

IN THE SUPREME COURT OF THE UNITED STATES

No. 16-254

WATER SPLASH, INC., PETITIONER

v.

TARA MENON

ON WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF TEXAS,
FOURTEENTH DISTRICT

MOTION OF THE UNITED STATES AS AMICUS CURIAE
FOR DIVIDED ARGUMENT AND TO PARTICIPATE IN ORAL ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for divided argument and for leave to participate in the oral argument in this case as amicus curiae in support of petitioners. The Solicitor General requests that the United States be allowed ten minutes of argument time. Petitioner has consented to an allocation of ten minutes of its argument time to the United States.

This case concerns the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention), done Nov. 15, 1965, 20 U.S.T. 361, 658

U.N.T.S. 163, which authorizes transmission of judicial and extrajudicial documents for service of process from one contracting state to another contracting state. Article 10(a) of that convention states that, "[p]rovided the State of destination does not object, the present Convention shall not interfere with * * * the freedom to send judicial documents, by postal channels, directly to persons abroad." The question presented is whether Article 10(a) of the Hague Service Convention authorizes service of process by mail.

The United States filed a brief as amicus curiae supporting petitioner. That brief argues that although Article 10(a) of the Hague Service Convention does not affirmatively authorize service of process by mail, it is properly construed as permitting service of process by postal channels where such service satisfies otherwise applicable law. That is so, the brief contends, because the text of Article 10(a) must be read in the context of the rest of the Convention, which this Court has already held was intended to "appl[y] only to documents transmitted for service abroad." Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 701 (1988). In that light, Article 10(a)'s reference to "send[ing] judicial documents" is readily understood as referring to the sending of documents through postal channels for purposes of service, rather than for some unspecified reasons that are disconnected from the Convention because they do not involve service. Moreover, the brief

argues, that reading is supported by the history of Article 10(a) and the consistent views of the Executive Branch and of other parties to the Convention.

The United States has a substantial interest in the Court's resolution of the question presented. As a party to the Convention, the United States has an important sovereign interest in ensuring that the Convention is construed in accordance with its terms and with the intent of the United States and the Convention's other contracting states. The Department of State participated in the Convention's negotiation and in the process of securing the Senate's consent to its ratification in 1967. As contemplated by Article 14 of the Convention, the Department of State continues to work through diplomatic channels to resolve difficulties arising in the Convention's operation. And the Office of International Judicial Assistance in the Department of Justice serves as the United States Central Authority in accordance with Article 2 of the Convention and is therefore responsible for administration of the Convention in this country.

The United States has participated as *amicus curiae* in oral argument in this Court's cases concerning the Hague Service Convention and other treaty obligations of the United States. See Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 701 (1988) (whether the Hague Service Convention applies when process is served on a foreign corporation by serving its domestic subsidiary

which, under state law, is the foreign corporation's involuntary agent for service); see also, e.g., Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court, 482 U.S. 522 (1987) (whether and to what extent a federal district court must employ the procedures set forth in the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters when litigants seek answers to interrogatories, the production of documents, and admissions from a French adversary over whom the court has personal jurisdiction); Abbott v. Abbott, 560 U.S. 1 (2010) (whether a parent has a "right of custody" under the Hague Convention on the Civil Aspects of International Child Abduction by reason of that parent's authority to consent before the other parent may take a child to another country).

In light of the substantial interest of the United States in the questions presented by this case and the distinct perspective of the United States on those questions, division of argument will materially assist the Court in its consideration of the case.

Respectfully submitted.

NOEL J. FRANCISCO
Acting Solicitor General
Counsel of Record

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