award
4 specified in the said Convention." 9 U.S.C. § 207. Article V of
5 the New York Convention "provides the exclusive grounds for
6 refusing confirmation," Yusuf Ahmed Alghanim & Sons, W.L.L. v.
7 Toys "R" Us, Inc., 126 F.3d 15, 20 (2d Cir. 1997), and specifies
8 seven grounds for refusing to enforce an arbitral award, none of
9 which include a lack of jurisdiction over the respondent or the
10 respondent's property, see New York Convention at art. 5, 21
11 U.S.T. at 2517. Frontera accordingly argues that we cannot
12 impose a jurisdictional requirement if the Convention does not
13 already have one. We disagree.

14 Unlike "state courts[,] [which] are courts of general
15 jurisdiction[,] . . . federal courts are courts of limited
16 jurisdiction which thus require a specific grant of
17 jurisdiction." Foxhall Realty Law Offices, Inc. v. Telecomm.
18 Premium Servs., Ltd., 156 F.3d 432, 435 (2d Cir. 1998) (citing
19 Sheldon v. Sill, 49 U.S. (8 How.) 441, 449 (1850)). "The
20 validity of an order of a federal court depends upon that court's
21 having jurisdiction over both the subject matter and the
22 parties." Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de

1 neither the Convention nor its implementing legislation removed the district
2 courts' obligation to find jurisdiction over the defendants in suits to
3 confirm arbitration awards.").

1 Guinee, 456 U.S. 694, 701 (1982). While the requirement of
2 subject matter jurisdiction “functions as a restriction on
3 federal power,” id. at 702, the need for personal jurisdiction is
4 fundamental to “the court’s power to exercise control over the
5 parties,” Leroy v. Great W. United Corp., 443 U.S. 173, 180
6 (1979). “Some basis must be shown, whether arising from the
7 respondent’s residence, his conduct, his consent, the location of
8 his property or otherwise, to justify his being subject to the
9 court’s power.” Glencore Grain, 284 F.3d at 1122 (quoting
10 Transatl. Bulk Shipping, 622 F. Supp. at 27).

11 Because of the primacy of jurisdiction, “jurisdictional
12 questions ordinarily must precede merits determinations in
13 dispositional order.” Sinochem Int’l Co. v. Malay. Int’l
14 Shipping Corp., 549 U.S. 422, 431 (2007). “[T]he items listed in
15 Article V as the exclusive defenses . . . pertain to substantive
16 matters rather than to procedure.” Monegasque de Reassurances
17 S.A.M. v. Nak Naftogaz of Ukr., 311 F.3d 488, 496 (2d Cir. 2002)
18 (emphasis added). Article V’s exclusivity limits the ways in
19 which one can challenge a request for confirmation, but it does
20 nothing to alter the fundamental requirement of jurisdiction over
21 the party against whom enforcement is being sought.

22 Frontera argues that the Supreme Court suggested otherwise
23 in Shaffer v. Heitner, 433 U.S. 186 (1977), in the following
24 footnote:

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

8 Id. at 210 n.36. But while this footnote indicated, in dicta,
9 that a court might not need jurisdiction over a respondent's
10 person when enforcing a debt – “the Shaffer principle” that
11 Frontera makes much of, (Appellant's Br. at 46) – it nonetheless
12 assumed that such a court would still have jurisdiction over the
13 respondent's property. And in this regard, the district court's
14 approach in no way conflicted with Shaffer. The district court
15 did not view its lack of personal jurisdiction over SOCAR as
16 fatal to Frontera's petition; instead, the court then
17 appropriately considered whether it could assert jurisdiction
18 over SOCAR's property.

19 We therefore hold that the district court did not err by
20 treating jurisdiction over either SOCAR or SOCAR's property as a
21 prerequisite to the enforcement of Frontera's petition. The
22 district court may, however, have given the Constitution's Due
23 Process Clause an unwarranted place in its analysis, which we
24 discuss next.

25 **B. SOCAR's Rights Under the Due Process Clause**

26 The district court recognized that our precedent Texas
27 Trading compelled it to hold that SOCAR possessed rights under

1 the Due Process Clause, thus requiring that jurisdiction over
2 SOCAR meet the minimum contacts requirements of International
3 Shoe. The district court, however, questioned Texas Trading's
4 soundness. These doubts were well-founded.

