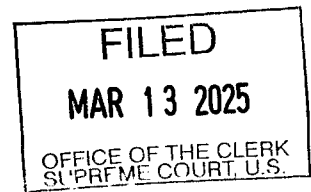


No. **25-6039**



IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

ALLAN DOUGLAS WILSON --- PETITIONER

VS.

UNITED STATES DEPARTMENT OF STATE AND
UNITED STATES EMBASSY PHILIPPINES --- RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the D.C. Circuit's reliance on mootness doctrine to avoid addressing a case of first impression regarding temporary deprivation of citizenship rights constitutes an error that warrants this Court's review, especially where the petitioner has raised substantive constitutional and statutory claims for compensatory damages that remain viable despite the mootness of injunctive relief claims.

2. Whether 28 U.S.C. § 1782, which authorizes federal district courts to order a "person" to provide testimony or produce documents "for use in a proceeding in a foreign or international tribunal," allows courts to order federal agencies to preserve and produce evidence through their representatives, or whether the federal government is categorically excluded from the statute's reach despite the absence of any textual distinction between the entity receiving a court order and the individuals who would ultimately provide testimony or evidence, thereby depriving American citizens of their constitutional right to due process when seeking evidence for use in foreign proceedings.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

RELATED CASES

- Wilson v. United States Department of State and United States Embassy Philippines, No. 1:23-cv-00216-CJN, U.S. District Court for the District of Columbia. Judgment entered September 5, 2024.
- Wilson v. United States Department of State and United States Embassy Philippines, No. 24-5204, U.S. Court of Appeals for the District of Columbia Circuit. Judgment entered December 23, 2024.
- Wilson v. United States Department of State and United States Embassy Philippines, No. 24-5204, U.S. Court of Appeals for the District of Columbia Circuit. Petition for rehearing denied April 22, 2025.
- Wilson v. Ottawa Police Service et al., Civil Action No. cv-0097442, Ontario Superior Court of Justice. Case filed September 17, 2024.
- Wilson v. Ottawa Police Service et al., File No. DC-25-00002976, Ontario Divisional Court. Case transferred from Ontario Superior Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The order of the United States Court of Appeals denying rehearing appears at Appendix C to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The petition for rehearing filed with the United States Court of Appeals appears at Appendix D to the petition.

The opinion of the United States District Court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was December 23, 2024.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was filed on February 14, 2025, and was denied by the United States Court of Appeals on April 22, 2025, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1782(a) provides in relevant part:

"The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation."

1 U.S.C. § 1 provides in relevant part:

"In determining the meaning of any Act of Congress, unless the context indicates otherwise... the words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."

5 U.S.C. § 552(a)(3)(A) (Freedom of Information Act) provides in relevant part:

"[E]ach agency, upon any request for records... shall make the records promptly available to any person."

U.S. Const. amend. V provides in relevant part:

"No person shall... be deprived of life, liberty, or property, without due process of law..."

STATEMENT OF THE CASE

This case presents two distinct but related issues: (1) whether the D.C. Circuit improperly avoided a case of first impression regarding temporary deprivation of citizenship rights by misapplying mootness doctrine, and (2) whether federal agencies

can be ordered to preserve and produce evidence through their representatives under 28 U.S.C. § 1782 for use in foreign proceedings.

Background of Citizenship Rights Claims

Petitioner Allan Douglas Wilson sought a U.S. passport at the U.S. Embassy in the Philippines in 2022, believing that official recognition of his U.S. citizenship would provide constitutional protections against alleged surveillance that had caused him physical harm. The government initially denied his request, and Wilson brought suit against the Department of State and the Embassy for injunctive relief and damages. After Wilson filed suit, the government issued him a passport.

The District Court dismissed Wilson's claims on September 5, 2024, finding that his request for injunctive relief was moot since he had received a passport, and that he had no cause of action for damages under any of the legal theories he presented: 42 U.S.C. § 1983, 18 U.S.C. § 242, Bivens, or the Federal Tort Claims Act.

Wilson appealed to the D.C. Circuit, which summarily affirmed the District Court's decision on December 23, 2024, stating that "the merits of the parties' positions are so clear as to warrant summary action." The court held that Wilson's claim for injunctive relief was moot and that he had no viable cause of action for damages under any of the theories he presented.

