No. 26-

IN THE

Supreme Court of the United States

NEIL MCDOUGALL,

Petitioner,

v.

SAUDI ARABIAN OIL COMPANY,
DOING BUSINESS AS SAUDI ARAMCO,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a plaintiff who sues an undisputed foreign-state defendant under the FSIA must plead that a domestic subsidiary through which the defendant allegedly acted also qualifies as a foreign state before a court may consider the statutory exceptions in 28 U.S.C. § 1605(a)(2) and § 1605(a)(3)?

2. Whether the courts below properly dismissed McDougall's FSIA expropriation theory at the pleading stage after treating employment documents, rather than McDougall's pleaded legal claims for earned benefits, as the property allegedly taken?

PARTIES AND PROCEEDINGS

Petitioner Neil McDougall was Plaintiff-Appellant in the court of appeals and Plaintiff in the district court. He is an individual. No corporate disclosure statement applies to him.

Respondent Saudi Arabian Oil Company, doing business as Saudi Aramco, was Defendant-Appellee in the court of appeals and Defendant in the district court. Respondent trades on the Saudi Exchange under ticker symbol 2222. The Kingdom of Saudi Arabia holds a majority ownership interest in Saudi Aramco. No publicly held corporation owns 10% or more of Saudi Aramco's stock.

All parties appear in the caption.

The proceedings directly related to this petition are:

1. *McDougall v. Saudi Arabian Oil Co.*, No. 3:24-CV-02564-N, in the United States District Court for the Northern District of Texas, which entered final judgment on April 21, 2025.

2. *McDougall v. Saudi Arabian Oil Co.*, No. 25-10619, in the United States Court of Appeals for the Fifth Circuit, which entered judgment affirming dismissal on April 2, 2026.

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JURISDICTION

The district court exercised removal jurisdiction under 28 U.S.C. § 1441(d) and original jurisdiction under 28 U.S.C. § 1330 because Saudi Aramco removed as a foreign state under the FSIA. The district court entered final judgment dismissing McDougall's claims without prejudice on April 21, 2025. The Fifth Circuit had jurisdiction under 28 U.S.C. § 1291 and affirmed on April 2, 2026. No party filed a timely petition for rehearing.

This petition follows within 90 days of the judgment affirming dismissal. Sup. Ct. R. 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1604 provides:

> Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall have immunity from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605–1607 of this chapter.

28 U.S.C. § 1605(a)(2) provides in relevant part:

> A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case . . . in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States[.]

28 U.S.C. § 1605(a)(3) provides in relevant part:

> A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case . . . in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States[.]

28 U.S.C. § 1603(a) provides:

> A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

28 U.S.C. § 1603(b) provides:

> An "agency or instrumentality of a foreign state" means any entity–
>
> (1) which is a separate legal person, corporate or otherwise, and
>
> (2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and
>
> (3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (e) of this title, nor created under the laws of any third country.

STATEMENT OF THE CASE

A. Introduction

This case requires a remand because the Fifth Circuit did not merely misread a pleading, but changed the legal question posed to it. The FSIA asks whether the defendant foreign state has immunity and whether a statutory exception removes that immunity. Saudi Aramco was the defendant. Saudi Aramco invoked immunity. Saudi Aramco had the burden to make a prima facie showing of foreign-state status. It did so. Then McDougall had to plead facts that plausibly brought his claims within an exception to Saudi Aramco's immunity. That should have framed the appeal.

Instead, the Fifth Circuit made ASC's sovereign status the gate. The court held that because McDougall alleged Saudi Aramco used ASC to carry on commercial activity in the United States, McDougall first had to plead that ASC itself qualifies as a foreign state under § 1603(b). ASC never invoked immunity. ASC never appeared. McDougall did not sue ASC. Saudi Aramco itself insisted that ASC is a separate Delaware corporation. Yet the Fifth Circuit required McDougall to prove ASC's independent sovereign character before it would address whether Saudi Aramco lost immunity under § 1605.

That rule appears nowhere in the FSIA. It does not follow from this Court's cases. It does not follow from *Dole Food Co. v. Patrickson*, 538 U.S. 468 (2003), which decides when an entity claiming immunity qualifies as an agency or instrumentality. It does not follow from *Janvey v. Libyan Investment Authority*, 840 F.3d 248 (5th Cir. 2016), which addressed entities before the court that claimed immunity for themselves. Neither case says a plaintiff must plead foreign-state status for a nonparty domestic intermediary before testing an exception against the defendant that actually invoked immunity.

The Fifth Circuit then stopped. It expressly declined to reach the remaining elements of the commercial-activity or expropriation exceptions. That ruling left the real FSIA question unanswered: whether McDougall pleaded that Saudi Aramco, an undisputed foreign-state defendant, carried on U.S. commercial activity through ASC in a way that fits § 1605(a)(2) or § 1605(a)(3). That leaves the law worse than unsettled. It leaves a new threshold rule that lets a foreign sovereign conduct commercial activity through a domestic affiliate, insist that the affiliate is separate, and then avoid exception analysis because the affiliate is not also a foreign state. If the subsidiary qualifies as a foreign state, the sovereign claims immunity through the subsidiary. If the subsidiary does not qualify, the sovereign claims the plaintiff cannot satisfy the "by the foreign state" language. The sovereign wins both ways, and the plaintiff never reaches the statutory exceptions.

This Court need not grant plenary review and write a new FSIA treatise. The clean remedy is narrow: grant the petition, vacate the judgment, and remand so the Fifth Circuit can decide the statutory questions the FSIA actually presents. The court of appeals should decide whether McDougall pleaded the commercial-activity exception and the expropriation exception against Saudi Aramco. It should not require him to confer sovereign status on ASC first.

B. Saudi Aramco's Houston subsidiary recruited McDougall and administered the employment relationship.

Neil McDougall worked for Saudi Aramco under renewable expat employment contracts from 2012 until Saudi Aramco terminated him in 2020. Saudi Aramco did not recruit him through a random headhunter. It used

Aramco Services Company, a Houston-based subsidiary that handled recruiting, onboarding, and employment processing for Saudi Aramco's expat workforce.

The offer letter told McDougall that Saudi Aramco had asked ASC to offer him the position. It directed him to work with ASC processing staff. ASC handled contingencies and processing steps for Saudi Aramco's employment needs. ASC served as the U.S. conduit for a commercial employment relationship that Saudi Aramco wanted and used.

