SUPREME COURT OF THE UNITED STATES

No. 03–13

REPUBLIC OF AUSTRIA ET AL., PETITIONERS *v.* MARIA V. ALTMANN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 7, 2004]

JUSTICE STEVENS delivered the opinion of the Court.

In 1998 an Austrian journalist, granted access to the Austrian Gallery's archives, discovered evidence that certain valuable works in the Gallery's collection had not been donated by their rightful owners but had been seized by the Nazis or expropriated by the Austrian Republic after World War II. The journalist provided some of that evidence to respondent, who in turn filed this action to recover possession of six Gustav Klimt paintings. Prior to the Nazi invasion of Austria, the paintings had hung in the palatial Vienna home of respondent's uncle, Ferdinand Bloch-Bauer, a Czechoslovakian Jew and patron of the arts. Respondent claims ownership of the paintings under a will executed by her uncle after he fled Austria in 1938. She alleges that the Gallery obtained possession of the paintings through wrongful conduct in the years during and after World War II.

The defendants (petitioners here)—the Republic of Austria and the Austrian Gallery (Gallery), an instrumentality of the Republic—filed a motion to dismiss the complaint asserting, among other defenses, a claim of sovereign immunity. The District Court denied the motion, 142

F. Supp. 2d 1187 (CD Cal. 2001), and the Court of Appeals affirmed, 317 F. 3d 954 (CA9 2002), as amended, 327 F. 3d 1246 (2003). We granted certiorari limited to the question whether the Foreign Sovereign Immunities Act of 1976 (FSIA or Act), 28 U. S. C. §1602 *et seq*., which grants foreign states immunity from the jurisdiction of federal and state courts but expressly exempts certain cases, including "cases . . . in which rights in property taken in violation of international law are in issue," §1605(a)(3), applies to claims that, like respondent's, are based on conduct that occurred before the Act's enactment, and even before the United States adopted the so-called "restrictive theory" of sovereign immunity in 1952. 539 U. S. 987 (2003).

I

Because this case comes to us from the denial of a motion to dismiss on the pleadings, we assume the truth of the following facts alleged in respondent's complaint.

Born in Austria in 1916, respondent Maria V. Altmann escaped the country after it was annexed by Nazi Germany in 1938. She settled in California in 1942 and became an American citizen in 1945. She is a niece, and the sole surviving named heir, of Ferdinand Bloch-Bauer, who died in Zurich, Switzerland, on November 13, 1945.

Prior to 1938 Ferdinand, then a wealthy sugar magnate, maintained his principal residence in Vienna, Austria, where the six Klimt paintings and other valuable works of art were housed. His wife, Adele, was the subject of two of the paintings. She died in 1925, leaving a will in which she "ask[ed]" her husband "after his death" to bequeath the paintings to the Gallery.[1] App. 187a, ¶81. The attor-

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[1]Adele's will mentions six Klimt paintings, Adele Bloch-Bauer I, Adele Bloch-Bauer II, Apple Tree I, Beechwood, Houses in Unterach am Attersee, and Schloss Kammer am Attersee III. The last of these,

ney for her estate advised the Gallery that Ferdinand intended to comply with his wife's request, but that he was not legally obligated to do so because he, not Adele, owned the paintings. Ferdinand never executed any document transferring ownership of any of the paintings at issue to the Gallery. He remained their sole legitimate owner until his death. His will bequeathed his entire estate to respondent, another niece, and a nephew.

On March 12, 1938, in what became known as the "Anschluss," the Nazis invaded and claimed to annex Austria. Ferdinand, who was Jewish and had supported efforts to resist annexation, fled the country ahead of the Nazis, ultimately settling in Zurich. In his absence, according to the complaint, the Nazis "Aryanized" the sugar company he had directed, took over his Vienna home, and divided up his artworks, which included the Klimts at issue here, many other valuable paintings, and a 400-piece porcelain collection. A Nazi lawyer, Dr. Erich Führer, took possession of the six Klimts. He sold two to the Gallery in 1941[2] and a third in 1943, kept one for himself, and sold another to the Museum of the City of Vienna. The immediate fate of the sixth is not known. 142 F. Supp. 2d, at 1193.

In 1946 Austria enacted a law declaring all transactions motivated by Nazi ideology null and void. This did not result in the immediate return of looted artwork to exiled Austrians, however, because a different provision of Austrian law proscribed export of "artworks . . . deemed to be important to [the country's] cultural heritage" and re-

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Schloss Kammer am Attersee III, is not at issue in this case because Ferdinand donated it to the Gallery in 1936. The sixth painting in this case, Amalie Zuckerkandl, is not mentioned in Adele's will. For further details, see 142 F. Supp. 2d 1187, 1192–1193 (CD Cal. 2001).

[2]More precisely, he traded Adele Bloch-Bauer I and Apple Tree I to the Gallery for Schloss Kammer am Attersee III, which he then sold to a third party.

quired anyone wishing to export art to obtain the permission of the Austrian Federal Monument Agency. App. 168a, ¶32. Seeking to profit from this requirement, the Gallery and the Federal Monument Agency allegedly adopted a practice of "forc[ing] Jews to donate or trade valuable artworks to the [Gallery] in exchange for export permits for other works." *Id.*, at 168a, ¶33.