Wilson filed a petition for panel rehearing on February 14, 2025, arguing that:

1. The court improperly avoided a case of first impression regarding remedies for temporary revocation of citizenship rights;
2. The court failed to address his constitutional and statutory bases for relief;
3. The court overlooked that he had explicitly abandoned injunctive relief claims;
4. The court misapplied mootness doctrine to his compensatory damages claims; and
5. The constitutional implications of temporary deprivation of citizenship rights warranted fuller consideration.

On April 22, 2025, the D.C. Circuit denied the petition for rehearing without explanation and directed the Clerk to "accept no further submissions from appellant in this closed case."

Background of § 1782 Evidence Preservation Claims

Background of § 1782 Evidence Preservation Claims

As part of his case, Wilson sought to preserve evidence held by federal agencies, specifically including evidence potentially held by the Central Intelligence Agency (CIA), for use in an international proceeding in Canada. Wilson filed a motion under 28 U.S.C. § 1782 in the District Court requesting an order for the CIA to preserve records subject to a Privacy Act request that Wilson had submitted earlier in 2024.

The Canadian proceeding at issue is *Wilson v. Ottawa Police Service et al.*, originally filed as Civil Action No. cv-0097442 in the Ontario Superior Court of Justice on September 17, 2024, and subsequently transferred to the Ontario Divisional Court as

File No. DC-25-00002976. In this Canadian action, Petitioner alleges violations of his rights under the Canadian Charter of Rights and Freedoms, claiming that the defendants (Ottawa Police Service, The Ottawa Hospital, and Canadian Joint Operations Command) engaged in a coordinated campaign of surveillance, involuntary medical treatment, unlawful detention, and experimentation without his consent over a 24-year period.

The evidence Petitioner sought to preserve through the § 1782 motion relates directly to allegations in the Canadian case concerning information sharing between Canadian authorities and U.S. government agencies, specifically including claims that information was "shared with U.S. Government officials without warrants." The Canadian proceeding seeks both injunctive relief against ongoing surveillance activities and substantial damages totaling \$13,109,059.50 CAD.

The District Court characterized this approach as "procedurally unusual," noting that "motions under § 1782 are typically brought as standalone suits." The court denied Wilson's motion, relying on the D.C. Circuit's precedent in *Al Fayed v. CIA*, 229 F.3d 272 (D.C. Cir. 2000), which held that the federal government is excluded from the definition of a "person" subject to discovery under § 1782.

Wilson intended to use the § 1782 order in conjunction with a planned Freedom of Information Act (FOIA) request to the CIA. The preservation order was necessary to prevent the potential destruction of evidence that could be vital to Wilson's proceedings

in Canada, as well as to ensure that any subsequent FOIA request would yield complete records.

The D.C. Circuit affirmed the District Court's denial of Wilson's § 1782 motion, citing *Al Fayed* and concluding that "the federal government is excluded from the definition of a 'person' subject to discovery under § 1782."

The denial of Wilson's motion to preserve evidence has potentially allowed for the destruction of evidence that could have been vital for his Canadian proceedings, raising serious concerns regarding both the integrity of the international judicial process and fundamental principles of due process.

REASONS FOR GRANTING THE WRIT

I. THE COURT IMPROPERLY AVOIDED A CASE OF FIRST IMPRESSION

This Court should grant certiorari because the D.C. Circuit improperly used mootness doctrine to avoid addressing a novel legal issue of first impression. The case presents a previously unaddressed question regarding remedies available to U.S. citizens whose citizenship rights are temporarily revoked without due process. Neither the district court nor the D.C. Circuit cited any precedent addressing similar circumstances because this is genuinely a case of first impression that warrants full consideration rather than summary disposition.

In his petition for rehearing, Wilson argued that the Court's reliance on mootness appears to be a mechanism to avoid addressing a novel legal issue never before presented to the Circuit. Neither the district court nor the D.C. Circuit cited any precedent addressing similar circumstances—precisely because this case presents a matter of first impression regarding remedies available to U.S. citizens whose citizenship rights are temporarily revoked without due process.

The D.C. Circuit's use of mootness doctrine to dismiss this novel issue contradicts the principle that cases of first impression deserve careful consideration, particularly when they involve fundamental constitutional rights. As this Court noted in *United States v. Majestic Rely. Corp.*, 344 U.S. 434, 437 (1953), courts should carefully consider cases presenting novel issues affecting fundamental rights.