That point matters. McDougall's case does not rest on Saudi Aramco having merely a customer in Houston. It rests on Saudi Aramco using ASC as its U.S. employment arm.

C. Saudi Aramco terminated McDougall during COVID-19, McDougall prevailed in Saudi court, and Saudi Aramco withheld documents he needed to recover earned benefits.

In 2020, McDougall took approved leave to visit family outside Saudi Arabia. COVID-19 travel restrictions blocked his return. Saudi Aramco then terminated him because his services were "no longer needed."

McDougall sued Saudi Aramco in Saudi court for wrongful termination and won. The Saudi judgment awarded lost salary for the remaining portion of his contract term. But that judgment did not compensate him for additional earned benefits, including medical, retirement, and life insurance benefits.

McDougall needed his employment documents to pursue those additional benefits. He alleged that Saudi law entitled him to those documents. He also alleged that Saudi Aramco's counsel represented in Saudi court that Saudi Aramco would provide them. Saudi Aramco did not provide them. Without the documents, McDougall lost the ability to pursue benefit claims worth about $250,000.

McDougall filed suit in Texas for fraud, fraud by nondisclosure, and constructive fraud. He did not sue ASC. He sued Saudi Aramco, the company that employed him, promised the documents, withheld them, and ultimately invoked FSIA immunity.

D. The district court dismissed under the FSIA.

Saudi Aramco removed the case to federal court under the FSIA and moved to dismiss for lack of subject-matter jurisdiction, lack of personal jurisdiction, insufficient service, and forum non conveniens. The parties agreed that Saudi Aramco qualifies as a foreign state under the FSIA. The dispute concerned whether the commercial-activity exception or the expropriation exception removed Saudi Aramco's immunity.

The district court dismissed under Rule 12(b)(1). It held that the commercial-activity exception did not apply because the gravamen of the fraud claims lay in Saudi Arabia, not in Saudi Aramco's U.S. recruitment and employment-administration activity. It also rejected the expropriation exception. In doing so, it treated the withheld documents as the property at issue, rather than the legal claims for earned benefits that McDougall pleaded. It then concluded that McDougall had not shown an arbitrary or discriminatory taking.

E. The Fifth Circuit affirmed on a different threshold rule and declined to reach the statutory exception elements.

The Fifth Circuit affirmed, but not on the same analysis. The court recognized the FSIA burden framework. Saudi Aramco had to make a prima facie showing that it qualified as a foreign state. It did. The parties did not dispute that point. The burden therefore shifted to McDougall to plead adequate facts showing that an exception applied.

Then, the court changed the framework, reasoning that the commercial-activity and expropriation exceptions both require "commercial activity carried on in the United States by the foreign state." It then asked who carried on the U.S. activity. Because McDougall alleged that ASC carried on U.S. commercial activity for Saudi Aramco, the court held that it had to decide whether ASC qualifies as a foreign state under § 1603(b).

The court concluded that ASC did not qualify as a foreign state. Saudi Arabia did not directly own ASC, and the complaint did not plead facts showing that ASC functioned as an organ of Saudi Arabia. The court therefore held that McDougall had not demonstrated "essential elements" of both exceptions and declined to reach the other elements. The court applied the immunity granted only to a foreign state to an entity that no party claimed was a foreign state.

That ruling decided the appeal on a threshold rule no party had litigated in that form. Saudi Aramco did not ask the courts to extend FSIA immunity to ASC. Saudi Aramco argued the opposite: ASC is separate, domestic, and not Saudi Aramco. That argument raised attribution, agency, and corporate-separateness issues. It did not raise an immunity-status inquiry for ASC.

The Fifth Circuit's shortcut changed the case. It never answered the real FSIA question: whether McDougall pleaded that Saudi Aramco, an undisputed foreign-state defendant, carried on U.S. commercial activity through ASC in a way that fits § 1605(a)(2) or § 1605(a)(3).

REASONS FOR GRANTING THE PETITION

A. The Fifth Circuit added a threshold rule the FSIA does not contain.

The FSIA contains enough complexity without courts adding more. Congress created a comprehensive scheme. It starts with immunity in § 1604. It defines "foreign state" in § 1603. It creates exceptions in § 1605. It gives courts jurisdiction when an exception applies. The statute does not require a plaintiff to prove that a domestic intermediary also qualifies as a foreign state before invoking an exception against the defendant foreign state.

The Fifth Circuit's decision does just that.

1. The statutory question concerns the defendant that invoked immunity.

The FSIA's structure keeps the focus where it belongs: on the party claiming immunity.

Section 1604 provides immunity to a "foreign state" unless an exception applies. Section 1605 says a "foreign state shall not be immune" in specified cases. The court first asks whether the defendant qualifies as a foreign state. If yes, the court asks whether the plaintiff has pleaded an exception. If yes, the defendant may still carry the ultimate burden to show that the exception does not apply.

That is the framework the Fifth Circuit recited and ignored. *See Janvey*, 840 F.3d at 257; *Frank v. Commonwealth of Antigua & Barbuda*, 842 F.3d 362, 367 (5th Cir. 2016); *Kelly v. Syria Shell Petroleum Development B.V.*, 213 F.3d 841, 847 (5th Cir. 2000).

The framework should have ended the threshold fight. Saudi Aramco claimed immunity. Saudi Aramco qualified as a foreign state. McDougall then had to plead that an exception defeated Saudi Aramco's immunity.

The Fifth Circuit instead required McDougall to plead that ASC qualifies as a foreign state. That rule does not fit the burden structure. ASC did not seek immunity. ASC did not need immunity. ASC was not in the case. The only immunity in play belonged to Saudi Aramco.

2. The phrase "by the foreign state" does not require every domestic intermediary to qualify as a foreign state.

The Fifth Circuit rested its threshold rule on the phrase "commercial activity carried on in the United States by the foreign state." 28 U.S.C. § 1605(a)(2), (a)(3). But the court read that phrase in a tortured, extra-statutory way.

Section 1605(a)(2) asks whether "the action is based upon a commercial activity carried on in the United States by the foreign state." Section 1605(a)(3), as relevant here, asks whether property is present in the United States "in connection with a commercial activity carried on in the United States by the foreign state." 28 U.S.C. § 1605(a)(2), (a)(3). Those provisions focus on the foreign state defendant. They do not require a plaintiff to prove that each corporate actor through which the foreign state allegedly acts in the United States also qualifies as a foreign state. Congress knew how to define a "foreign state," and it did so in § 1603. A foreign state can act through people, offices, agents, subsidiaries, affiliates, and other intermediaries. That does not mean every intermediary must independently qualify for FSIA immunity. nothing in § 1605(a)(2) or § 1605(a)(3) requires the plaintiff to establish foreign-state status for a nonparty intermediary before the Court may test the exceptions against the sovereign defendant.