The next year Robert Bentley, respondent's brother and fellow heir, retained a Viennese lawyer, Dr. Gustav Rinesch, to locate and recover property stolen from Ferdinand during the war. In January 1948 Dr. Rinesch wrote to the Gallery requesting return of the three Klimts purchased from Dr. Führer. A Gallery representative responded, asserting—falsely, according to the complaint—that Adele had bequeathed the paintings to the Gallery, and the Gallery had merely permitted Ferdinand to retain them during his lifetime. *Id.*, at 170a, ¶40.

Later the same year Dr. Rinesch enlisted the support of Gallery officials to obtain export permits for many of Ferdinand's remaining works of art. In exchange, Dr. Rinesch, purporting to represent respondent and her fellow heirs, signed a document "acknowledg[ing] and accept[ing] Ferdinand's declaration that in the event of his death he wished to follow the wishes of his deceased wife to donate" the Klimt paintings to the Gallery. *Id.*, at 177a, ¶56. In addition, Dr. Rinesch assisted the Gallery in obtaining both the painting Dr. Führer had kept for himself and the one he had sold to the Museum of the City of Vienna.[3] At no time during these transactions, however, did Dr. Rinesch have respondent's permission either "to negotiate on her behalf or to allow the [Gallery] to obtain

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[3]The sixth painting, which disappeared from Ferdinand's collection in 1938, apparently remained in private hands until 1988, when a private art dealer donated it to the Gallery. *Id.*, at 1193.

the Klimt paintings." *Id.*, at 178a, ¶61.

In 1998 a journalist examining the Gallery's files discovered documents revealing that at all relevant times Gallery officials knew that neither Adele nor Ferdinand had, in fact, donated the six Klimts to the Gallery. The journalist published a series of articles reporting his findings, and specifically noting that Klimt's first portrait of Adele, "which all the [Gallery] publications represented as having been donated to the museum in 1936," had actually been received in 1941, accompanied by a letter from Dr. Führer signed "'Heil Hitler.'" *Id.*, at 181a, ¶67.

In response to these revelations, Austria enacted a new restitution law under which individuals who had been coerced into donating artworks to state museums in exchange for export permits could reclaim their property. Respondent—who had believed, prior to the journalist's investigation, that Adele and Ferdinand had "freely donated" the Klimt paintings to the Gallery before the war—immediately sought recovery of the paintings and other artworks under the new law. *Id.*, at 178a–179a, ¶61, 182a. A committee of Austrian government officials and art historians agreed to return certain Klimt drawings and porcelain settings that the family had donated in 1948. After what the complaint terms a "sham" proceeding, however, the committee declined to return the six paintings, concluding, based on an allegedly purposeful misreading of Adele's will, that her precatory request had created a binding legal obligation that required her husband to donate the paintings to the Gallery on his death. *Id.*, at 185a.

Respondent then announced that she would file a lawsuit in Austria to recover the paintings. Because Austrian court costs are proportional to the value of the recovery sought (and in this case would total several million dollars, an amount far beyond respondent's means), she requested a waiver. *Id.*, at 189a. The court granted this

request in part but still would have required respondent to pay approximately $350,000 to proceed. *Ibid.* When the Austrian Government appealed even this partial waiver, respondent voluntarily dismissed her suit and filed this action in the United States District Court for the Central District of California.

II

Respondent's complaint advances eight causes of action and alleges violations of Austrian, international, and California law.[4] It asserts jurisdiction under §2 of the FSIA, which grants federal district courts jurisdiction over civil actions against foreign states "as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity" under either another provision of the FSIA or "any applicable international agreement." 28 U. S. C. §1330(a). The complaint further asserts that petitioners are not entitled to immunity under the FSIA because the Act's "expropriation exception," §1605(a)(3), expressly exempts from immunity all cases involving "rights in property taken in violation of international law," provided the property has a commercial con-

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[4] As the District Court described these claims:

"[Respondent's] first cause of action is for declaratory relief pursuant to 28 U. S. C. §2201; [she] seeks a declaration that the Klimt paintings should be returned pursuant to the 1998 Austrian law. [Her] second cause of action is for replevin, presumably under California law; [she] seeks return of the paintings. [Her] third cause of action seeks rescission of any agreements by the Austrian lawyer with the Gallery or the Federal Monument Agency due to mistake, duress, and/or lack of authorization. [Her] fourth cause of action seeks damages for expropriation and conversion, and her fifth cause of action seeks damages for violation of international law. [Her] sixth cause of action seeks imposition of a constructive trust, and her seventh cause of action seeks restitution based on unjust enrichment. Finally, [her] eighth cause of action seeks disgorgement of profits under the California Unfair Business Practices law." *Id.*, at 1197.

nection to the United States or the agency or instrumentality that owns the property is engaged in commercial activity here.[5]

Petitioners filed a motion to dismiss raising several defenses including a claim of sovereign immunity.[6] Their immunity argument proceeded in two steps. First, they claimed that as of 1948, when much of their alleged wrongdoing took place, they would have enjoyed absolute immunity from suit in United States courts.[7] Proceeding from this premise, petitioners next contended that nothing in the FSIA should be understood to divest them of that

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[5] The provision reads:

"(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

. . . . . .