The summary affirmance and subsequent denial of rehearing without analysis further compound the problem. The D.C. Circuit's terse order granting summary affirmance and denying rehearing fail to engage with the substantive legal questions presented, effectively insulating the issue from appellate review. This approach creates a troubling precedent whereby courts can sidestep novel constitutional questions through mechanical application of justiciability doctrines without addressing the underlying merits.

This Court has consistently emphasized the importance of allowing thorough consideration of novel legal questions, especially those involving fundamental constitutional rights. The lower courts' avoidance of the substantive issues presented in

this case—through invocation of mootness without addressing the distinct compensatory damages claims—warrants this Court's review. Without intervention, a significant constitutional question regarding temporary deprivation of citizenship rights will remain unresolved, with no remedy available to citizens who suffer similar deprivations in the future.

The fact that both the District Court and the D.C. Circuit avoided addressing the fundamental constitutional issue—whether temporary deprivation of citizenship rights without due process gives rise to a compensatory remedy—underscores the need for this Court's intervention. Citizens have a right to expect that courts will not use procedural mechanisms to avoid addressing substantial constitutional questions, particularly when they involve such fundamental rights as citizenship.

II. THE COURT FAILED TO ADDRESS CONSTITUTIONAL AND STATUTORY BASES FOR RELIEF

This Court should grant certiorari because both the District Court and the D.C. Circuit wholly failed to address Petitioner's primary causes of action under the U.S. Constitution and Immigration and Nationality Act (INA) §§ 301 and 309. These fundamental bases for relief were presented in both the district court and on appeal, yet neither court acknowledged them in their respective orders.

This oversight is particularly significant given this Court's definitive ruling in *Afroyim v. Rusk*, 387 U.S. 253 (1967), which held that citizenship cannot be involuntarily

revoked under the Fourteenth Amendment. The effective denial of Petitioner's citizenship rights for one year, without voluntary renunciation, constitutes a de facto revocation of citizenship in violation of *Afroyim*'s core holding.

Instead of addressing these constitutional claims, both courts focused exclusively on whether Petitioner had viable causes of action under 42 U.S.C. § 1983, 18 U.S.C. § 242, Bivens, or the FTCA. This approach fundamentally mischaracterized Petitioner's claims and avoided addressing the core constitutional question: whether temporary deprivation of citizenship rights without due process is constitutionally permissible and, if not, what remedies are available.

The failure to address these constitutional violations renders the courts' summary dispositions incomplete and erroneous. By ignoring Petitioner's primary constitutional and statutory arguments, the lower courts effectively denied him any opportunity to have these substantial legal questions addressed. This kind of selective engagement with a litigant's arguments is particularly problematic when fundamental constitutional rights are at stake.

This Court should grant certiorari to ensure that lower courts do not avoid addressing substantial constitutional questions through selective engagement with litigants' arguments. The question of what remedies are available for temporary deprivation of citizenship rights is too important to leave unaddressed, and this Court's intervention is necessary to provide guidance on this significant constitutional issue.

III. THE COURT OVERLOOKED THAT APPELLANT EXPLICITLY ABANDONED INJUNCTIVE RELIEF CLAIMS

This Court should grant certiorari because the D.C. Circuit's conclusion that "appellant's claim for injunctive relief was moot" overlooks a critical procedural fact: Petitioner formally abandoned all injunctive relief claims in his Motion for Partial Summary Judgment 'Statement of Facts' filed September 11, 2023.

In the U.S. District Court for the District of Columbia, a plaintiff may expressly waive claims through clear statements in motions or briefs. Petitioner did exactly this, yet both the District Court and the D.C. Circuit erroneously treated the abandoned injunctive claims as live controversies before dismissing them as moot.

This error has significant implications for the disposition of the case. By focusing on mootness of injunctive relief claims that had already been abandoned, both courts avoided addressing Petitioner's remaining claims for compensatory damages based on the constitutional violations he alleged. This approach effectively denied Petitioner any opportunity to have his damages claims considered on their merits.

The lower courts' failure to recognize Petitioner's explicit abandonment of injunctive relief claims demonstrates a troubling lack of engagement with the actual arguments and procedural history of the case. This kind of error is particularly concerning when it results in the dismissal of potentially meritorious constitutional claims without consideration.

This Court should grant certiorari to correct this error and to ensure that lower courts properly engage with the actual claims presented by litigants, rather than dismissing cases based on mischaracterizations of their procedural posture. The D.C. Circuit's failure to acknowledge Petitioner's express abandonment of injunctive relief claims calls into question the thoroughness of its review and underscores the need for this Court's intervention.