5 The Due Process Clause famously states that "no person shall
6 be . . . deprived of life, liberty or property without due
7 process of law." U.S. Const. amend. V (emphasis added). In
8 Texas Trading, we held that a foreign state was a "person" within
9 the meaning of the Due Process Clause, and that a court asserting
10 personal jurisdiction over a foreign state must – in addition to
11 complying with the FSIA – therefore engage in "a due process
12 scrutiny of the court's power to exercise its authority" over the
13 state. 647 F.2d at 308, 313 ("[T]he [FSIA] cannot create
14 personal jurisdiction where the Constitution forbids it.").
15 Texas Trading reached this conclusion without much analysis,
16 while also noting that cases on point were "rare." Id. at 313.
17 The FSIA had been enacted only five years earlier, and pre-FSIA
18 suits against foreign states were generally supported by quasi in
19 rem jurisdiction. Id. Subsequently, we applied Texas Trading
20 not only to foreign states but also to their agencies and
21 instrumentalities. See, e.g., Seetransport Wiking Trader
22 Schiffahrtsgesellschaft MBH & Co. v. Navimpex Centrala Navala,
23 989 F.2d 572, 579-80 (2d Cir. 1993) (applying Texas Trading to a
24 foreign trading company wholly owned by Romania that "promoted

1 ship sales through its governmental office in Manhattan").

2 Since Texas Trading, however, the case law has marched in a
3 different direction. In Republic of Argentina v. Weltover, Inc.,
4 the Supreme Court "assum[ed], without deciding, that a foreign
5 state is a 'person' for purposes of the Due Process Clause," 504
6 U.S. 607, 619 (1992), but then cited South Carolina v.
7 Katzenbach, 383 U.S. 301, 323-24 (1966), which held that "States
8 of the Union are not 'persons' for purposes of the Due Process
9 Clause," 504 U.S. at 619. Weltover did not require deciding the
10 issue because Argentina's contacts satisfied the due process
11 requirements, see id. at 619 & n.2, but the Court's implication
12 was plain: If the "States of the Union" have no rights under the
13 Due Process Clause, why should foreign states?

14 After Weltover, we noted that "we are uncertain whether
15 [Texas Trading] remains good law." Hanil Bank v. PT Bank Negara
16 Indon., 148 F.3d 127, 134 (2d Cir. 1998). But we went no further
17 in Hanil Bank because the due process requirements were satisfied
18 in that case. See id. The instant case is different, however,
19 as only the Due Process Clause prevented the district court from
20 asserting personal jurisdiction over SOCAR.

21 In Price v. Socialist People's Libyan Arab Jamahiriya, 294
22 F.3d 82 (D.C. Cir. 2002), the D.C. Circuit reasoned that because
23 "the word 'person' in the context of the Due Process Clause of
24 the Fifth Amendment cannot, by any reasonable mode of

1 interpretation, be expanded to encompass the States of the
2 Union," Katzenbach, 383 U.S. at 323, "absent some compelling
3 reason to treat foreign sovereigns more favorably than 'States of
4 the Union,' it would make no sense to view foreign states as
5 'persons' under the Due Process Clause," 294 F.3d at 96. The
6 Price court found no such reason, see id. at 95-100, and we find
7 that case's analysis persuasive. As the Price court noted, the
8 States of the Union "both derive important benefits [from the
9 Constitution] and must abide by significant limitations as a
10 consequence of their participation [in the Union]," id. at 96,²
11 yet a "'foreign State lies outside the structure of the Union,'"
12 id. (quoting Principality of Monaco v. Mississippi, 292 U.S. 313,
13 330 (1934)).

14 If the States, as sovereigns that are part of the Union,
15 cannot "avail themselves of the fundamental safeguards of the Due
16 Process Clause," Price, 294 F.3d at 97, we do not see why foreign
17 states, as sovereigns wholly outside the Union, should be in a
18 more favored position. This is particularly so when the Supreme
19 Court has "[n]ever . . . suggested that foreign nations enjoy

1 ² Price compared U.S. Const. art. I, § 10 (prohibiting specific acts by
2 the States), with id. at art. IV, § 4 ("The United States shall guarantee to
3 every State in this Union a Republican form of Government, and shall protect
4 each of them against Invasion; and on Application of the Legislature, or of
5 the Executive (when the Legislature cannot be convened) against domestic
6 Violence."), and id. at art. VI, cl. 2 ("This Constitution, and the Laws of
7 the United States which shall be made in Pursuance thereof . . . shall be the
8 supreme Law of the Land; and the Judges in every State shall be bound thereby,
9 any Thing in the Constitution or Law of the State to the Contrary
10 notwithstanding."). 294 F.3d at 96.

