

In the
Supreme Court of the United States

WALEED KHALID ABU AL-WALEED AL HOOD AL-QARQANI;
AHMED KHALID ABU AL-WALEED AL HOOD AL-QARQANI;
SHAHA KHALID ABU AL-WALEED AL HOOD AL-QARQANI;
NAOUM AL-DOHA KHALID ABU AL-WALEED AL HOOD AL-
QARQANI; AND NISREEN MUSTAFA JAWAD ZIKRI,

Petitioners,

v.

SAUDI ARABIAN OIL COMPANY,

Respondent.

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

PETITION FOR REHEARING

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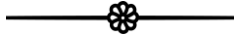
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PETITION FOR REHEARING

Pursuant to United States Supreme Court Rule 44.2, Petitioners petition for panel rehearing of this Court's May 31, 2022 Order denying their Petition for a Writ of Certiorari.



REASONS FOR GRANTING REHEARING

I. THE WORDS AND INTENT OF THE FRAMERS OF ARTICLE III, SECTION 2, CLAUSE 2 OF OUR UNITED STATES CONSTITUTION COMPELS THIS UNITED STATES SUPREME COURT TO INVOKE ORIGINAL JURISDICTION TO PRESIDE OVER THE RECOGNITION AND ENFORCEMENT OF A FOREIGN ARBITRAL AWARD AFFECTING A FOREIGN MINISTER AND AMBASSADOR'S ESTATE.

Petitioners bring this Petition for Panel Rehearing under U.S. Supreme Court Rule 44.2 because "substantial grounds not previously presented" compel this Court to invoke original jurisdiction of a case involving a foreign minister as well as an ambassador's estate. Article III, Section 2, Clause 2 of our U.S. Constitution reads:

In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such

Exceptions, and under such Regulations as the Congress shall make.

Let this article be carefully weighed and considered. The language of the article throughout is manifestly designed to be mandatory in terms of the parameters of U.S. Supreme court jurisdiction. Its obligatory force is quintessential from a constitutional standpoint as U.S. Supreme Court original jurisdiction flows directly from the Constitution.

Exempli gratia, the United States Supreme Court “shall have original jurisdiction” (not “may have jurisdiction”) in “all cases affecting” (not some cases affecting) ambassadors, other public ministers and consuls, and those in which a State shall be Party. Any Federalist embracing an originalist reading of the text of Article III, Section 2, Clause 2 must first acknowledge that there are cases and controversies wherein the U.S. Supreme Court is obligated to preside over a proceeding. Second this U.S. Court must next take the judicial next step of ascertaining whether Article III, Section 2, Clause 2, the case falls within its obligatory or discretionary. The term “ambassadors and other public ministers,” comprehends “all officers having diplomatic functions, whatever their title or designation.” *See, United States v. Hartwell*, 6 Wall. (73 U.S.) 385, 451 (1868).

The judicial power extends to all cases under the laws of the United States; all cases under the treaties made; and all cases affecting ambassadors and public ministers. In the case at bar, Petitioners sought recognition and enforcement of a June 3, 2015 foreign arbitral award affecting the Islamic estate of his Excellency Sheikh Abdullah Al-Solaiman Al-Hamdan, the first Minister of the Kingdom of Saudi Arabia,

Minister of Finance and National Economy to His Majesty King Abdulaziz, minister to his successors, King Saud and King Faisal. Sheikh Khalid Abu Al-Waleed Al Hood Al-Qarqani an advisor to His Majesty King Abdulaziz bin Abdul Rahman, the first king and the founding father of the Kingdom of Saudi Arabia; he also served as advisor and minister to his successors, King Saud and King Faisal Al Saud of the Kingdom of Saudi Arabia. Petitioner, Waleed Al-Qarqani, Ambassador of the Arab League to Italy and the Vatican; and prior the Deputy Chief in New York for the Arab League Mission to the United States. His Royal Highness Prince Mohammad Al Faisal Al Saud, Sheikh Al-Qarqani's granddaughter was married to King Faisal's son, His Royal Highness Prince Mohammad Al Faisal, and his children are current heirs, to Sheikh Khalid Abu Al-Waleed Al-Qarqani, and named recipients to the award.

This case involves the signing of a historic 1933 Concession Agreement between Standard Oil Company of California (present day "Chevron") and the Kingdom of Saudi Arabia. The signer of the agreement was Sheikh Abdullah Al-Solaiman Al-Hamdan, the first Minister of the Kingdom of Saudi Arabia, Minister of Finance and National Economy to His Majesty King Abdulaziz.