If a foreign sovereign uses a domestic entity to recruit workers, administer documents, and manage commercial employment processes, the question is whether those acts count as the sovereign's acts for purposes of the exception. That is an attribution question.

The Fifth Circuit converted attribution into sovereign status. That conversion creates a trap that Congress did not set. If ASC counts as Saudi Aramco's U.S. arm for the relevant conduct, the exceptions may apply. If ASC does not count, the exceptions may fail. Unequivocally, the answer does not turn on whether ASC could file its own motion to dismiss as a foreign state.

This Court should not allow an unpublished per curiam opinion to embed a new threshold rule in FSIA law.

Although the decision lacks formal precedential status, its reasoning will guide future panels considering the same question, and it already denies McDougall a decision on the statutory exceptions Congress enacted.

3. *Dole Food* and *Janvey* do not support the Fifth Circuit's new prerequisite.

The Fifth Circuit relied on *Dole Food* and *Janvey* to decide whether ASC qualified as an agency or instrumentality of Saudi Arabia. Those cases address a different question.

Dole Food asked whether the companies claiming FSIA status qualified as instrumentalities of Israel. 538 U.S. at 472. This Court held that indirect ownership through corporate parents does not satisfy § 1603(b)(2). *Id.* at 477. The case stands for a simple rule: the entity claiming foreign-state status must fit the statutory definition. Dole Food does not say that a plaintiff invoking an FSIA exception against an undisputed foreign-state defendant must also prove foreign-state status for a domestic nonparty.

Janvey works the same way. In *Janvey*, both Libyan entities moved to dismiss and claimed FSIA immunity for themselves. 840 F.3d at 257-59. The Fifth Circuit therefore had to decide whether those entities qualified as foreign states. Nothing in *Janvey* required the plaintiff to prove foreign-state status for a nonparty domestic subsidiary before invoking an exception against a different defendant.

That is the issue. *Dole Food* and *Janvey* protect corporate separateness when an entity seeks FSIA status.

They do not create a new hurdle that blocks exception analysis when the defendant already qualifies as a foreign state.

4. The decision also bypasses the usual corporate-separateness and attribution rules.

If the Fifth Circuit thought ASC's separate corporate existence defeated McDougall's theory, it should have said so and applied the correct law. Courts do not need to pretend ASC is a sovereign to decide whether Saudi Aramco can claim or disclaim ASC's conduct.

This Court's decision in *First National City Bank v. Banco Para el Comercio Exterior de Cuba (Bancec)*, 462 U.S. 611, 627–28 (1983), recognizes a presumption of separate juridical status for government instrumentalities. It also recognizes exceptions where equity, control, or injustice require a different result. Saudi Aramco made a corporate-separateness argument. McDougall answered with allegations that Saudi Aramco used ASC as its U.S. arm for the employment relationship.

The Fifth Circuit did not apply the *Bancec* framework. It did not decide agency. It did not decide alter ego. It did not decide direct commercial activity through a chosen U.S. conduit. It did not decide whether McDougall needed more facts or whether jurisdictional discovery should proceed. It skipped all of that and held that ASC must itself qualify as a foreign state.

That approach creates bad law. It lets a sovereign use a U.S. subsidiary for commercial activity, but then demand a showing that the subsidiary is a sovereign before any exception applies. It turns the FSIA into a shell game. Congress did not write that game into § 1605.

B. The Fifth Circuit's threshold rule controlled the outcome and prevented review of the real statutory questions.

The Fifth Circuit did not say McDougall lost after a complete exception analysis. It said he lost because ASC did not qualify as a foreign state. Then the court expressly declined to reach the other elements.

That matters. This Court often denies certiorari when a petitioner merely alleges fact error. This case presents something cleaner. The court of appeals created a threshold legal rule, used it to avoid the statutory exception analysis, and left the parties without a decision on the actual issues.

1. The commercial-activity issue remains undecided.

The commercial-activity exception applies when an action "is based upon a commercial activity carried on in the United States by the foreign state." 28 U.S.C. § 1605(a)(2). The parties disputed whether McDougall's fraud claims rest on Saudi Aramco's U.S. commercial employment apparatus or on later conduct in Saudi Arabia. That is a hard question, but it is the right question.

Saudi Arabia v. Nelson, 507 U.S. 349 (1993), and *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27 (2015), instruct courts to identify the gravamen of the suit. They do not instruct courts to ignore a commercial relationship because one later act occurred abroad. They also do not turn every upstream domestic act into irrelevant "background" merely because the injury ripened later.

McDougall alleged that Saudi Aramco used ASC in Houston to recruit him, onboard him, administer employment documentation, and manage the employment framework from which the withheld documents and benefit claims arose. Saudi Aramco argues that the only relevant conduct happened in Saudi court. That dispute needs analysis under *Sachs*, *Nelson*, and the Fifth Circuit's own commercial-activity precedent, including *Stena Rederi AB v. Comision de Contratos del Comite Ejecutivo Gen. del Sindicato Revolucionario de Trabajadores Petroleros de la Republica Mexicana*, S.C., 923 F.2d 380, 387 (5th Cir. 1991).

The Fifth Circuit did not perform that analysis. It held that ASC's own sovereign status was an "essential element" and stopped. This Court should not leave that threshold error in place.

2. The expropriation issue remains distorted.

The expropriation exception asks whether "rights in property taken in violation of international law are in issue" and whether the statutory commercial nexus exists. 28 U.S.C. § 1605(a)(3).

The district court treated the employment documents as the property allegedly taken. That missed McDougall's pleaded theory. McDougall did not sue to recover the documents for their own sake. He sued because Saudi Aramco's withholding of those documents destroyed his ability to pursue legal claims for earned benefits worth roughly $250,000.