1 rights derived from the Constitution,” and when courts have
2 instead “relied on principles of comity and international law to
3 protect foreign governments in the American legal system.” Id.
4 For the reasons discussed by the Price court in its thorough
5 opinion, we “are unwilling to interpret the Due Process Clause as
6 conferring rights on foreign nations that States of the Union do
7 not possess.” Id. at 99. Thus, we hold that the district court
8 erred, albeit understandably in light of Texas Trading, by
9 holding that foreign states and their instrumentalities are
10 entitled to the jurisdictional protections of the Due Process
11 Clause.

12 SOCAR argues otherwise by defending not Texas Trading’s
13 reasoning but its significance as precedent. And, to be sure,
14 our court’s decisions are binding until overruled by us sitting
15 en banc or by the Supreme Court, United States v. Wilkerson, 361
16 F.3d 717, 732 (2d Cir. 2004), neither of which has happened to
17 Texas Trading. “We do, however, recognize an exception to this
18 general rule where there has been an intervening Supreme Court
19 decision that casts doubt on our controlling precedent.” Gelman
20 v. Ashcroft, 372 F.3d 495, 499 (2d Cir. 2004) (internal quotation
21 marks omitted). Although Welterover arguably casts sufficient
22 doubt on Texas Trading to justify its overruling by this panel,
23 see Hanil Bank, 148 F.3d at 134, we have nonetheless circulated
24 this opinion to all active members of our court, and none has

1 objected to our departure from Texas Trading. See United States
2 v. Parkes, 497 F.3d 220, 230 n.7 (2d Cir. 2007) (describing our
3 “mini-en banc” process). Accordingly, to the extent that Texas
4 Trading conflicts with our holding today that foreign states are
5 not “persons” entitled to rights under the Due Process Clause, it
6 is overruled.

7 Simply overruling Texas Trading, however, and holding that a
8 sovereign state does not enjoy due process protections does not
9 decide the precise question in this case, because SOCAR is not a
10 sovereign state, but rather an instrumentality or agency of one.
11 Frontera contends that, because the FSIA treats foreign states
12 and their agencies and instrumentalities identically, see
13 Kensington Int’l Ltd. v. Itoua, 505 F.3d 147, 153 (2d Cir. 2007)
14 (citing 28 U.S.C. § 1603(a)), we should treat SOCAR just as we
15 would treat Azerbaijan for constitutional purposes. The simple
16 fact that SOCAR is deemed a foreign state as a statutory matter,
17 however, does not answer the constitutional question of SOCAR’s
18 due process rights. SOCAR may indeed lack due process rights
19 like a foreign state, but similar statutory treatment will not be
20 the reason.

21 However, if the Azerbaijani government “exerted sufficient
22 control over” SOCAR “to make it an agent of the State, then there
23 is no reason to extend to [SOCAR] a constitutional right that is
24 denied to the sovereign itself.” TMR Energy Ltd. v. State Prop.

