

No. 21-1338

In the
Supreme Court of the United States

NSO GROUP TECHNOLOGIES LIMITED AND
Q CYBER TECHNOLOGIES LIMITED,

Petitioners,

v.

WHATSAPP INC. AND META PLATFORMS, INC.,

Respondents.

**On Petition for Writ of Certiorari to
the United States Court of Appeals
for the Ninth Circuit**

SUPPLEMENTAL BRIEF OF PETITIONERS

Joseph N. Akrotirianakis	Jeffrey S. Bucholtz
Aaron Craig	<i>Counsel of Record</i>
KING & SPALDING LLP	KING & SPALDING LLP
633 W. 5th Street	1700 Pennsylvania Ave. NW
Suite 1600	Washington, DC 20006
Los Angeles, CA 90071	(202) 737-0500
	jbucholtz@kslaw.com
Matthew V.H. Noller	
KING & SPALDING LLP	
50 California Street	
Suite 3300	
San Francisco, CA 94105	
	<i>Counsel for Petitioners</i>

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SUPPLEMENTAL BRIEF OF PETITIONERS

Petitioners (“NSO”) submit this supplemental brief to address the Solicitor General’s brief. The Solicitor General endorses several of NSO’s key arguments and identifies no valid basis for denying review. The Court should grant the petition for certiorari.

ARGUMENT

I. The government agrees that the Ninth Circuit incorrectly decided an important question of law.

Although this Court asked the government to provide its views on the question presented by NSO’s petition, the government conspicuously avoids providing a straight answer to that question: Whether the FSIA “entirely displaces common-law immunity for entities.” Pet. i. But despite being unwilling to come right out and say it, the Solicitor General’s brief makes clear that the Ninth Circuit was wrong to hold that the FSIA categorically prohibits entities from seeking common-law conduct-based immunity even when, like NSO, they act as agents of foreign governments.

The government states it cannot “endorse” the Ninth Circuit’s “categorical holding,” SG Br. 7, and for good reason. Immunity under the FSIA is “*status-based*”: it “address[es] only entities that Congress determined should be covered by a foreign state’s *sovereign* immunity because they are so closely connected with the foreign state that they are deemed to be part of the state itself.” *Id.* at 9. That is “distinct from the question whether a more limited form of

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