"(3) 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."

[6] Petitioners claimed (1) "they are immune from suit under the doctrine of sovereign immunity," and the FSIA, 28 U. S. C. §§1602–1611, "does not strip them of this immunity"; (2) the District Court "should decline to exercise jurisdiction . . . under the doctrine of *forum non conveniens*"; (3) respondent "fail[ed] to join indispensable parties under Fed. R. Civ. P. 19"; and (4) venue in the Central District of California is improper. 142 F. Supp. 2d, at 1197.

[7] As the District Court noted, *id.*, at 1201, n. 16, and the above summary of the complaint makes clear, *supra*, at 5–6, respondent alleges that petitioners' wrongdoing continued well past 1948 in the form of concealment of the paintings' true provenance and deliberate misinterpretation of Adele's will. Because we conclude that the FSIA may be applied to petitioners' 1948 actions, we need not address the District Court's alternative suggestion that petitioners' subsequent alleged wrongdoing would be sufficient, in and of itself, to establish jurisdiction.

immunity retroactively.

The District Court rejected this argument, concluding both that the FSIA applies retroactively to pre-1976 actions and that the Act's expropriation exception extends to respondent's specific claims. Only the former conclusion concerns us here. Presuming that our decision in *Landgraf* v. *USI Film Products,* 511 U. S. 244 (1994), governed its retroactivity analysis, the court "first consider[ed] whether Congress expressly stated the [FSIA's] reach." 142 F. Supp., at 1199. Finding no such statement, the court then asked whether application of the Act to petitioners' 1948 actions "would impair rights [petitioners] possessed when [they] acted, impose new duties on [them], or increase [their] liability for past conduct." *Ibid.* Because it deemed the FSIA "a jurisdictional statute that does not alter substantive legal rights," the court answered this second question in the negative and accordingly found the Act controlling. *Id.*, at 1201. As further support for this finding, the court noted that the FSIA itself provides that "'[c]laims of foreign states to immunity should *henceforth be decided* by courts of the United States . . . *in conformity with the principles set forth in this chapter*.'" *Ibid.* (quoting 28 U. S. C. §1602) (emphasis in District Court opinion). In the court's view, this language suggests the Act "is to be applied to all cases decided after its enactment regardless of when the plaintiff's cause of action may have accrued." 142 F. Supp. 2d, at 1201.

The Court of Appeals agreed that the FSIA applies to this case.[8] Rather than endorsing the District Court's reliance on the Act's jurisdictional nature, however, the panel reasoned that applying the FSIA to Austria's alleged

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[8]The Court of Appeals also affirmed the District Court's conclusion that FSIA §1605(a)(3) covers respondent's claims. 317 F. 3d 954, 967–969, 974 (CA9 2002). We declined to review that aspect of the panel's ruling. 539 U. S. 987 (2003).

wrongdoing was not impermissibly retroactive because Austria could not legitimately have expected to receive immunity for that wrongdoing even in 1948 when it occurred. The court rested that conclusion on an analysis of American courts' then-prevalent practice of deferring to case-by-case immunity determinations by the State Department, and on that Department's expressed policy, as of 1949, of "'reliev[ing] American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials.'" 317 F. 3d, at 965 (quoting Press Release No. 296, Jurisdiction of United States Courts Re Suits for Identifiable Property Involved in Nazi Forced Transfers (emphasis deleted)).

We granted certiorari, 539 U. S. 987 (2003), and now affirm the judgment of the Court of Appeals, though on different reasoning.

III

Chief Justice Marshall's opinion in *Schooner Exchange* v. *McFaddon,* 7 Cranch 116 (1812), is generally viewed as the source of our foreign sovereign immunity jurisprudence. In that case, the libellants claimed to be the rightful owners of a French ship that had taken refuge in the port of Philadelphia. The Court first emphasized that the jurisdiction of the United States over persons and property within its territory "is susceptible of no limitation not imposed by itself," and thus foreign sovereigns have no right to immunity in our courts. *Id.,* at 136. Chief Justice Marshall went on to explain, however, that as a matter of comity, members of the international community had implicitly agreed to waive the exercise of jurisdiction over other sovereigns in certain classes of cases, such as those involving foreign ministers or the person of the sovereign.[9]

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[9] "Th[e] perfect equality and absolute independence of sovereigns, and th[e] common interest impelling them to mutual intercourse, and an

Accepting a suggestion advanced by the Executive Branch, see *id.*, at 134, the Chief Justice concluded that the implied waiver theory also served to exempt the *Schooner Exchange*—"a national armed vessel . . . of the emperor of France"—from United States courts' jurisdiction. *Id.*, at 145–146.[10]

