

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

)		
UNITED STATES OF AMERICA,)		
Plaintiff,)	Civil Action No. 1:08 CV 1311	
)		
v.)		
)		
MICROSEMI CORPORATION,)		
Defendant.)		
)		

**SURREBUTTAL MEMORANDUM OF UNITED STATES
IN OPPOSITION TO DEFENDANT MICROSEMI’S MOTION
TO DISMISS FOR IMPROPER VENUE, MOTION TO DISMISS FOR LACK
OF PERSONAL JURISDICTION, OR, IN THE ALTERNATIVE,
MOTION TO TRANSFER VENUE**

In its Rebuttal Memorandum, Microsemi for the first time argues that its contacts with Virginia do not satisfy constitutional due process standards. This Court should disregard that argument because it was made late and misstates the applicable constitutional due process requirements.

First, as a procedural matter, this Court should not consider this argument because Microsemi failed to raise it in its opening Memorandum. *See Bland v. Virginia State Univ.*, No. 3:06CV513-HEH, 2007 WL 446122, at *4 n.2 (E.D. Va. Feb. 7, 2007) (refusing to consider argument raised for the first time in a reply brief). Second, constitutional due process is clearly established here. In a case arising under a federal statute that provides for nationwide service of process, the constitutional due process inquiry is governed by the “national contacts” test under the Fifth Amendment. *Board of Trustees, Sheet Metal Workers’ Nat’l Pension Fund v. McD Metals, Inc.*, 964 F. Supp. 1040, 1043 (E.D. Va. 1997) (Ellis, J., collecting cases); *see Kingsepp v. Wesleyan Univ.*, 763 F. Supp. 22, 24-25 (S.D.N.Y. 1991) (finding that in an antitrust case,

“when a defendant resides in the United States and is subject to nationwide service of process under a federal statute, the defendant is subject to personal jurisdiction in federal court without regard to state long arm statutes and due process requirements are satisfied by the defendant’s contacts with the United States”). This test requires only that “a defendant have sufficient aggregate contacts with the United States as a whole.” *McD Metals*, 964 F. Supp. at 1044. Because the Clayton Act allows for nationwide service of process, (*see* 15 U.S.C. § 22) and Microsemi clearly has sufficient aggregate contacts with the United States as a whole, constitutional due process is satisfied.¹

Microsemi’s argument that its contacts with Virginia do not satisfy constitutional due process principles was made late and is incorrect. Accordingly, this Court should disregard that argument.

Dated: February 17, 2009

Respectfully submitted,

/s/
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¹ By contrast, all of the cases cited by Microsemi for the proposition that its contacts do not meet constitutional due process requirements involve either diversity jurisdiction or federal statutes that do not contain a provision for nationwide service of process.