IV. THE COURT MISAPPLIED THE MOOTNESS DOCTRINE TO COMPENSATORY DAMAGES

This Court should grant certiorari because the D.C. Circuit misapplied the mootness doctrine to Petitioner's compensatory damages claims. The court's order fails to acknowledge or address Petitioner's primary claim for compensatory damages, which was clearly articulated yet ignored in both the District Court's dismissal order and the D.C. Circuit's summary affirmance.

The mere fact that injunctive relief became moot does not extinguish separate claims for compensatory damages arising from past constitutional violations. As this Court held in *Powell v. McCormack*, 395 U.S. 486, 495-500 (1969), while injunctive relief may become moot, damages claims can remain viable. The D.C. Circuit's failure to apply this well-established principle constitutes a significant legal error that warrants this Court's review.

The absence of precedent addressing temporary deprivations of citizenship rights and corresponding remedies further demonstrates that this is a case of first impression that should not have been summarily dismissed through mootness doctrine. The D.C. Circuit's approach effectively creates a jurisdictional gap where no remedy exists for temporary but unconstitutional deprivations of citizenship rights.

This approach is particularly troubling because it allows the government to engage in a form of strategic mooting—temporarily denying constitutional rights and then restoring them before a final judgment on the merits, thereby avoiding any accountability for the interim deprivation. Without the possibility of compensatory damages, there is no deterrent against such constitutional violations, and citizens have no remedy for the harms they suffer during the period of deprivation.

This Court should grant certiorari to clarify that claims for compensatory damages arising from past constitutional violations remain viable even when claims for injunctive relief become moot. Without this clarification, government agencies will have an incentive to temporarily deprive citizens of their constitutional rights, secure in the knowledge that they can avoid liability by restoring those rights before final judgment.

V. THE CONSTITUTIONAL IMPLICATIONS WARRANT FULLER CONSIDERATION

This Court should grant certiorari because the constitutional implications of this case warrant fuller consideration than they received in the courts below. The D.C. Circuit's

summary disposition creates a dangerous precedent whereby government agencies could effectively revoke citizenship rights for arbitrary periods without consequence, contrary to both *Afroyim* and the Fourteenth Amendment's citizenship protections.

The temporary but complete denial of Petitioner's citizenship rights for one year represents a significant constitutional injury. The rights of citizenship are among the most fundamental in our constitutional system, and their temporary deprivation without due process raises serious constitutional concerns that deserve thorough judicial consideration, not summary dismissal.

The D.C. Circuit's approach effectively creates a constitutional blind spot, where temporary deprivations of citizenship rights—no matter how severe or unjustified—are beyond judicial remedy. This result cannot be reconciled with this Court's jurisprudence emphasizing the fundamental nature of citizenship rights and the constitutional limitations on the government's power to abridge those rights.

The constitutional question presented—whether temporary deprivation of citizenship rights without due process is constitutionally permissible and, if not, what remedies are available—is too important to leave unaddressed. The absence of clear precedent on this issue further underscores the need for this Court's guidance.

This Court should grant certiorari to ensure that constitutional questions of this magnitude receive the thorough consideration they deserve, rather than being subject to summary disposition through mechanical application of justiciability doctrines.

Without this Court's intervention, a significant gap in constitutional protection will persist, leaving citizens vulnerable to temporary but consequential deprivations of their most fundamental rights.

VI. THE D.C. CIRCUIT'S RULING IN AL FAYED FUNDAMENTALLY BETRAYS THE SPIRIT AND PURPOSE OF § 1782, ESPECIALLY IN THE CONTEXT OF EVIDENCE PRESERVATION

Turning to the second question presented, this Court should grant certiorari because the D.C. Circuit's decision in *Al Fayed* represents a stark divergence from the core purpose of § 1782—to provide broad assistance to foreign tribunals and litigants in obtaining evidence located within the United States. By categorically excluding federal agencies from the statute's reach, the D.C. Circuit has transformed § 1782 from an instrument of international cooperation and transparency into a shield protecting government agencies from accountability in international proceedings.

