

# UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

## Rinat Akhmetshin v. William Browder

No. No. 19-7129, United States Court of Appeals for the District of Columbia Circuit (December 29, 2020)

### SUMMARY

The D.C. Circuit vacated dismissal for lack of personal jurisdiction and remanded for jurisdictional discovery, holding that the government contacts exception to D.C.'s long-arm statute (D.C. Code § 13-423(a)(4)) only excludes direct contacts with federal government officials or agencies—not media interviews, book promotions, or think tank panels—even when those activities relate to a policy agenda. The court assumed without deciding that the exception applies to nonresident aliens, but found the district court's overly broad construction erroneous. The dissent argued for certification to the D.C. Court of Appeals on whether the exception extends to indirect advocacy and whether nonresident aliens can invoke it.

### CASE DETAILS

|                       |                                                                                                                                    |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the District of Columbia Circuit                                                                |
| WRITING FOR THE COURT | Edwards; Tatel; Katsas                                                                                                             |
| JURISDICTION          | Federal                                                                                                                            |
| DECIDED               | December 29, 2020                                                                                                                  |
| DOCKET                | No. 19-7129                                                                                                                        |
| DISPOSITION           | vacated                                                                                                                            |
| PROCEDURAL POSTURE    | Appeal from dismissal for lack of personal jurisdiction                                                                            |
| STANDARD OF REVIEW    | Dismissal for lack of personal jurisdiction reviewed de novo; denial of jurisdictional discovery reviewed for abuse of discretion. |
| PRECEDENTIAL VALUE    | Published                                                                                                                          |
| PARTIES               | Rinat Akhmetshin v. William Browder                                                                                                |

### TOPICS

personal jurisdiction

defamation

civil procedure

appellate procedure

standard of review

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the district court erred in concluding that it lacked personal jurisdiction over Browder.
2. Whether the district court applied an overly broad interpretation of the government contacts exception.
3. Whether the district court abused its discretion in denying jurisdictional discovery.

## HOLDINGS

1. The government contacts exception only excludes direct contacts with members, agents, or instrumentalities of the federal government from the personal jurisdiction calculus. It does not extend to media appearances, book promotions, interviews, or other activities that do not involve direct contact with federal officials.
2. The district court abused its discretion in denying jurisdictional discovery because it relied on an erroneous legal conclusion that the government contacts exception excluded virtually all of Browder's contacts. Given that Browder's non-excluded contacts are significant, Akhmetshin is entitled to discovery to determine whether Browder engaged in a persistent course of conduct under the second plus factor.

## KEY QUOTATIONS

*“Based on this controlling precedent, only direct contacts with members, agents, or instrumentalities of the federal government may be excluded from the jurisdictional calculus.”* (at 17-18)

*“The decision in Environmental Research International indicates that the Court of Appeals viewed the government contacts exception as applying only to members of the 'national citizenry.'”* (at 13)

*“To hold otherwise would mean that a defendant who has even a single contact with the federal government in support of a policy agenda may then exclude all contacts with the District that can be somehow construed as efforts to advance that agenda.”* (at 20)

## FACTUAL BACKGROUND

Akhmetshin, a D.C. resident and dual U.S.-Russian citizen, sued Browder, a UK citizen, for defamation based on tweets and statements made outside D.C. that allegedly labeled Akhmetshin a Russian intelligence asset. Akhmetshin sought jurisdiction under D.C. Code § 13-423(a)(4), which requires a tortious injury in D.C. from an act outside D.C. and one of three 'plus factors': regularly doing business, persistent course of conduct, or deriving substantial revenue. Browder had significant contacts with D.C., including lobbying for the Magnitsky Act, media interviews, book promotions, and other professional and personal events, but the district court excluded most under the government contacts exception.

## PROCEDURAL HISTORY

The District Court for the District of Columbia granted Browder's motion to dismiss under Rule 12(b)(2) for lack of personal jurisdiction, denied jurisdictional discovery, and dismissed the case without prejudice. Akhmetshin

appealed.

## DISPOSITION

vacated

## REMAND INSTRUCTIONS

The case is remanded to the district court for jurisdictional discovery to determine whether Browder engaged in a persistent course of conduct sufficient to subject him to personal jurisdiction under D.C. Code § 13-423(a)(4). The district court should then reconsider the motion to dismiss under Rule 12(b)(2) and, if jurisdiction is established, may consider the Rule 12(b)(6) motion.

## CASES CITED

- *Env't Rsch. Int'l, Inc. v. Lockwood Greene Eng'rs, Inc.*, 355 A.2d 808 (D.C. 1976) (en banc)
- *Crane v. Carr*, 814 F.2d 758 (D.C. Cir. 1987)
- *Stabilisierungsfonds für Wein v. Kaiser Stuhl Wine Distribs. Pty. Ltd.*, 647 F.2d 200 (D.C. Cir. 1981)
- *Donahue v. Far E. Air Transp. Corp.*, 652 F.2d 1032 (D.C. Cir. 1981)
- *Naartex Consulting Corp. v. Watt*, 722 F.2d 779 (D.C. Cir. 1983)
- *Companhia Brasileira Carbureto de Calicio v. Applied Indus. Materials Corp.*, 640 F.3d 369 (D.C. Cir. 2011)
- *United States v. Ferrara*, 54 F.3d 825 (D.C. Cir. 1995)
- *FC Inv. Grp. LC v. IFX Mkts., Ltd.*, 529 F.3d 1087 (D.C. Cir. 2008)
- *McFarlane v. Esquire Magazine*, 74 F.3d 1296 (D.C. Cir. 1996)
- *Parsons v. Mains*, 580 A.2d 1329 (D.C. 1990)
- *Steinberg v. Int'l Crim. Police Org.*, 672 F.2d 927 (D.C. Cir. 1981)
- *Etchebarne-Bourdin v. Radice*, 754 A.2d 322 (D.C. 2000)
- *Urquhart-Bradley v. Mobley*, 964 F.3d 36 (D.C. Cir. 2020)
- *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990)
- *Invest. Co. Inst. v. United States*, 550 F. Supp. 1213 (D.D.C. 1982)
- *United Therapeutics Corp. v. Vanderbilt Univ.*, 278 F. Supp. 3d 407 (D.D.C. 2017)

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