Legal claims qualify as property under Texas law. *Henry v. Brooks*, 651 S.W.3d 657, 664 (Tex. App.-Tyler 2022, no pet.). This Court has recognized that FSIA cases follow the same choice-of-law framework as diversity cases, looking to state law rather than federal common law to identify the governing substantive rules. *Cassirer v. Thyssen-Bornemisza Collection Foundation*, 596 U.S. 107, 113-14 (2022). Saudi Aramco may argue that international-law limits narrow the expropriation exception. It may argue that the pleaded facts do not show a taking in violation of international law under *Bolivarian Republic of Venez. v. Helmerich & Payne Int'l Drilling Co.*, 581 U.S. 170 (2017). But the court must first identify the property McDougall pleaded.

The district court did not. It framed the property as "employment documents." Then it faulted McDougall for not showing that withholding documents was discriminatory or arbitrary. That framing created a straw man and then knocked it down.

The Fifth Circuit did not fix that error. It did not reach the expropriation elements at all because it required McDougall to show ASC's own foreign-state status. That leaves the district court's misframing intact with the Fifth Circuit's new threshold rule on top of it.

3. The oral argument showed why remand, not merits resolution fits this case.

The Fifth Circuit panel asked the right questions at argument. One judge asked whether the case involved personal jurisdiction at all or instead subject-matter jurisdiction under the FSIA. Another focused on the documents: where the employment documents came from, who created them, and how the documents connected to the U.S. employment process. The panel also drilled into whether ASC's acts counted as acts "by" the foreign state.

Those questions deserved answers under the FSIA. They did not justify a new prerequisite requiring McDougall to establish ASC's sovereign status.

The panel ultimately used ASC's status to avoid the harder analysis. It did not resolve whether Saudi Aramco acted through ASC, whether the pleaded U.S. activity carried enough weight under *Sachs* and *Nelson*, whether *Stena Rederi*'s material-connection rule helps McDougall, whether McDougall pleaded a property right under § 1605(a)(3), or whether the pleaded taking violated international law under *Helmerich*.

That is exactly why this petition seeks narrow relief. This Court does not need to decide every one of those issues first. The Fifth Circuit should decide them under the correct framework.

C. The decision conflicts with this Court's FSIA decisions and warrants at least summary vacatur.

McDougall understands that Rule 10 does not make this Court an error-correction court, but this case seeks more than error correction.

The Fifth Circuit decided an important federal question in a way that conflicts with the FSIA's text and this Court's decisions. No other court of appeals has adopted the threshold rule the Fifth Circuit applied, which itself confirms the rule's novelty and departure from the statutory framework. The decision also departed from the usual course of judicial proceedings by affirming on a threshold rule that no party litigated as the controlling question and then declining to reach the preserved exception issues.

1. The decision conflicts with the FSIA's comprehensive scheme.

This Court has repeatedly treated the FSIA as a comprehensive jurisdictional statute. *See Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434-35 (1989); *see also Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 488-89 (1983). Courts must respect the statute Congress wrote.

The Fifth Circuit did the opposite. It inserted a condition that Congress did not include: a plaintiff must prove that the domestic intermediary through which the foreign-state defendant allegedly acted also qualifies as a foreign state. That condition changes the scope of § 1605(a)(2) and § 1605(a)(3). It makes the statutory exception depend not only on the defendant's status and conduct, but also on the domestic intermediary's independent right to immunity.

That makes no sense. If the intermediary qualifies as a foreign state, it may claim immunity. If it does not, it may not. But the intermediary's inability to claim immunity should not automatically shield the foreign-state defendant from exception analysis.

2. The decision conflicts with Dole Food's focus on the party claiming immunity.

Dole Food rejected indirect ownership as a basis for a corporation to claim FSIA status. 538 U.S. at 477. The decision protects statutory limits. It does not expand immunity.

The Fifth Circuit applied *Dole Food* backwards. It used ASC's inability to claim immunity as a reason to preserve Saudi Aramco's immunity. That move turns *Dole Food* from a limit on instrumentality status into a shield for foreign-state defendants that act through domestic subsidiaries. This Court should not let that inversion stand.

3. The decision conflicts with the pleading-stage principles the Fifth Circuit itself recited.

The Fifth Circuit acknowledged that the district court dismissed on the complaint alone, so the court had to accept well-pleaded allegations as true and construe them in McDougall's favor. It then did something else.

McDougall pleaded that Saudi Aramco used ASC to recruit and onboard him, manage employment documentation, and carry-on commercial activities in the United States for Saudi Aramco. The Fifth Circuit did not ask whether those allegations plausibly support attribution to Saudi Aramco. It asked whether ASC qualifies as a foreign state. That inquiry did not construe the complaint in McDougall's favor. It changed his theory.

Likewise, McDougall pleaded that Saudi Aramco took his property interest in earned-benefit claims by withholding documents. The district court treated the documents themselves as the property and demanded proof of discriminatory or arbitrary taking. The Fifth Circuit left that distortion untouched.

4. Summary vacatur would fit this case better than full merits review.

This Court need not use this case to settle every boundary of the FSIA commercial-activity and expropriation exceptions. It can do something more modest and more useful.

It can grant the petition, vacate the judgment, and remand for the Fifth Circuit to apply the correct framework:

a. Start with undisputed facts, which includes that Saudi Aramco, the defendant that invoked immunity, qualifies as a foreign state and therefore receives the FSIA's presumption of immunity.

b. Ask whether McDougall pleaded facts plausibly showing that § 1605(a)(2) or § 1605(a)(3) removes Saudi Aramco›s immunity.

c. Decide any agency, attribution, corporate-separateness, or jurisdictional-discovery issues directly, instead of converting them into ASC's independent sovereign-status inquiry.

d. Decide the remaining commercial-activity and expropriation elements that the Fifth Circuit expressly left undecided.

That remedy would not declare McDougall the winner on jurisdiction. It would simply require the court of appeals to decide the statutory questions the FSIA actually presents, questions it acknowledged but expressly declined to reach.

D. This case has practical importance beyond McDougall.

Foreign sovereigns do business in the United States through domestic affiliates every day. They recruit employees, buy goods, sell products, maintain offices, conduct research, form subsidiaries, and use U.S. employees and contractors. The FSIA permits immunity for sovereign acts. It does not let foreign states take the benefits of U.S. commerce and then dodge statutory exceptions through corporate misdirection.

The Fifth Circuit's rule invites that misdirection. A foreign-state defendant can argue that its U.S. subsidiary did the domestic commercial acts, then argue that the subsidiary is separate and not a foreign state, then insist the plaintiff cannot satisfy the phrase "by the foreign state." That result means the more domestic and ordinary the subsidiary, the more useful it becomes as a shield. That flips the FSIA upside down.