In accordance with Chief Justice Marshall's observation that foreign sovereign immunity is a matter of grace and comity rather than a constitutional requirement, this Court has "consistently . . . deferred to the decisions of the political branches—in particular, those of the Executive Branch—on whether to take jurisdiction" over particular actions against foreign sovereigns and their instrumentalities. *Verlinden B. V.* v. *Central Bank of Nigeria,* 461 U. S. 480, 486 (1983) (citing *Ex parte Peru,* 318 U. S. 578, 586–590 (1943); *Republic of Mexico* v. *Hoffman,* 324 U. S. 30, 33–36 (1945)). Until 1952 the Executive Branch followed a policy of requesting immunity in all actions against friendly sovereigns. 461 U. S., at 486. In that

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interchange of good offices with each other, have given rise to a class of cases in which every sovereign is understood to wave *[sic]* the exercise of a part of that complete exclusive territorial jurisdiction, which has been stated to be the attribute of every nation." *Schooner Exchange,* 7 Cranch, at 137.

[10] Chief Justice Marshall noted, however, that the outcome might well be different if the case involved a sovereign's *private* property:

"Without indicating any opinion on this question, it may safely be affirmed, that there is a manifest distinction between the private property of the person who happens to be a prince, and that military force which supports the sovereign power, and maintains the dignity and the independence of a nation. A prince, by acquiring private property in a foreign country, may possibly be considered as subjecting that property to the territorial jurisdiction; he may be considered as so far laying down the prince, and assuming the character of a private individual; but this he cannot be presumed to do with respect to any portion of that armed force, which upholds his crown, and the nation he is entrusted to govern." *Id.*, at 145.

year, however, the State Department concluded that "immunity should no longer be granted in certain types of cases."[11] App. A to Brief for Petitioners 1a. In a letter to the Attorney General, the Acting Legal Adviser for the Secretary of State, Jack B. Tate, explained that the Department would thereafter apply the "restrictive theory" of sovereign immunity:

> "A study of the law of sovereign immunity reveals the existence of two conflicting concepts of sovereign immunity, each widely held and firmly established. According to the classical or absolute theory of sovereign immunity, a sovereign cannot, without his consent, be made a respondent in the courts of another sovereign. According to the newer or restrictive theory of sovereign immunity, the immunity of the sovereign is recognized with regard to sovereign or public acts *(jure imperii)* of a state, but not with respect to private acts *(jure gestionis)*. . . . [I]t will hereafter be the Department's policy to follow the restrictive theory . . . in the consideration of requests of foreign governments for a grant of sovereign immunity." *Id.*, at 1a, 4a–5a.

As we explained in our unanimous opinion in *Verlinden*, the change in State Department policy wrought by the "Tate Letter" had little, if any, impact on federal courts' approach to immunity analyses: "As in the past, initial responsibility for deciding questions of sovereign immunity fell primarily upon the Executive acting through the State Department," and courts continued to "abid[e] by" that Department's "'suggestions of immunity.'" 461 U. S.,

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[11] Letter from Jack B. Tate, Acting Legal Adviser, U. S. Dept. of State, to Acting U. S. Attorney General Philip B. Perlman (May 19, 1952), reprinted in 26 Dept. State Bull. 984–985 (1952), and in *Alfred Dunhill of London, Inc.* v. *Republic of Cuba,* 425 U. S. 682, 711–715 (1976) (App. 2 to opinion of White, J.).

at 487. The change did, however, throw immunity determinations into some disarray, as "foreign nations often placed diplomatic pressure on the State Department," and political considerations sometimes led the Department to file "suggestions of immunity in cases where immunity would not have been available under the restrictive theory." *Id.*, at 487–488. Complicating matters further, when foreign nations failed to request immunity from the State Department:

> "[T]he responsibility fell to the courts to determine whether sovereign immunity existed, generally by reference to prior State Department decisions. . . . Thus, sovereign immunity determinations were made in two different branches, subject to a variety of factors, sometimes including diplomatic considerations. Not surprisingly, the governing standards were neither clear nor uniformly applied." *Ibid.*

In 1976 Congress sought to remedy these problems by enacting the FSIA, a comprehensive statute containing a "set of legal standards governing claims of immunity in every civil action against a foreign state or its political subdivisions, agencies, or instrumentalities." *Id.*, at 488. The Act "codifies, as a matter of federal law, the restrictive theory of sovereign immunity," *ibid.*, and transfers primary responsibility for immunity determinations from the Executive to the Judicial Branch. The preamble states that "henceforth" both federal and state courts should decide claims of sovereign immunity in conformity with the Act's principles. 28 U. S. C. §1602.

The Act itself grants federal courts jurisdiction over civil actions against foreign states, §1330(a),[12] and over diversity actions in which a foreign state is the plaintiff,

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[12] The Act defines the term "foreign state" to include a state's political subdivisions, agencies, and instrumentalities. 28 U. S. C. §1603(a).