This historic photo depicts Saudi Finance Minister, Abdulluah Al-Sulaiman Al-Hamdan with Lloyd Hamilton, the lawyer and a land lease expert for Standard Oil Company of California signing the 1933 Concession Agreement. The lands that Petitioners prevailed in arbitration for unpaid rental arrearages from “Chevron entities”, which includes Aramco’s successor, Appellees, Saudi Aramco, a purported instrumentality of the State of Saudi Arabia. In 1949, the Kingdom of Saudi Arabia, ratified¹ by royal decree, granted exclusive ownership rights of four (4) plots of the concessioned oil land; giving 75% (three-quarters) ownership to Finance Minister Abdullah Al-Solaiman and 25% (one-quarter) ownership to Minister Khalid Abu Al-Waleed Al Hood Al-Qarqani. The 1949 deed of concession that was signed and assumed by Saudi Aramco was executed while Ministers Al-Solaiman and Al-Qarqani worked

¹ Royal Decree No. 1679/5022 signed by Saudi Arabia’s first and founding king, His Majesty King Abdulaziz Bin Abdul Rahman Al Saud.

in their official capacity for the king of Saudi Arabia. The remaining Petitioners, by Sharia Court Order are the children, heirs and owners of their father's estate, Sheikh Khalid Al-Qarqani.² The son and named Petitioner, Waleed Al-Qarqani, followed his father's footsteps and became an Ambassador himself to Rome and the Deputy Chief in New York for the Arab League Mission to the United States.

As this Court is well aware, jurisdiction is the power to hear and determine the subject matter in controversy between parties by adjudicating or exercising any judicial power over them. While U.S. Supreme Court's jurisdiction is largely controlled by Congress, Article III of the Constitution gives this Court original jurisdiction over a small class of cases, specifically those "affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party." While Petitioners understand that the Supreme Court is not a trial court, although very

² The original Petition for Enforcement of Foreign Arbitral Award, (the "Petition") USDC NDC 4:18-cv-03297-JSW Dck#1 submitted to the United States District Court for the Northern District of California on June 1, 2018, included both Heirs of His Excellency Sheikh Abdullah Al-Solaiman Al-Hamdan and Heirs of Sheikh Khalid Al-Qarqani. Since the confirmation proceedings initiated in the United States on June 1, 2018, the Saudi heirs have been harassed, intimidated, interrogated by the Saudi Public Prosecutor, banned from travel and prevented from leaving the Kingdom except after withdrawal from these confirmation proceedings and with the Saudi government's permission per each travel, threatened with imprisonment, confiscation of assets and a retaliatory action by Chevron, unless they withdraw from the confirmation and enforcement proceedings against Chevron and Saudi Aramco in the United States. Several attempts have been made by the Saudi authorities to demand from the heirs to surrender their Deed.

early in its history the justices did conduct one jury trial. *See, Georgia v. Brailsford*, 3 U.S. (3 Dall.) 1 (1794), from a textual perspective, Petitioners' case is not limited to a certiorari review. In fact, in consideration that the Fifth Circuit has relabeled this appeal on alternative legal grounds concerning purported sovereign immunity, this Court should not limit consideration of presiding over this matter through certiorari. Article III, Section 2, Clause 2, provides "substantial grounds not previously presented" for this U.S. court to invoke its original jurisdiction and grant rehearing in accord with U.S. Supreme Court Rule 44.2.

II. THE FIFTH AMENDMENT DUE PROCESS CLAUSE MANDATES CONSTITUTIONAL CONSISTENCY BY OUR ARTICLE III COURTS. THE FIFTH'S CIRCUIT'S *SUA SPONTE* DISMISSAL OF PETITIONERS' PETITION TO ENFORCE A FOREIGN ARBITRAL AWARD ON ALTERNATIVE LEGAL GROUNDS WHICH WAS NOT THE BASIS OF PETITIONER'S UNDERLYING APPEAL VIOLATED PROCEDURAL DUE PROCESS AND THE RULES ENABLING ACT.

Procedural due process means many different things in the numerous contexts in which it applies. *See, e.g. Goldberg v. Kelly*, 397 U. S. 254 (1970); *Bell v. Burson*, 402 U.S. 535 (1971). However, when it comes to Article III courts, legal issues that U.S. appellants bring before a U.S. circuit court are not, or at least should not be, moving targets. Following the filing of a Notice of Appeal wherein an appellant pays \$505 filing fee, the legal issues that any U.S. appellant raises before a U.S. appellate court and that are briefed and raised at oral argument, as a matter of judicial fairness and constitutional due process cannot

disregarded by a judicial panel. Why appeal something wherein the legal issues briefed and presented at oral argument will not be considered and a new set of legal issues and analysis applied?