Congress wrote exceptions for commercial activity and expropriation because foreign states sometimes act as market participants rather than sovereigns. When they do, courts must apply the exceptions as written. They must not add an additional prerequisite requiring the plaintiff to prove that a domestic subsidiary could claim immunity too.

This case offers a clean vehicle to correct that point. The Fifth Circuit made the threshold rule explicit. It found Saudi Aramco's status satisfied. It found ASC's status unsatisfied. It then held that McDougall failed to plead "essential elements" of both exceptions and declined to reach the rest. No alternative holding blocks review. No factfinding supports the decision. The issue sits on the face of the opinion.

CONCLUSION STATING RELIEF SOUGHT

The Court should grant the petition for a writ of certiorari, vacate the judgment of the Fifth Circuit, and remand for the court of appeals to decide whether the commercial-activity and expropriation exceptions apply to Saudi Aramco under the FSIA without requiring McDougall to prove that ASC independently qualifies as a foreign state.

Respectfully submitted,

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APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED APRIL 2, 2026

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-10619

NEIL MCDOUGALL,

Plaintiff-Appellant,

v.

SAUDI ARABIAN OIL COMPANY, DOING BUSINESS AS SAUDI ARAMCO,

Defendant-Appellee.

Filed April 2, 2026

OPINION

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:24-CV-2564

Before King, Southwick, and Haynes, *Circuit Judges*.

Per Curiam:*

Plaintiff–Appellant Neil McDougall sued Defendant–Appellee Saudi Arabian Oil Company for fraud. The

* This opinion is not designated for publication. See 5th Cir. R. 47.5.

district court dismissed the case, concluding that it lacked subject-matter jurisdiction under the Foreign Sovereign Immunities Act and that neither the commercial-activity nor the expropriation exceptions thereto could save McDougall's claims. We agree and AFFIRM.

I

In 2012, Neil McDougall, then residing in Ontario, Canada, received an offer to work as a Planning/Analysis Specialist for Saudi Arabian Oil Company ("Saudi Aramco"), an energy company owned by the Kingdom of Saudi Arabia.

Importantly, the job offer was not sent by Saudi Aramco, but by Aramco Services Company ("ASC"), Saudi Aramco's subsidiary based in Houston, Texas. The offer letter stated that Saudi Aramco "ha[d] asked [ASC] to conditionally offer [McDougall] the position of Planning/Analysis Specialist with Saudi Aramco." The letter also required McDougall to "work closely with the ASC processing staff to promptly satisfy [certain] contingencies," such as a background investigation and a physical examination "satisfactory to Saudi Aramco," "according to the timetable established by ASC." McDougall also alleges that, in addition to these recruiting and human-resources functions, ASC also aids Saudi Aramco in "oil distribution, oil refining, and research in Texas and the United States more broadly."

McDougall accepted the offer of employment and relocated to Saudi Arabia. And for the next several years, McDougall's employment contract renewed automatically year-to-year. In March 2020, still in Saudi Aramco's employ, McDougall left Saudi Arabia to go on an employer-approved family trip. But his return to the country was foreclosed when, due to COVID-19, Saudi Arabia shut its borders to all but a few categories of travelers, of which he was not one. Nor did Saudi Arabia approve McDougall's request to enter. In June 2020, still unable to enter Saudi Arabia, McDougall was terminated because his services were "no longer needed."

McDougall subsequently sued Saudi Aramco in Saudi court for wrongful termination and prevailed. The final judgment, in the amount equivalent to $61,179.84, reflected only his lost salary for the remaining term of his employment contract, from July 1, 2020, to October 31, 2020. Saudi Aramco appealed the judgment but was unsuccessful.

During the Saudi litigation, McDougall attempted to obtain his employment documents. These documents, he alleges, would have supplied the foundation for another claim against Saudi Aramco—for his lost employment benefits, including his medical, retirement, and life insurance benefits. According to McDougall, not only did he have a right to these documents under Saudi law, but Saudi Aramco's counsel also represented to McDougall's counsel in Saudi court that they would be turned over. Saudi Aramco allegedly failed to turn over these documents. Without them, McDougall says, he cannot make his case for his lost benefits, which allegedly amount to approximately $250,000.

McDougall then brought his document-recovery efforts stateside. He first sought a pre-suit deposition in Harris County District Court pursuant to Texas Rule of Civil Procedure 202. *See* Tex. R. Civ. P. 202. But his petition was denied. He then filed the present suit in Dallas County District Court, alleging (1) common law fraud; (2) fraud by nondisclosure; and (3) constructive fraud. In this suit, however, he no longer seeks the production of those documents. Instead, he seeks damages—in the amount of $250,000, in addition to treble damages—for the allegedly fraudulent withholding of those documents. Saudi Aramco timely removed the case to the Northern District of Texas.

Saudi Aramco then moved to dismiss under Federal Rules of Civil Procedure 12(b)(1), (2), and (5), arguing lack of subject-matter jurisdiction, lack of personal jurisdiction, deficient service of process, and *forum non conveniens.* The district court granted the motion, concluding that it lacked subject-matter jurisdiction under the Foreign Sovereign Immunities Act ("FSIA") and that neither the commercial-activity exception nor the expropriation exception applied. McDougall timely appealed.

II

"We review a dismissal for lack of subject matter jurisdiction under Rule 12(b)(1) *de novo.*" *Flores v. Pompeo*, 936 F.3d 273, 276 (5th Cir. 2019). "A district court may dispose of a motion to dismiss for lack of subject matter jurisdiction based 'on (1) the complaint alone; (2) the complaint supplemented by undisputed facts; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.'" *Id.* (quoting *Robinson v. TCI/US W. Commc'ns Inc.*, 117 F.3d 900, 904 (5th Cir. 1997)). Where, as here, the district court dismissed the case based on the complaint alone, we "accept as true all well-pleaded allegations set forth in the complaint and construe those allegations in the light most favorable to [the] plaintiff." *Burnett Specialists v. Cowen*, 140 F.4th 686, 693 (5th Cir. 2025).