§1332(a)(4); it contains venue and removal provisions, §§1391(f), 1441(d); it prescribes the procedures for obtaining personal jurisdiction over a foreign state, §1330(b); and it governs the extent to which a state's property may be subject to attachment or execution, §§1609–1611. Finally, the Act carves out certain exceptions to its general grant of immunity, including the expropriation exception on which respondent's complaint relies. See *supra,* at 6–7, and n. 5. These exceptions are central to the Act's functioning: "At the threshold of every action in a district court against a foreign state, . . . the court must satisfy itself that one of the exceptions applies," as "subject-matter jurisdiction in any such action depends" on that application. *Verlinden*, 461 U. S., at 493–494.

IV

The District Court agreed with respondent that the FSIA's expropriation exception covers petitioners' alleged wrongdoing, 142 F. Supp. 2d, at 1202, and the Court of Appeals affirmed that holding, 317 F. 3d, at 967–969, 974. As noted above, however, we declined to review this aspect of the courts' opinions, confining our grant of certiorari to the issue of the FSIA's general applicability to conduct that occurred prior to the Act's 1976 enactment, and more specifically, prior to the State Department's 1952 adoption of the restrictive theory of sovereign immunity. See *supra*, at 2, 8–9, and n. 8. We begin our analysis of that issue by explaining why, contrary to the assumption of the District Court, 142 F. Supp. 2d, at 1199–1201, and Court of Appeals, 317 F. 3d, at 963–967, the default rule announced in our opinion in *Landgraf* v. *USI Film Products,* 511 U. S. 244 (1994), does not control the outcome in this case.

In *Landgraf* we considered whether §102 of the Civil Rights Act of 1991, which permits a party to seek compensatory and punitive damages for certain types of intentional employment discrimination, Rev. Stat. §1977A, as

added, 105 Stat. 1072, 42 U. S. C. §1981a(a), and to demand a jury trial if such damages are sought, §1981a(c), applied to an employment discrimination case that was pending on appeal when the statute was enacted. The issue forced us to confront the "'apparent tension'" between our rule that "'a court is to apply the law in effect at the time it renders its decision,'" 511 U. S., at 264 (quoting *Bradley* v. *School Bd. of Richmond,* 416 U. S. 696, 711 (1974)), and the seemingly contrary "axiom that '[r]etroactivity is not favored in the law'" and thus that "'congressional enactments . . . will not be construed to have retroactive effect unless their language requires this result,'" 511 U. S., at 264 (quoting *Bowen* v. *Georgetown Univ. Hospital,* 488 U. S. 204, 208 (1988)).

Acknowledging that, in most cases, the antiretroactivity presumption is just that—a presumption, rather than a constitutional command[13]—we examined the rationales that support it. We noted, for example, that "[t]he Legislature's . . . responsivity to political pressures poses a risk that it may be tempted to use retroactive legislation as a means of retribution against unpopular groups or individuals," *Landgraf,* 511 U. S., at 266, and that retroactive statutes may upset settled expectations by "'tak[ing] away or impair[ing] vested rights acquired under existing laws, or creat[ing] a new obligation, impos[ing] a new duty, or attach[ing] a new disability, in respect to transactions or considerations already past,'" *id.*, at 269 (quoting *Society for Propagation of the Gospel* v. *Wheeler*, 22 F. Cas. 756, 767 (No. 13,156) (CCNH 1814) (Story, J.)). We further observed that these antiretroactivity concerns are most pressing in cases involving "new provisions affecting con-

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[13] But see *Landgraf,* 511 U. S., at 266–268 (identifying several constitutional provisions that express the antiretroactivity principle, including the *Ex Post Facto* Clause, Art. I, §10, cl. 1, and the prohibition on "Bills of Attainder," Art. I, §§9–10).

tractual or property rights, matters in which predictability and stability are of prime importance." 511 U. S., at 271.

In contrast, we sanctioned the application to all pending and future cases of "intervening" statutes that merely "confe[r] or ous[t] jurisdiction." *Id.*, at 274. Such application, we stated, "usually takes away no substantive right but simply changes the tribunal that is to hear the case." *Ibid.* (internal quotation marks omitted). Similarly, the "diminished reliance interests in matters of procedure" permit courts to apply changes in procedural rules "in suits arising before [the rules'] enactment without raising concerns about retroactivity." *Id.*, at 275.

Balancing these competing concerns, we described the presumption against retroactive application in the following terms:

> "When a case implicates a federal statute enacted after the events in suit, the court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules. When, however, the statute contains no such express command the court must determine whether the new statute would have retroactive effect, *i.e.,* whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result." *Id.*, at 280.[14]

Though seemingly comprehensive, this inquiry does not

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[14] Applying this rule to the question in the case, we concluded that §102 of the Civil Rights Act of 1991 should not apply to cases arising before its enactment. 511 U. S., at 293.

provide a clear answer in this case. Although the FSIA's preamble suggests that it applies to preenactment conduct, see *infra,* at 18, that statement by itself falls short of an "expres[s] prescri[ption of] the statute's proper reach." Under *Landgraf*, therefore, it is appropriate to ask whether the Act affects substantive rights (and thus would be impermissibly retroactive if applied to preenactment conduct) or addresses only matters of procedure (and thus may be applied to all pending cases regardless of when the underlying conduct occurred). But the FSIA defies such categorization. To begin with, none of the three examples of retroactivity mentioned in the above quotation fits the FSIA's clarification of the law of sovereign immunity. Prior to 1976 foreign states had a justifiable expectation that, as a matter of comity, United States courts would grant them immunity for their public acts (provided the State Department did not recommend otherwise), but they had no "right" to such immunity. Moreover, the FSIA merely opens United States courts to plaintiffs with preexisting claims against foreign states; the Act neither "increase[s those states'] liability for past conduct" nor "impose[s] new duties with respect to transactions already completed." 511 U. S., at 280. Thus, the Act does not at first appear to "operate retroactively" within the meaning of the *Landgraf* default rule.