This result undermines the statute's fundamental purpose in three critical ways:

1. It creates an asymmetrical system where the United States expects cooperation from foreign governments in providing evidence for U.S. proceedings while simultaneously exempting its own agencies from reciprocal obligations;
2. It places the interests of government secrecy above the interests of citizens seeking access to justice in international forums;

3. It arbitrarily limits the statute's reach based on distinctions not found in the statutory text.

The *Al Fayed* decision effectively creates a two-tiered system of justice: private entities and individuals can be ordered to provide evidence for use in foreign proceedings, while government agencies—often the sole possessors of important evidence—remain insulated from such orders regardless of the importance of the evidence they hold.

In the specific context of evidence preservation, this problem is particularly acute. When Petitioner sought an order requiring the CIA to preserve evidence that could later be requested through FOIA, the D.C. Circuit's interpretation prevented the court from issuing this minimally intrusive order. The result is that important evidence may now be destroyed with impunity—evidence that might have been vital to Petitioner's proceedings in Canada.

This Court should grant certiorari to ensure that § 1782 serves its intended purpose as a tool for international judicial cooperation, rather than as a shield for government secrecy. Without this Court's intervention, the statute will continue to operate in a fundamentally asymmetrical way, undermining both international comity and American citizens' access to justice in international forums.

VII. THE D.C. CIRCUIT'S INTERPRETATION IGNORES THE DISTINCTION BETWEEN AN ENTITY RECEIVING A COURT ORDER AND THE INDIVIDUALS WHO PROVIDE TESTIMONY OR EVIDENCE

This Court should grant certiorari because the D.C. Circuit in *Al Fayed* fundamentally erred by failing to recognize the distinction between the entity receiving a court order and the individuals who ultimately provide testimony or produce documents. Section 1782 states that a district court "may order him to give his testimony or statement or to produce a document or other thing." The statute does not differentiate between the "person" who receives the order and the individual who gives testimony.

When a court issues an order to a corporation under § 1782, it is understood that the corporation itself cannot literally testify—rather, a representative of the corporation provides testimony or produces documents on behalf of the entity. The same logic should apply to federal agencies:

1. A court can order a federal agency to provide testimony or documents;
2. The agency, through its representatives or officials, complies with that order;
3. Nothing in the text of § 1782 precludes this common-sense reading.

The D.C. Circuit's interpretation creates an artificial barrier to discovery that is not supported by the statutory text and serves only to insulate government agencies from transparency and accountability in international proceedings.

This interpretive error is particularly significant because it effectively immunizes federal agencies from the reach of § 1782, regardless of the importance of the evidence they hold or the centrality of that evidence to foreign proceedings. This result cannot be reconciled with the statute's purpose of providing broad assistance to foreign tribunals and litigants.

This Court should grant certiorari to correct this interpretive error and to clarify that § 1782 permits courts to order federal agencies to produce evidence through their representatives, just as courts routinely order corporate entities to do the same. Without this clarification, federal agencies will continue to enjoy an unjustified exemption from the statute's reach, undermining its effectiveness as a tool for international judicial cooperation.

VIII. SECTION 1782 FUNCTIONS AS AN INTERNATIONAL COUNTERPART TO FOIA, WITH AGENCIES SIMILARLY REQUIRED TO RESPOND THROUGH REPRESENTATIVES

This Court should grant certiorari because the D.C. Circuit's interpretation in *Al Fayed* creates an inconsistent legal framework where federal agencies must comply with transparency obligations under FOIA domestically but can evade similar obligations in the international context under § 1782. This inconsistency serves no legitimate purpose and only benefits government agencies seeking to avoid scrutiny of their actions in international proceedings.

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, provides a useful parallel that demonstrates the flawed reasoning in *Al Fayed*. Under FOIA, federal agencies are required to make records "promptly available to any person" upon request. When responding to FOIA requests, agencies necessarily act through their representatives—officials who search for, review, and produce responsive documents.

Like § 1782, FOIA does not explicitly define federal agencies as "persons" who can be ordered to produce documents. Instead, FOIA creates a mechanism through which individuals can request documents, and agencies comply with these requests through designated representatives.

The parallel is clear:

1. Both FOIA and § 1782 establish mechanisms for obtaining information from government agencies;
2. Both statutes necessarily contemplate that agencies will respond through their representatives;
3. Both statutes serve important public interests in transparency and access to information.

Section 1782 can be understood as extending this document production framework to the international context, allowing foreign tribunals and litigants to access evidence that might otherwise be unavailable. Just as FOIA does not require that federal agencies themselves be defined as "persons" in order to respond to information requests

through their representatives, § 1782 should not be constrained by an artificially narrow reading of the term "person."