III

The FSIA "provides 'the sole basis for obtaining jurisdiction over a foreign state in [federal and state] courts.'" *Janvey v. Libyan Inv. Auth.*, 840 F.3d 248, 257 (5th Cir. 2016) (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 & n.2 (1989)). "It furnishes both the immunity itself, which applies to any 'foreign state,' and the only exceptions to that immunity." *Id.*; *see* 28 U.S.C. §§ 1602–11. If an exception applies, courts have jurisdiction over "any nonjury civil action against a foreign state . . . as to any claim in personam . . . ." § 1330. But "[i]f no exception applies, there is no other basis for personal or subject matter jurisdiction over a foreign state." *Janvey*, 840 F.3d at 257 (citing *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 489 (1983)); § 1604 ("[A] foreign state shall be immune from the jurisdiction of the courts of the United States and of the States exception as provided in sections 1605 and 1607 of this chapter.").

A "foreign state," in turn, includes "a political subdivision of a foreign state or an agency or instrumentality of a foreign state " § 1603(a). An "agency or instrumentality of a foreign state" means an entity that is: (1) a separate legal person, corporate or otherwise; (2) an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof; and (3) neither a citizen of a U.S. state, as defined in §§ 1332(c) and (e), nor created under the laws of any third country. § 1603(b); *see also Janvey*, 840 F.3d at 258–59.

We apply a burden-shifting framework to determine subject-matter jurisdiction under the FSIA. First, the party claiming to be a foreign state "need only present a prima facie case that it is a foreign state." *Frank v. Commonwealth of Antigua & Barbuda*, 842 F.3d 362, 367 (5th Cir. 2016). If it does so, it is "entitled to a presumption of immunity." *Janvey*, 840 F.3d at 257; *see also Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993). The burden then shifts to the party opposing immunity to present evidence or, at the pleading stage, point to parts of the complaint that plausibly demonstrate that one of the exceptions to immunity applies. *Frank*, 842 F.3d at 367. If the party opposing immunity bears this burden, then the foreign state "ha[s] the ultimate burden of persuasion that the exception does not apply to [it] and that [it is] entitled to immunity." *Janvey*, 840 F.3d at 257–58.

A

Here, the prima facie case is met. We have already recognized that "Saudi Aramco is a 'foreign state' for purposes of the FSIA." *Al-Qarqani v. Saudi Arabian*

Oil Co., 19 F.4th 794, 800. (5th Cir. 2021). And the parties do not dispute this. Saudi Aramco has therefore made its prima facie showing, and the burden shifts to McDougall to plead adequate facts to plausibly demonstrate that an exception applies.

McDougall contends two exceptions are met: the commercial-activity exception and the expropriation exception. The former states, in relevant part, that a foreign state is not entitled to jurisdictional immunity if "the action is based upon a commercial activity carried on in the United States by the foreign state."[1] § 1605(a)(2). The latter states, in relevant part, that a foreign state is not immune if "rights in property taken in violation of international law are in issue and that property . . . is present in the United States in connection with a commercial activity carried on in the United States by the foreign state." § 1605(a)(3).

These exceptions share the requirement that there be a "commercial activity carried on in the United States *by*

1. To be sure, § 1605(a)(2) contains a total of three immunity-exception clauses. These clauses differ on the type of activity (commercial or not), the location of the activity (in the United States or not), and the actor (the foreign state or not) they require. But McDougall argues that his fraud claims against Saudi Aramco "are rooted in an employment relationship forged and managed through continuous *U.S.-based commercial conduct*" by ASC, such as its recruiting efforts. Since only the clause we highlight above requires a showing of a commercial activity in the United States, we construe his arguments as relying on that clause of the commercial-activity exception and analyze them as such.

the foreign state." *See* §§ 1605(a)(2), (3) (emphasis added). So we must first determine who, under the pleaded facts, carried on the commercial-activity in the United States and then determine whether that entity indeed constitutes a foreign state under the FSIA.

The first step is easy enough. McDougall pleads repeatedly that ASC carries on various commercial activities for Saudi Aramco. He alleges that ASC conducts "oil sales and refinement," "perform[s] research," and "recruit new employees from the United States and greater-Americas" on Saudi Aramco's behalf. And he further alleges that these activities are indeed "commercial." On appeal, too, he argues that ASC's U.S.-based commercial conduct is the basis for his suit.

The question then becomes whether ASC is a "foreign state" under the statute. As noted above, "the term 'foreign state' refers not only to the state itself, *viz.*, the 'body politic that governs a particular territory,' but also to its 'agenc[ies] or instrumentalit[ies].'"[2] *Janvey*, 840 F.3d at 258 (internal footnotes omitted). "An agency or instrumentality of a foreign state is a separate entity, 'corporate or otherwise,' that is either (1) majority owned by a foreign state or (2) an 'organ' of a foreign state."[3]

2. "[T]he terms 'agency' and 'instrumentality[ ]' . . . are read together or treated interchangeably." *Janvey*, 840 F.3d at 258.

3. As noted above, there is an additional requirement that the agency or instrumentality be "neither a citizen of a State of the United States as defined in section 1332(c) and (e) of [title 28], nor created under the laws of any third country." § 1603(b)(3). But we need not reach that requirement.

Id. "There is a distinction between those agencies or instrumentalities that qualify because they are 'organs' of a foreign state and those that qualify because they are 'majority owned' by one." *Id.* at 258–59. "In some circumstances, however, an agency or instrumentality may be both and thus qualify as either." *Id.* at 259.

To qualify as a "majority owned" agency or instrumentality, "the foreign state *itself* [must] own[ ] a majority of the corporation's shares" or other ownership interest. *Id.* (quoting *Dole Food Co. v. Patrikson*, 538 U.S. 468, 477 (2003)). In other words, "[i]t is not an agency or instrumentality on the basis of majority ownership . . . if the 'foreign state does not own a majority of its shares but does own a majority of the shares of the corporate parent one or more tiers above the subsidiary." *Id.* (quoting *Dole Food Co.*, 538 U.S. at 471).

Here, Saudi Aramco is "majority-owned by [Saudi Arabia] itself and thus is an agency or instrumentality of" Saudi Arabia. *See Al-Qarqani*, 19 F.4th at 800. ASC, "however, does not qualify on that basis because it is not majority owned by [Saudi Arabia] directly, but by [Saudi Aramco]." *See Janvey*, 840 F.3d at 259. ASC is "merely a subsidiary of [Saudi Aramco], and that is not sufficient." *See id.*

ASC could still qualify as an agency or instrumentality if it is an "organ" of Saudi Arabia. "There is no clear test for determining whether an entity is an organ of a state," but "the following factors are useful": (1) whether the foreign state created the entity for a national purpose;

(2) whether the foreign state actively supervises the entity; (3) whether the foreign state requires the hiring of public employees and pays their salaries; (4) whether the entity holds exclusive rights to some right in the [foreign] country; and (5) how the entity is treated under foreign state law." *Id.*

McDougall has not pleaded *any* facts that would allow us to conclude that any one of these factors is met. By failing to do so, he has failed to carry his burden of plausibly demonstrating that one of the exceptions to immunity applies. *See Frank*, 842 F.3d at 367. And therefore, under these pleaded facts, ASC is neither an organ nor majority-owned agency or instrumentality of Saudi Arabia.