That preliminary conclusion, however, creates some tension with our observation in *Verlinden* that the FSIA is not simply a jurisdictional statute "concern[ing] access to the federal courts" but a codification of "the standards governing foreign sovereign immunity as an aspect of *substantive* federal law." 461 U. S., at 496–497 (emphasis added). Moreover, we noted in *Verlinden* that in any suit against a foreign sovereign, "the plaintiff will be barred from raising his claim in *any* court in the United States" unless one of the FSIA's exceptions applies, *id.*, at 497 (emphasis added), and we have stated elsewhere that statutes that

"*creat[e]* jurisdiction" where none otherwise exists "spea[k] not just to the power of a particular court but to the substantive rights of the parties as well," *Hughes Aircraft Co.* v. *United States ex rel. Schumer,* 520 U. S. 939, 951 (1997) (emphasis in original). Such statutes, we continued, "even though phrased in 'jurisdictional' terms, [are] as much subject to our presumption against retroactivity as any other[s]." *Ibid.*[15]

Thus, *Landgraf*'s default rule does not definitively resolve this case. In our view, however, *Landgraf*'s antiretroactivity presumption, while not strictly confined to cases involving private rights, is most helpful in that context. Cf. 511 U. S., at 271, n. 25 ("[T]he great majority of our decisions relying upon the antiretroactivity presumption have involved intervening statutes burdening private parties"). The aim of the presumption is to avoid unnecessary *post hoc* changes to legal rules on which

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[15] Of course, the FSIA differs from the statutory amendment at issue in *Hughes Aircraft*. That amendment was attached to the statute that created the cause of action, see former 31 U. S. C. §3730(b)(1) (1982 ed.), 96 Stat. 978; 31 U. S. C. §3730(b)(1), 100 Stat. 3154, and it prescribed a limitation that any court entertaining the cause of action was bound to apply, see §3730(e)(4)(A), 100 Stat., at 3157. When a "jurisdictional" limitation adheres to the cause of action in this fashion—when it applies by its terms regardless of where the claim is brought—the limitation is essentially substantive. In contrast, the FSIA simply limits the jurisdiction of federal and state courts to entertain claims against foreign sovereigns. The Act does not create or modify any causes of action, nor does it purport to limit *foreign* countries' decisions about what claims against which defendants their courts will entertain.

Even if the dissent is right that, like the provision at issue in *Hughes Aircraft*, the FSIA "create[s] jurisdiction where there was none before," *post*, at 10 (opinion of KENNEDY, J.) (punctuation omitted), however, that characteristic is in some tension with other, less substantive aspects of the Act. This tension, in turn, renders the *Landgraf* approach inconclusive and requires us to examine the entire statute in light of the underlying principles governing our retroactivity jurisprudence.

parties relied in shaping their primary conduct. But the principal purpose of foreign sovereign immunity has never been to permit foreign states and their instrumentalities to shape their conduct in reliance on the promise of future immunity from suit in United States courts. Rather, such immunity reflects current political realities and relationships, and aims to give foreign states and their instrumentalities some *present* "protection from the inconvenience of suit as a gesture of comity." *Dole Food Co.* v. *Patrickson,* 538 U. S. 468, 479 (2003). Throughout history, courts have resolved questions of foreign sovereign immunity by deferring to the "decisions of the political branches . . . on whether to take jurisdiction." *Verlinden,* 461 U. S., at 486. In this *sui generis* context, we think it more appropriate, absent contraindications, to defer to the most recent such decision—namely, the FSIA—than to presume that decision *inapplicable* merely because it postdates the conduct in question.[16]

V

This leaves only the question whether anything in the FSIA or the circumstances surrounding its enactment suggests that we should not apply it to petitioners' 1948 actions. Not only do we answer this question in the negative, but we find clear evidence that Congress intended the Act to apply to preenactment conduct.

To begin with, the preamble of the FSIA expresses Congress' understanding that the Act would apply to all postenactment claims of sovereign immunity. That section provides:

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[16] Between 1952 and 1976 courts and the State Department similarly presumed that the Tate Letter was applicable even in disputes concerning conduct that predated the letter. See, *e.g., National City Bank of N. Y.* v. *Republic of China*, 348 U. S. 356, 429 (1955) (assuming, in dicta, that the Tate Letter would govern the sovereign immunity analysis in a dispute concerning treasury notes purchased in 1920 and 1947–1948).

> "*Claims* of foreign states to immunity should *henceforth* be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter." 28 U. S. C. §1602 (emphasis added).