1 Fund of Ukr., 411 F.3d 296, 301 (D.C. Cir. 2005). Although
2 “government instrumentalities established as juridical entities
3 distinct and independent from their sovereign should normally be
4 treated as such,” this presumption can be overcome if the state
5 so “extensively control[s]” the instrumentality “that a
6 relationship of principal and agent is created,” or if
7 “adher[ing] blindly to the corporate form . . . would cause . . .
8 injustice.” First Nat’l City Bank v. Banco Para El Comercio
9 Exterior de Cuba (“Bancec”), 462 U.S. 611, 626-27, 629, 632
10 (1983); see also Zappia Middle E. Constr. Co. v. Emirate of Abu
11 Dhabi, 215 F.3d 247, 252 (2d Cir. 2000) (“While the presumption
12 of separateness is a strong one, it may be overcome if a
13 corporate entity is so extensively controlled by the sovereign
14 that the latter is effectively the agent of the former, or if
15 recognizing the corporate entity as independent would work a
16 fraud or injustice.”). Although Bancec asked when a state
17 instrumentality can be treated like its state for “the
18 attribution of liability,” id. at 622 n.11, we think, as the D.C.
19 Circuit did in TMR Energy, that Bancec’s analytic framework is
20 also applicable when the question is whether the instrumentality
21 should have due process rights to which the state is not
22 entitled. See TMR Energy, 411 F.3d at 301; see also, e.g.,
23 Walter Fuller Aircraft Sales, Inc. v. Republic of the Phil., 965
24 F.2d 1375, 1382 (5th Cir. 1992) (“The broader principles upon

1 which Bancec was based . . . are undoubtedly relevant whenever a
2 plaintiff seeks to disregard a foreign government instrumentality
3"). Accordingly, if SOCAR is an agent of the Azerbaijani
4 state, as recognized in Bancec and subsequent cases, then, like
5 Azerbaijan, SOCAR lacks due process rights.

6 The district court did not decide whether SOCAR is an agent
7 of the state because Texas Trading rendered the question
8 unnecessary and, unsurprisingly, there was scant briefing on the
9 issue. SOCAR suggests that the parties' lack of focus on the
10 question should be fatal to Frontera's position, because Frontera
11 "bears the burden of proving that the corporate entity should not
12 be presumed distinct from a sovereign or sovereign entity."
13 Zappia, 215 F.3d at 252. But the Bancec analysis and Frontera's
14 related burden were not relevant until our decision today, nor
15 did Frontera argue that Bancec should apply. Cf. Brooklyn Legal
16 Servs. Corp. v. Legal Servs. Corp., 462 F.3d 219, 232 (2d Cir.
17 2006) ("It is our role to ensure that in making factual findings,
18 the district court applies the proper legal test and applies it
19 correctly."). Moreover, using the parties' inattention to
20 SOCAR's relationship with Azerbaijan to decide that SOCAR is not
21 an agent of the state would still not resolve this appeal. We
22 would then have to determine whether SOCAR, as a corporation
23 owned by a foreign state but not the state's agent, was entitled
24 to the Due Process Clause's protections.

1 In TMR Energy, the D.C. Circuit called this last question
2 "far from obvious." 411 F.3d at 302 n.*. The TMR Energy court
3 observed that "'aliens receive constitutional protections [only]
4 when they have come within the territory of the United States and
5 developed substantial connections with this country.'" Id.
6 (quoting United States v. Verdugo-Urquidez, 494 U.S. 259, 271
7 (1990)) (alteration in TMR Energy). The Supreme Court has gone
8 so far as to accord due process protections to privately owned
9 foreign corporations. See Helicopteros Nacionales de Colombia,
10 S.A. v. Hall, 466 U.S. 408, 418-19 (1984); see also, e.g., Bank
11 Brussels Lambert v. Fiddler Gonzalez & Rodriguez, 171 F.3d 779,
12 784 (2d Cir. 1999); Metro. Life Ins. Co. v. Robertson-Ceco Corp.,
13 84 F.3d 560, 571 (2d Cir. 1996). Whether, and to what extent, it
14 would do so for state-owned foreign corporations has not been
15 decided. And, given the present posture of this litigation, it
16 would be premature for us to address this question without
17 hearing first from the court below. See Farricielli v. Holbrook,
18 215 F.3d 241, 246 (2d Cir. 2000) (per curiam) ("It is our settled
19 practice to allow the district court to address arguments in the
20 first instance."). Accordingly, we choose to remand so that in
21 the first instance the district court can determine, in light of
22 Texas Trading's demise and Bancec's new relevance to this
23 context, (1) whether SOCAR is an agent of Azerbaijan, and if not,
24 (2) whether SOCAR is entitled to the protections of the Due

1 Process Clause.

2 **II. Jurisdictional Discovery**

3 Frontera also argues that the district court erred by
4 rejecting its request for limited discovery of SOCAR's contacts
5 with the United States. We review the district court's decision
6 for an abuse of discretion. See Jazini v. Nissan Motor Co., 148
7 F.3d 181, 186 (2d Cir. 1998). This issue is relevant only if the
8 Due Process Clause protects SOCAR, which is for the district
9 court to determine on remand.