* * *

McDougall has not demonstrated that ASC is an agency or instrumentality of Saudi Arabia—essential elements to the two exceptions he contends are satisfied. Accordingly, the district court did not err in concluding that the exceptions are not met and that the FSIA confers immunity on Saudi Aramco here. We need not reach the other elements of the exceptions.

B

McDougall raises one additional point of error regarding the district court's treatment of the commercial-activities exception. He argues that the district court "committed reversible error by applying a minimum contacts analysis to determine subject-matter jurisdiction under the Foreign Sovereign Immunities Act." As the argument goes, the Supreme Court in *CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.*, 145 S. Ct. 1572 (2025), held that the FSIA does not impose a minimum-contacts requirement, but "[i]n direct contravention of that standard, the [d]istrict [c]ourt here evaluated jurisdiction by searching for the 'particular conduct that constitutes the gravamen of the suit' and where that conduct occurred."

This argument misapplies *CC/Devas* and misunderstands the district court's decision. To start, *CC/Devas* dealt with an entirely different subsection of the FSIA from the one at issue here—§ 1330(b) (the personal jurisdiction subsection), not § 1330(a) (the subject-matter jurisdiction subsection). *See* 145 S. Ct. at 1579–82. It held only that, under § 1330(b), "personal jurisdiction over a foreign sovereign is 'automatic' whenever (1) 'an exception to immunity applies' and (2) 'service of process has been accomplished.'" *Id.* at 1580. It did not speak to how to evaluate whether an exception to immunity applies to confer *subject-matter* jurisdiction to federal courts. Nor did the district court even purport to decide the issue of personal jurisdiction or undertake a minimum contacts analysis; the words "minimum contacts" do not appear once in the district court's opinion.

More fundamentally, the district court was in fact *required* to "search[ ] for the 'particular conduct that constitutes the gravamen of the suit.'" *See Sachs*, 577 U.S. at 35. Indeed, the Supreme Court has instructed that, to determine what the action is "based upon" under the commercial-activities exception, courts must consider the "particular conduct that constitutes the gravamen of the suit." *Id.*

McDougall is correct that the district court searched for such conduct. We thus decline to fault the district court for following the Supreme Court's express instructions.

IV

For the foregoing reasons, we AFFIRM the judgment of the district court.

APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, FILED APRIL 21, 2025

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. 3:24-CV-02564-N

NEIL MCDOUGALL,

Plaintiff,

v.

SAUDI ARABIAN OIL COMPANY,

Defendant.

Filed April 21, 2025

MEMORANDUM OPINION AND ORDER

This Order addresses Defendant Saudi Arabian Oil Company's ("Saudi Aramco") motion to dismiss [23]. Because the Court lacks subject-matter jurisdiction over the case, the Court grants the motion.

I. Origins of the Dispute

Plaintiff Neil McDougall is suing Saudi Aramco for events arising out of his employment termination. In

2012, Saudi Aramco's Houston-based subsidiary, Aramco Services Company ("ASC"), recruited McDougall to work at Saudi Aramco in Saudi Arabia. Pl.'s First Am. Compl. ¶¶ 26-27 [16]. The Kingdom of Saudi Arabia is the direct, majority owner of Saudi Aramco, and Saudi Aramco's principal place of business is in Saudi Arabia. *Id.* ¶ 2; *see also* Def.'s Mot. Br. 5 [24]. McDougall worked for Saudi Aramco under a series of one-year expat contracts from November 2012 until Saudi Aramco terminated him in June 2020. Pl.'s First Am. Compl. ¶ 27.

In 2021, McDougall won a wrongful termination lawsuit against Saudi Aramco in Saudi Arabian court and received an award reflecting his lost salary. *Id.* ¶ 31. McDougall also seeks to recover his lost medical, retirement, and life insurance benefits, but he needs certain employment documents to do so. *Id.* ¶¶ 33-35. During the wrongful termination proceedings, McDougall requested the employment documents from Saudi Aramco, and Saudi Aramco's attorney represented that the company would give him the employment documents. *Id.* ¶ 33. However, Saudi Aramco never gave him the documents. *Id.* ¶¶ 33, 37. So, in October 2024, McDougall filed this lawsuit against Saudi Aramco in the 116th Judicial District of Dallas County, Texas. *See* Pl.'s Orig. Pet. 1 [1-5]. Saudi Aramco then removed the case to this Court. *See* Notice of Removal 1 [1]. Saudi Aramco now moves to dismiss the case for lack of subject-matter jurisdiction under the Foreign Sovereign Immunities Act. Def.'s Mot. Br. 5-14 [24].

II. The Foreign Sovereign Immunities Act

A suit is properly dismissed when a court lacks subject-matter jurisdiction over a case. *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). The Foreign Sovereign Immunities Act ("FSIA") "provides 'the sole basis for obtaining jurisdiction over a foreign state in [federal and state] courts.'" *Janvey v. Libyan Investment Auth.*, 840 F.3d 248, 257 (5th Cir. 2016) (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 & n.2 (1989)). FSIA defines "foreign state" to include a state "agency or instrumentality." 28 U.S.C. § 1603(a). Under FSIA, "a foreign state is presumptively immune from the jurisdiction of United States courts; unless a specified exception applies, a federal court lacks subject-matter jurisdiction over a claim against a foreign state." *Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993) (citing *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 488-89 (1983) and 28 U.S.C. § 1604).

The party claiming immunity under FSIA has the initial burden of persuasion that it is a foreign state and therefore entitled to a presumption of immunity. *Janvey*, 840 F.3d at 257 (citing *United States v. Moats*, 961 F.2d 1198, 1205 (5th Cir. 1992)). If it meets this burden, then the party opposing immunity has the burden of showing that one of the exceptions to immunity applies. *See id.* Then, if this burden is met, the party claiming immunity has the "ultimate burden of persuasion that the exception does not apply to [it] and that [it] is entitled to immunity." *Id.* at 257-58.