Though perhaps not sufficient to satisfy *Landgraf*'s "express command" requirement, 511 U. S., at 280, this language is unambiguous: Immunity "claims"—not actions protected by immunity, but assertions of immunity to suits arising from those actions—are the relevant conduct regulated by the Act;[17] those claims are "henceforth" to be decided by the courts. As the District Court observed, see *supra,* at 8 (citing 142 F. Supp. 2d, at 1201), this language suggests Congress intended courts to resolve *all* such claims "in conformity with the principles set forth" in the Act, regardless of when the underlying conduct occurred.[18]

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[17] Our approach to retroactivity in this case thus parallels that advocated by JUSTICE SCALIA in his concurrence in *Landgraf:*

"The critical issue, I think, is not whether the rule affects 'vested rights,' or governs substance or procedure, but rather what is the relevant activity that the rule regulates. Absent clear statement otherwise, only such relevant activity which occurs *after* the effective date of the statute is covered. Most statutes are meant to regulate primary conduct, and hence will not be applied in trials involving conduct that occurred before their effective date. But other statutes have a different purpose and therefore a different relevant retroactivity event." 511 U. S., at 291 (opinion concurring in judgment).

[18] The dissent is quite right that "'[a] statement that a statute will become effective on a certain date does not even arguably suggest that it has any application to conduct that occurred at an earlier date.'" *Post*, at 6. The provision of the FSIA to which this observation applies, however, is not the preamble but section 8, which states that the "Act shall take effect ninety days after the date of its enactment.'" 90 Stat. 2898, note following 28 U. S. C. §1602. The office of the word "henceforth" is to make the statute effective with respect to claims to immunity thereafter asserted. Notably, any such claim asserted immediately after the statute became effective would necessarily have related to conduct that took place at an earlier date.

The FSIA's overall structure strongly supports this conclusion. Many of the Act's provisions unquestionably apply to cases arising out of conduct that occurred before 1976. In *Dole Food Co.* v. *Patrickson,* 538 U. S. 468 (2003), for example, we held that whether an entity qualifies as an "instrumentality" of a "foreign state" for purposes of the FSIA's grant of immunity depends on the relationship between the entity and the state at the time suit is brought rather than when the conduct occurred. In addition, *Verlinden*, which upheld against constitutional challenge 28 U. S. C. §1330's grant of subject-matter jurisdiction, involved a dispute over a contract that predated the Act. 461 U. S., at 482–483, 497. And there has never been any doubt that the Act's procedural provisions relating to venue, removal, execution, and attachment apply to all pending cases. Thus, the FSIA's preamble indicates that it applies "henceforth," and its body includes numerous provisions that unquestionably apply to claims based on pre-1976 conduct. In this context, it would be anomalous to presume that an isolated provision (such as the expropriation exception on which respondent relies) is of purely prospective application absent any statutory language to that effect.

Finally, applying the FSIA to all pending cases regardless of when the underlying conduct occurred is most consistent with two of the Act's principal purposes: clarifying the rules that judges should apply in resolving sovereign immunity claims and eliminating political participation in the resolution of such claims. We have recognized that, to accomplish these purposes, Congress established a comprehensive framework for resolving any claim of sovereign immunity:

> "We think that the text and structure of the FSIA demonstrate Congress' intention that the FSIA be the sole basis for obtaining jurisdiction over a foreign state in our courts. Sections 1604 and 1330(a) work in

> tandem: §1604 bars federal and state courts from exercising jurisdiction when a foreign state *is* entitled to immunity, and §1330(a) confers jurisdiction on district courts to hear suits brought by United States citizens and by aliens when a foreign state is *not* entitled to immunity. As we said in *Verlinden*, the FSIA 'must be applied by the district courts in every action against a foreign sovereign, since subject-matter jurisdiction in any such action depends on the existence of one of the specified exceptions to foreign sovereign immunity.'" *Argentine Republic* v. *Amerada Hess Shipping Corp.,* 488 U. S. 428, 434–435 (1989) (quoting *Verlinden*, 461 U. S., at 493).

The *Amerada Hess* respondents' claims concerned conduct that postdated the FSIA, so we had no occasion to consider the Act's retroactivity. Nevertheless, our observations about the FSIA's inclusiveness are relevant in this case: Quite obviously, Congress' purposes in enacting such a comprehensive jurisdictional scheme would be frustrated if, in postenactment cases concerning preenactment conduct, courts were to continue to follow the same ambiguous and politically charged "'standards'" that the FSIA replaced. See *supra*, at 12 (quoting *Verlinden*, 461 U. S., at 487).