In the specific case of Petitioner, the denial of the § 1782 motion to preserve evidence threatens to undermine the effectiveness of the FOIA process itself. Petitioner sought to ensure that evidence would remain available for a subsequent FOIA request.

Without the preservation order, the CIA retains the ability to destroy potentially relevant evidence before it can be requested through FOIA—effectively circumventing both statutory schemes through a technical reading of § 1782 that serves no legitimate purpose.

This Court should grant certiorari to establish a coherent framework that recognizes § 1782 as an international counterpart to FOIA, with both statutes creating mechanisms for obtaining information from government entities through their representatives.

Without this clarification, government agencies will continue to exploit the inconsistency between these two statutory schemes to shield themselves from accountability in international proceedings.

IX. THE TEXTUAL ANALYSIS IN AL FAYED IS FUNDAMENTALLY FLAWED

This Court should grant certiorari because the textual analysis in *Al Fayed* is fundamentally flawed. The decision relies on a rigid and mechanical application of the Dictionary Act, 1 U.S.C. § 1, without properly considering the context of § 1782. The Dictionary Act itself states that its definitions apply "unless the context indicates

otherwise." The context of § 1782—a statute designed to provide broad discovery assistance for international proceedings—strongly indicates that federal agencies should be included.

Moreover, even if the term "person" in § 1782 excludes federal agencies themselves, nothing in the statute precludes a court from:

1. Ordering an agency to designate an appropriate official to provide testimony;
2. Ordering the preservation of documents in agency possession; or
3. Ordering the production of agency records through agency representatives.

The D.C. Circuit's interpretation creates a false dichotomy between the agency and its representatives, when in reality both corporate and government entities can only act through human agents. This technical parsing of language serves to frustrate the statute's purpose and undermines its effectiveness as a tool for international judicial cooperation.

The *Al Fayed* decision relies on an overly technical reading of the statute that ignores the practical realities of how discovery operates. When a court orders a corporation to provide testimony or documents under § 1782, it is understood that natural persons—employees or officers of the corporation—will actually provide that testimony or those documents. There is no principled reason why the same framework should not apply to federal agencies.

This Court should grant certiorari to correct this interpretive error and to ensure that § 1782 is interpreted in a manner consistent with its purpose and practical operation.

Without this clarification, federal agencies will continue to enjoy an unjustified exemption from the statute's reach, undermining its effectiveness as a tool for international judicial cooperation.

X. THE D.C. CIRCUIT'S INTERPRETATION TRANSFORMS § 1782 INTO AN INSTRUMENT OF STATE SECRECY RATHER THAN CITIZEN EMPOWERMENT

This Court should grant certiorari because the D.C. Circuit's interpretation in *Al Fayed* fundamentally transforms § 1782 from a tool designed to empower citizens and foreign tribunals into an instrument that shields government agencies from accountability in international proceedings. This transformation contradicts both the letter and spirit of the statute.

Congress enacted § 1782 to facilitate the gathering of evidence for use in foreign proceedings, recognizing that access to evidence is essential to the fair administration of justice. The statute represents a congressional judgment that U.S. courts should provide assistance to foreign tribunals and litigants seeking evidence located within the United States. By categorically excluding federal agencies from the statute's reach, the D.C. Circuit has effectively privileged government secrecy over this congressional policy favoring transparency and international cooperation.

This Court has repeatedly emphasized that transparency in government serves vital public interests. As noted in *Dep't of Air Force v. Rose*, 425 U.S. 352, 372 (1976),

"disclosure, not secrecy, is the dominant objective" of statutes like FOIA. The same principle should inform the interpretation of § 1782, which serves a similar function in the international context.

The D.C. Circuit's interpretation creates a troubling asymmetry where private entities and individuals can be ordered to provide evidence for use in foreign proceedings, while government agencies—often the sole possessors of crucial evidence—remain insulated from such orders. This asymmetry serves no legitimate purpose and only benefits government agencies seeking to avoid scrutiny of their actions in international proceedings.

This Court should grant certiorari to ensure that § 1782 is interpreted in a manner consistent with its purpose of promoting transparency and international judicial cooperation, rather than as a shield for government secrecy. Without this Court's intervention, federal agencies will continue to exploit the D.C. Circuit's interpretation to avoid accountability in international proceedings, undermining both the statute's purpose and the interests of justice.