10 "A district court has wide latitude to determine the scope
11 of discovery," In re Agent Orange Prod. Liab. Litig., 517 F.3d
12 76, 103 (2d Cir. 2008), and is typically within its discretion to
13 deny jurisdictional discovery when "the plaintiff [has] not made
14 out a prima facie case for jurisdiction," Best Van Lines, Inc. v.
15 Walker, 490 F.3d 239, 255 (2d Cir. 2007) (citing cases).

16 Assuming for the moment that SOCAR has the jurisdictional
17 protections of the Due Process Clause, to establish jurisdiction
18 Frontera must show that SOCAR had "continuous and systematic
19 general business contacts" with the United States, Metro. Life
20 Ins. Co., 84 F.3d at 568 (quoting Helicopteros, 466 U.S. at 416),
21 a highly fact-sensitive "contextual inquiry" with no one factor
22 having "talismanic significance," id. at 570-71.

23 Frontera argued that SOCAR's production-sharing contracts
24 with several U.S. oil companies and loan agreement with "a

1 syndicate that included [a] U.S. bank" brought it within the
2 district court's jurisdiction. Frontera, 479 F. Supp. 2d at 386.
3 Frontera also alleged that "it is highly likely that at least a
4 portion of [SOCAR's] oil and gas revenues are processed through
5 U.S.-based banks." Id. at 386-87 (alteration in original). The
6 district court dismissed this latter allegation as "conclusory,"
7 and then found the rest of Frontera's claims insufficient to
8 demonstrate a prima facie case for jurisdiction, reasoning that
9 "[t]he fact that American oil companies and one bank have entered
10 into contracts with SOCAR for oil production in Azerbaijan does
11 not demonstrate a continuous and systematic presence in the
12 United States." Id. "In the absence of any prima facie showing
13 of personal jurisdiction," the district court found it
14 "inappropriate to subject SOCAR to the burden and expense of
15 discovery" and denied Frontera's request. Id. at 387.

16 Frontera contends that our decision in Seetransport
17 demonstrates that the district court's denial was erroneous. In
18 Seetransport, we held that a foreign company's "deliberate[]"
19 solicitations of business through U.S.-based representatives
20 "with a fair measure of permanence or continuity" met the minimum
21 requirements for general personal jurisdiction. 989 F.2d at 580.
22 Frontera argues that SOCAR's contracts with U.S. oil and
23 financial companies "were likely the product of the type of
24 'deliberate solicitations'" found sufficient in Seetransport, see

1 id., and that the district court should therefore have granted
2 jurisdictional discovery. (Appellant's Br. at 54-55.) But this
3 is pure speculation on Frontera's part.

4 Seetransport addressed solicitations that were
5 "deliberate[,] and not occasional[] or casual[]," with the record
6 establishing the defendant's use of a New York office. 989 F.2d
7 at 580. Here, the fact that SOCAR has relationships with
8 American companies, without more, could just as easily be the
9 result of occasional or casual solicitations, or solicitations
10 outside the United States. Thus, because Frontera has not
11 pointed to anything in the record that suggests otherwise, we
12 will not disturb the district court's discretionary decision not
13 to allow discovery. See Best Van Lines, 490 F.3d at 255 ("We
14 conclude that the district court acted well within its discretion
15 in declining to permit discovery because the plaintiff had not
16 made out a prima facie case for jurisdiction."). The district
17 court is free to consider further discovery requests in light of
18 the questions it must decide on remand.

19 **III. Forum Non Conveniens**

20 Finally, SOCAR asks us to affirm the district court's
21 dismissal on the alternate basis of forum non conveniens. Having
22 dismissed for want of jurisdiction, the district court expressly
23 declined to address this argument. Following "our settled
24 practice" of allowing district courts to address arguments in the

1 first instance, Farricielli, 215 F.3d at 246, we express no view
2 on SOCAR's forum non conveniens argument, which it is free to
3 raise again on remand.

4 **CONCLUSION**

5 For the foregoing reasons, we VACATE the district court's
6 dismissal of Frontera's petition and REMAND for further
7 proceedings.