We do not endorse the reasoning of the Court of Appeals. Indeed, we think it engaged in precisely the kind of detailed historical inquiry that the FSIA's clear guidelines were intended to obviate. Nevertheless, we affirm the panel's judgment because the Act, freed from *Landgraf*'s antiretroactivity presumption, clearly applies to conduct, like petitioners' alleged wrongdoing, that occurred prior to 1976 and, for that matter, prior to 1952 when the State Department adopted the restrictive theory of sovereign

immunity.[19]

VI

We conclude by emphasizing the narrowness of this holding. To begin with, although the District Court and Court of Appeals determined that §1605(a)(3) covers this case, we declined to review that determination. See *supra*, at 2, 8–9, and n. 8. Nor do we have occasion to comment on the application of the so-called "act of state" doctrine to petitioners' alleged wrongdoing. Unlike a claim of sovereign immunity, which merely raises a jurisdictional defense, the act of state doctrine provides foreign states with a substantive defense on the merits. Under that doctrine, the courts of one state will not question the validity of public acts (acts *jure imperii)* performed by other sovereigns within their own borders, even when such courts have jurisdiction over a controversy in which one of the litigants has standing to challenge those acts.[20] See *Underhill* v. *Hernandez,* 168 U. S. 250, 252 (1897); *Banco Nacional de Cuba* v. *Sabbatino,* 376 U. S. 398, 401 (1964) ("The act of state doctrine in its traditional formulation precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory"). Petitioners principally rely on the act of state doctrine to support their assertion that foreign expropriations are public acts for which, prior to the enactment of the FSIA, sovereigns

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[19] Petitioners suggest that the latter date is important because it marked the first shift in foreign states' expectations concerning the scope of their immunity. Whether or not the date would be significant to a *Landgraf*-type analysis of foreign states' settled expectations at various times prior to the FSIA's enactment, it is of no relevance in this case given our rationale for finding the Act applicable to preenactment conduct.

[20] Under the doctrine, redress of grievances arising from such acts must be obtained through diplomatic channels.

expected immunity. Brief for Petitioners 18–20. Applying the FSIA in this case would upset that settled expectation, petitioners argue, and thus the Act "would operate retroactively" under *Landgraf*. 511 U. S., at 280. But because the FSIA in no way affects application of the act of state doctrine, our determination that the Act applies in this case in no way affects any argument petitioners may have that the doctrine shields their alleged wrongdoing.

Finally, while we reject the United States' recommendation to bar application of the FSIA to claims based on pre-enactment conduct, Brief for United States as *Amicus Curiae*, nothing in our holding prevents the State Department from filing statements of interest suggesting that courts decline to exercise jurisdiction in particular cases implicating foreign sovereign immunity.[21] The issue now before us, to which the Brief for United States as *Amicus Curiae* is addressed, concerns interpretation of the FSIA's reach—a "pure question of statutory construction . . . well within the province of the Judiciary." *INS* v. *Cardoza-Fonseca,* 480 U. S. 421, 446, 448 (1987). While the United States' views on such an issue are of considerable interest to the Court, they merit no special deference. See, *e.g., ibid*. In contrast, should the State Department choose to express its opinion on the implications of exercising jurisdiction over *particular* petitioners in connection with *their* alleged conduct,[22] that opinion might well be

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[21] See, *e.g., Flatow* v. *Islamic Republic of Iran*, 305 F. 3d 1249, 1251–1252, and n. 4 (CADC 2002) (statement of interest concerning attachment of property that is owned by a foreign state but located in the United States); *Sea Hunt, Inc.* v. *Unidentified Shipwrecked Vessel or Vessels*, 221 F. 3d 634, 642 (CA4 2000) (statement of interest concerning sovereign immunity of a foreign state's vessels); *767 Third Ave. Assoc.* v. *Consulate General of Socialist Federal Republic of Yugoslavia*, 218 F. 3d 152, 157 (CA2 2000) (statement of interest concerning successor states to the Socialist Federal Republic of Yugoslavia).

[22] We note that the United States Government has apparently indi-

entitled to deference as the considered judgment of the Executive on a particular question of foreign policy.[23] See, *e.g., Verlinden,* 461 U. S., at 486; *American Ins. Assn.* v. *Garamendi,* 539 U. S. 396, 414 (2003) (discussing the President's "'vast share of responsibility for the conduct of our foreign relations'"). We express no opinion on the question whether such deference should be granted in cases covered by the FSIA.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

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cated to the Austrian Federal Government that it will not file a statement of interest in this case. App. 243a (Letter from Hans Winkler, Legal Adviser, Austrian Federal Ministry for Foreign Affairs, to Deputy Secretary of the Treasury Stuart E. Eizenstat (Jan. 17, 2001)). The enforceability of that indication, of course, is not before us.

[23] Mislabeling this observation a "constitutional conclusion," the dissent suggests that permitting the Executive to comment on a party's assertion of sovereign immunity will result in "[u]ncertain prospective application of our foreign sovereign immunity law." *Post,* at 21, 24. We do not hold, however, that executive intervention could or would trump considered application of the FSIA's more neutral principles; we merely note that the Executive's views on questions within its area of expertise merit greater deference than its opinions regarding the scope of a congressional enactment. Furthermore, we fail to understand how our holding, which requires that courts apply the FSIA's sovereign immunity rules in *all* cases, somehow injects greater uncertainty into sovereign immunity law than the dissent's approach, which would require, for cases concerning pre-1976 conduct, case-by-case analysis of the status of that law at the time of the offending conduct—including analysis of the existence or nonexistence of any State Department statements on the subject.