XI. THE PROPER FOCUS SHOULD BE ON THE AGENCY REPRESENTATIVES WHO PROVIDE TESTIMONY OR DOCUMENTS

This Court should grant certiorari because the proper focus under § 1782 should be on the individuals who actually provide testimony or documents, rather than on the entity that receives the court order. The statute authorizes a district court to "order him to give his testimony or statement or to produce a document or other thing." This

language focuses on the act of giving testimony or producing documents—acts necessarily performed by natural persons.

When a court orders a corporation to provide testimony under § 1782, the corporation designates an appropriate representative to testify on its behalf. Similarly, when a court orders a corporation to produce documents, individual employees locate, review, and produce those documents. Nothing in the text of § 1782 suggests that federal agencies should be treated differently in this regard.

Indeed, this Court's jurisprudence recognizes that entities—whether corporate or governmental—can only act through natural persons. As the Court noted in *Sachs v. Republic of Austria*, 577 U.S. 27, 34-35 (2015), "a principal acts through the actions of its agents." This principle applies with equal force in the context of § 1782.

The D.C. Circuit's interpretation in *Al Fayed* artificially separates the agency from its representatives, creating a distinction without a difference. Whether the court orders an agency to produce documents or orders an agency official to produce documents in his official capacity, the practical result is the same: agency records are produced through the actions of agency personnel.

This Court should grant certiorari to clarify that § 1782 permits courts to order federal agencies to produce evidence through their representatives, just as courts routinely order corporate entities to do the same. Without this clarification, federal agencies will continue to enjoy an unjustified exemption from the statute's reach, undermining its effectiveness as a tool for international judicial cooperation.

XII. THE LEGISLATIVE HISTORY SUPPORTS A BROADER READING OF § 1782 AS SERVING CITIZEN INTERESTS RATHER THAN STATE SECRECY.

This Court should grant certiorari because the legislative history of § 1782 supports a broader reading of the statute that includes federal agencies within its reach. Congress enacted § 1782 as part of a broader effort to improve international judicial cooperation and to provide assistance to foreign tribunals and litigants seeking evidence in the United States.

The 1964 amendments to § 1782, which established the current framework, were designed to "clarify and liberalize existing U.S. procedures for assisting foreign and international tribunals and litigants in obtaining oral and documentary evidence in the United States." The amendments reflected a congressional judgment that U.S. courts should provide broad assistance to foreign tribunals and litigants, with few limitations or exceptions.

Nothing in the legislative history suggests that Congress intended to exclude federal agencies from the statute's reach. Indeed, such an exclusion would be inconsistent with the statute's purpose of providing comprehensive assistance to foreign tribunals and litigants. As this Court noted in *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978), "the basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society." Similarly, the basic purpose of § 1782 is to ensure that foreign tribunals have access to the evidence necessary to render just decisions—a purpose that would be undermined by excluding federal agencies from its reach.

The D.C. Circuit's interpretation in *Al Fayed* privileges government secrecy over this congressional policy favoring transparency and international cooperation. This result cannot be reconciled with the statute's purpose or legislative history, both of which support a reading that includes federal agencies within the statute's reach.

This Court should grant certiorari to ensure that § 1782 is interpreted in a manner consistent with its purpose and legislative history, rather than in a manner that arbitrarily limits its reach based on distinctions not found in the statutory text.

Without this Court's intervention, the statute will continue to operate in a way that undermines its fundamental purpose.

XIII. THE DENIAL OF EVIDENCE PRESERVATION ORDERS VIOLATES AMERICAN CITIZENS' CONSTITUTIONAL DUE PROCESS RIGHTS

This Court should grant certiorari because the D.C. Circuit's interpretation of § 1782 in *Al Fayed* effectively denies American citizens their constitutional right to due process when seeking evidence for use in foreign proceedings. The Fifth Amendment guarantees that no person shall be "deprived of life, liberty, or property, without due process of law." Due process fundamentally requires that parties have a meaningful opportunity to present their cases, including access to relevant evidence.

The present case illustrates this constitutional concern with particular clarity.

Petitioner is actively litigating substantial claims in the Ontario Divisional Court (File No. DC-25-00002976, transferred from Ontario Superior Court case cv-0097442)

alleging violations of his rights under the Canadian Charter of Rights and Freedoms. The Canadian case specifically alleges information sharing between Canadian authorities and U.S. government agencies without proper authorization. Evidence in possession of the CIA regarding such information sharing would be directly relevant to these claims, which seek both injunctive relief and damages exceeding \$13 million CAD. However, due to the D.C. Circuit's interpretation of § 1782 in *Al Fayed*, Petitioner has been categorically denied the ability to preserve this potentially crucial evidence—evidence that may be destroyed before it can be requested through FOIA or other mechanisms. This denial substantially impairs Petitioner's ability to present his case effectively in the Canadian proceedings, undermining his constitutional right to due process.