Because the basic objective of foreign sovereign immunity is "to free a foreign sovereign from suit, the court should normally resolve [] factual disputes and reach a decision about immunity as near to the outset of the case as is reasonably possible." *Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co.*, 581 U.S. 170, 174 (2017) (citing *Verlinden*, 461 U.S. at 493-494).

III. The Court Grants the Motion to Dismiss

Here, the parties agree that Saudi Aramco qualifies as a foreign state under FSIA.[1]The case thus hinges on whether an exception to FSIA applies. McDougall proffers two such exceptions—the commercial activity exception and the expropriation exception—each of which the Court addresses in turn.

A. The Commercial Activity Exception Does Not Apply

The commercial activity exception "withdraws sovereign immunity in any case 'in which the action is based upon a commercial activity carried on in the United States by [a] foreign state.'" *OBB Personverkehr AG v. Sachs*, 577 U.S. 27, 29 (2015) (quoting 28 U.S.C. § 1605(a)(2)). To determine what an action is "based upon," courts consider the "particular conduct that constitutes the gravamen of the suit." *See id.* at 35 (internal quotation

1. *See Al-Qarqani v. Saudi Arabian Oil Co.*, 19 F.4th 794, 800 (5th Cir. 2021) ("We hold that Saudi Aramco is a 'foreign state' for purposes of the FSIA." (citing 28 U.S.C. § 1603-1604)).

marks omitted). Rather than individually analyzing each of the plaintiff's causes of action, courts "zero[] in on the core of the[] suit: the . . . sovereign acts that actually injured" the plaintiff. *See id.*

Under this analysis, the Court determines that the conduct constituting the gravamen of McDougall's suit occurred in Saudi Arabia. The core of McDougall's suit is based on Saudi Aramco's alleged refusal to provide him with the employment documents during the wrongful termination suit, which took place in Saudi Arabian court. *See* Pl.'s First Am. Compl. ¶¶ 33-37. McDougall maintains that his action is based upon Saudi Aramco's recruitment of him in the United States through its Houston-based subsidiary, ASC. *Id.* ¶¶ 13-14. The Court disagrees; McDougall's claims do not arise out of his hiring, but out of an alleged promise Saudi Aramco made during Saudi Arabian court proceedings regarding his termination. McDougall does not plead that Saudi Aramco—or ASC—acted fraudulently in recruiting him, but that Saudi Aramco acted fraudulently after his employment terminated. However McDougall frames his suit, Saudi Aramco's actions during the wrongful termination proceedings remain at its foundation.

Alternatively, McDougall argues that "Saudi Aramco's consistent, systematic actions" in the United States—namely, ASC's recruitment apparatus and Saudi Aramco's oil sales and refinement—"constitute a commercial action upon which [his] claims are based." Pl.'s Resp. ¶ 20 [27]. However, the commercial activity exception does not turn on Saudi Aramco's commercial activities as a general matter, but rather the "particular conduct that constitutes the gravamen of the suit." *OBB Personverkehr*, 577 U.S. at 35. And neither ASC's recruitment efforts nor Saudi Aramco's oil sales and refinement constitute Saudi Aramco's particular conduct constituting the gravamen of McDougall's suit. Accordingly, the commercial activity exception does not apply here.

B. The Expropriation Exception Does Not Apply

Next, under the expropriation exception, a foreign state shall not be immune in any case "in which rights in property taken in violation of international law are in issue and that property . . . is owned or operated by agency or instrumentality of the foreign state . . . engaged in a commercial activity in the United States." *Bolivarian Republic*, 581 U.S. at 170 (quoting 28 U.S.C. § 1605(a)(3)). To survive a motion to dismiss based on this exception, "the relevant factual allegations must make out a legally valid claim that a certain kind of right is at issue (property rights) and that the relevant property was taken in a certain way (in violation of international law)." *Id.* at 174. Accordingly, "the legal standards by which takings are judged are not found in the domestic laws of the United States or even the laws of the 'expropriating' nation, but rather in customary international law." *Beierwaltes v. L'Office Federale De La Culture De La Confederation Suisse*, 999 F.3d 808, 821 (2d Cir. 2021) (collecting cases).

Under House Report 94-1487 on the FSIA legislation, there are three categories of illegal takings: (1) nationalizations or expropriations of property without payment of prompt, adequate, and effective compensation; (2) takings that are discriminatory; and (3) takings that are arbitrary. *See id.* (citing H.R. Rep. No. 94-1487, at 19-20 (1976)). Here, McDougall claims that Saudi Aramco's withholding of his employment documents is a taking of property rights in violation of international law because the taking is both discriminatory and arbitrary. Pl.'s First Am. Compl. ¶¶ 20-21.

The Court determines that McDougall has not sufficiently demonstrated that Saudi Aramco took the employment documents at issue in violation of international law. His allegations are conclusory and do not establish that the withholding of the employment documents was either discriminatory or arbitrary. First, McDougall's pleadings do not support that Saudi Aramco withheld the employment documents because he is an alien, so his discriminatory taking claim fails. Second, McDougall does not establish that Saudi Aramco's withholding of the employment documents bears no rational relationship to a public purpose, so his arbitrary taking claim also fails. Thus, McDougall has not met his burden of presenting evidence that the expropriation exception to immunity applies.

CONCLUSION

Because no exception to FSIA applies to McDougall's claims, the Court grants the motion to dismiss. By separate order of this same date, the Court issues final judgment for Saudi Aramco.

Signed April 21, 2025.

s/ David C. Godbey
David C. Godbey
Chief United States District Judge

APPENDIX C — FINAL JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, FILED APRIL 21, 2025

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. 3:24-CV-02564-N

NEIL MCDOUGALL,

Plaintiff,

v.

SAUDI ARABIAN OIL COMPANY,

Defendant.

FINAL JUDGMENT

By separate Order of this same date, the Court granted Defendant Saudi Arabian Oil Company's motion to dismiss for lack of jurisdiction. It is, therefore, ordered that Plaintiff Neil McDougall take nothing on his claims against Saudi Arabian Oil Company, and those claims are dismissed without prejudice. Court costs are taxed against McDougall. This is a final judgment.

Signed April 21, 2025.

s/ David C. Godbey
David C. Godbey
Chief United States District Judge