Here, the Fifth Circuit *sua sponte* altered the legal issues on appeal and thereafter converted an erroneous merits decision in conflict with Justice Antonin Scalia's May 4, 2009 opinion in *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624 (2009), Justice Clarence Thomas' June 1, 2020 decision in *GE Energy Power Conversion France SAS v. Outokumpu Stainless USA LLC*, 590 U.S. ___ (2020) and this Court's June 8, 2020 order vacating the Ninth Circuit Court's decision in *Setty v. Shrinivas Sugandhalaya LLP*, 2021 WL, 2817005 (9th Cir. 2021). Despite the U.S. District Court for the Southern District of Texas (Houston) ruling that Appellees, Saudi Arabian Oil Company ("Saudi Aramco") was deemed a successor to Chevron's U.S. subsidiary Arabian American Oil Company (*aka*, "Aramco") and it was uncontested that Aramco was not a sovereign and that the Kingdom of Saudi Arabia was not afforded sovereign immunity (as both were involved in arbitration proceedings wherein in 1963 Aramco prevailed over the Kingdom of Saudi Arabia³) did it

³ This is significant because at this time there was no Foreign Sovereign Immunity Act 28 U.S.C. §§ 1602, et seq. In the 1960s there was strict sovereign immunity where there were no U.S. exceptions to sovereign immunity; however, because the 1933 Concession Agreement contained an agreement to arbitrate, the arbitrators, two of which were Egyptian and the umpire Arbitrator was a Swiss, ruled that the Kingdom of Saudi Arabia cannot be afforded Foreign Sovereign Immunity as a signatory party to the Concession Agreement, in a seminal declaratory award (The "Onasis Award") which became an international precedent decision in foreign arbitration; Arbitrators held that "the jurisdictional

alter the circuit court's *sua sponte* decision to cloak it with sovereign immunity. Again, while Petitioners prevailed in defeating Appellees claim of sovereign immunity in the United States District Court for the South District of Texas, their appeal concerning the merits of a "summary proceeding" were ignored where the circuit court ordained Saudi Aramco with sovereign immunity on appeal.

Understandably, there is a significant amount of case law and legal precedent governing procedural due process. However, let's take a moment apply the concept of judicial fairness and practicality to assess when an appellant pays a \$505 filing fee and invests considerable amounts of monies in paying appellate attorneys' fees, there is a reasonable expectation that legal issues briefed on appeal and presented at oral argument will be the issues decided upon by the judicial panel and an appellate court will not *sua sponte* modify a "summary proceeding" to imposing an affirmative defense of sovereign immunity for purposes of evading clear judicial error by a U.S. district court. In the case of Petitioners seeking confirmation and enforcement against these oil cartels (Chevron and Saudi Aramco), there has been an unprecedented exercise of *sua sponte* decision making that deviates from Petitioners' ability to show clear legal error.

immunity of states 'excludes the possibility, for the judicial authorities of the country of the seat, of exercising their right of supervision and interference in the arbitral proceedings'. Declaratory award. *Saudi Arabia v Arabian American Oil Company (Aramco)* (1963) 27 ILR 117, at 145. The Award of 23 August 1958 between Saudi Arabia and the Arabian American Oil Company (Aramco) is reproduced in INTERNATIONAL LAW REPORTS, 27 (1963), pp. 117-229.

As this Court is aware, under 9 U.S.C. § 6, any Petition for Recognition and Enforcement shall be treated as a motion. Practically speaking, there can be no sovereign immunity analysis for a circuit court to apply on cases that are summary in nature, especially if not the basis for the underlying appeal. Ergo, the legal compass as to procedural fairness points to the Fifth Amendment Due Process Clause. While the Fifth Amendment Due Process Clause is brief, important parts of the Supreme Court's constitutional doctrine rest on it. The Due Process clause reiterates under the rule of law the government, including Article III Courts must act in accordance with legal rules and not contrary to them. Specifically, the application of the Due Process Clause is the doctrine of "procedural due process," which concerns the fairness and lawfulness of decision-making methods used by the courts and the executive. An Article III court violates due process when it frustrates the fairness of proceedings, such as it has done here by *sua sponte* invoking sovereign immunity which was not the basis of the underlying appeal.

While Petitioners are mindful that U.S. circuit courts and judges are vested with certain inherent authority, as a matter of law, this authority cannot compromise procedural due process, nor exceed the statutory restrictions contained in the Rules Enabling Act, 28 U.S.C. § 2071, *et seq.* nor be inconsistent with the procedural limitations specified in Fed. R. Civ. P. 47. Respectfully, our judicial system has installed an due process engine in the machinery of our Article III courts. By these terms judicial authority that undermines due process of law or violates an international

treaty relied upon by foreign nationals undermines public confidence in our judicial institutions.

No sovereign immunity is not applicable within a summary proceeding and it was an error and a violation of constitutional procedural due process for the Fifth Circuit to *sua sponte* apply such affirmative defense to a summary proceeding and reverse the lower court's denial of sovereign immunity to remand Petitioners case as a jurisdictional dismissal.



CONCLUSION

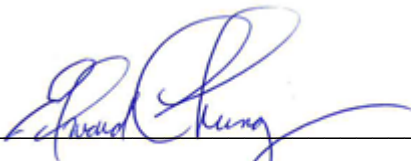
The petition for a rehearing should be granted.

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JUNE 27, 2022

CERTIFICATE OF COUNSEL

As counsel for the Petitioners, I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.



EDWARD C. CHUNG