This Court has consistently recognized that access to evidence is a critical component of due process. As the Court noted in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), "the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." A meaningful opportunity to be heard necessarily includes access to relevant evidence that might support one's claims or defenses.

Similarly, in *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970), this Court held that due process requires that a party have "an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally." And in *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972), the Court emphasized that due process includes "the right to present evidence and confront adverse witnesses."

When an American citizen is involved in a proceeding in a foreign tribunal and seeks evidence located within the United States, § 1782 provides the primary mechanism for obtaining that evidence. By excluding federal agencies from the statute's reach, the D.C. Circuit's interpretation in *Al Fayed* effectively denies American citizens access to potentially crucial evidence held by those agencies, undermining their right to a meaningful opportunity to be heard in foreign proceedings.

This problem is particularly acute in the context of evidence preservation. As this Court recognized in *Armstrong v. Executive Office of the President*, 1 F.3d 1274, 1282 (D.C. Cir. 1993), federal agencies have statutory obligations under the Federal Records Act, 44 U.S.C. § 3301 et seq., to preserve certain records. However, without a § 1782 preservation order, agencies retain discretion over which records to preserve and for how long. This discretion creates a risk that important evidence might be destroyed before it can be requested through FOIA or other mechanisms.

The denial of evidence preservation orders under § 1782 thus creates a significant risk that American citizens will be unable to obtain evidence necessary to support their claims or defenses in foreign proceedings. This result effectively denies them the "meaningful opportunity to be heard" that due process requires. As this Court noted in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429 (1982), "the Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged."

This Court should grant certiorari to ensure that § 1782 is interpreted in a manner consistent with the constitutional guarantee of due process, rather than in a manner that arbitrarily limits American citizens' access to evidence based on whether that evidence is held by a federal agency. Without this Court's intervention, American citizens will continue to face arbitrary barriers to obtaining evidence necessary to support their claims in foreign proceedings, undermining their constitutional right to due process.

XIV. THIS CASE PRESENTS AN IDEAL VEHICLE TO RESOLVE THESE IMPORTANT QUESTIONS

This Court should grant certiorari because this case presents an ideal vehicle for resolving the important questions presented. The case presents clean legal issues that were fully briefed in the courts below and directly implicate fundamental questions of constitutional rights and statutory interpretation.

First, with respect to the mootness issue, the case presents a clear question of whether and when courts can dismiss compensatory damages claims as moot based on the mootness of related injunctive relief claims. The D.C. Circuit's summary disposition provides this Court with an opportunity to clarify the proper application of mootness doctrine to damages claims arising from past constitutional violations.

Second, with respect to the § 1782 issue, the case directly raises the question of whether federal agencies can be ordered to preserve and produce evidence through their representatives for use in foreign proceedings. The active, ongoing litigation in

the Ontario Divisional Court (File No. DC-25-00002976) provides a concrete, practical context that demonstrates the real-world significance of this legal question. The specific allegations in the Canadian case regarding information sharing between Canadian authorities and U.S. government agencies make the evidence Petitioner sought to preserve particularly relevant to those proceedings.

The D.C. Circuit's reliance on *Al Fayed* presents this Court with an opportunity to review a precedent that has significant implications for international judicial cooperation and American citizens' access to evidence. The fact that Petitioner is concurrently litigating parallel claims in both U.S. and Canadian courts, with allegations that involve potential information sharing between agencies of both countries, makes this case particularly suitable for addressing the reach of § 1782.

Moreover, the specific context of this case—involving claims that raise serious concerns of potentially defamatory statements by government lawyers in both the U.S. and Canada, statements which by their nature cannot both be true—highlights the importance of evidence preservation orders in cases involving cross-border allegations and defenses.

Both questions presented are of substantial importance and warrant this Court's review. The first question implicates fundamental constitutional rights of citizenship and the availability of remedies for temporary deprivations of those rights. The second question affects American citizens' ability to obtain evidence for use in foreign

proceedings and implicates important principles of international comity and judicial cooperation.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,



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