

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

## Syllabus

REPUBLIC OF AUSTRIA ET AL. *v.* ALTMANNCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT

No. 03–13. Argued February 25, 2004—Decided June 7, 2004

Upon evidence that certain of her uncle’s valuable art works had either been seized by the Nazis or expropriated by Austria after World War II, respondent filed this action in Federal District Court to recover six of the paintings from petitioners, Austria and its instrumentality, the Austrian Gallery. She asserts jurisdiction under §2 of the Foreign Sovereign Immunities Act of 1976 (FSIA or Act), 28 U. S. C. §1330(a), which authorizes federal civil suits against foreign states “as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity” under another section of the FSIA or under “any applicable international agreement.” She further asserts that petitioners are not entitled to immunity under the FSIA’s “expropriation exception,” §1605(a)(3), which expressly exempts from immunity certain cases involving “rights in property taken in violation of international law.” Petitioners moved to dismiss based on, *inter alia*, the two-part claim that (1) as of 1948, when much of their alleged wrongdoing took place, they would have enjoyed absolute sovereign immunity from suit in United States courts, and that (2) nothing in the FSIA retroactively divests them of that immunity. Rejecting this argument, the District Court concluded, among other things, that the FSIA applies retroactively to pre-1976 actions. The Ninth Circuit affirmed.

*Held:* The FSIA applies to conduct, like petitioners’ alleged wrongdoing, that occurred prior to the Act’s 1976 enactment and even prior to the United States’ 1952 adoption of the so-called “restrictive theory” of sovereign immunity. Pp. 9–24.

(a) This Court has long deferred to Executive Branch sovereign immunity decisions. Until 1952, Executive policy was to request immunity in all actions against friendly sovereigns. In that year, the

## Syllabus

State Department began to apply the “restrictive theory,” whereby immunity is recognized with regard to a foreign state’s sovereign or public acts, but not its private acts. Although this change had little impact on federal courts, which continued to abide by the Department’s immunity suggestions, *Verlinden B. V. v. Central Bank of Nigeria*, 461 U. S. 480, 487, the change threw immunity decisions into some disarray: Foreign nations’ diplomatic pressure sometimes prompted the Department to file suggestions of immunity in cases in which immunity would not have been available under the restrictive theory; and when foreign nations failed to ask the Department for immunity, the courts had to determine whether immunity existed, so responsibility for such determinations lay with two different branches, *ibid.* To remedy these problems, the FSIA codified the restrictive principle and transferred primary responsibility for immunity determinations to the Judicial Branch. The Act grants federal courts jurisdiction over civil actions against foreign states and carves out the expropriation and other exceptions to its general grant of immunity. In any such action, the district court’s subject-matter jurisdiction depends on the applicability of one of those exceptions. *Id.*, at 493–494. Pp. 9–13.

(b) This case is not controlled by *Landgraf v. USI Film Products*, 511 U. S. 244. In describing the general presumption against retroactive application of a statute, the Court there declared, *inter alia*, that, if a federal law enacted after the events in suit does not expressly prescribe its own proper reach but does operate retroactively—*i.e.*, would impair rights a party possessed when he acted, increase his liability for past conduct, or impose new duties with respect to transactions already completed—it does not govern absent clear congressional intent favoring that result. *Id.*, at 280. Though seemingly comprehensive, this inquiry does not provide a clear answer here. None of the three examples of retroactivity mentioned above fits the FSIA’s clarification of sovereign immunity law. However, the preliminary conclusion that the FSIA does not appear to “operate retroactively” within the meaning of *Landgraf*’s default rule creates some tension with the Court’s observation in *Verlinden* that the FSIA is not simply a jurisdictional statute, 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). And while the FSIA’s preamble suggests that it applies to preenactment conduct, that statement by itself falls short of the requisite express prescription. Thus *Landgraf*’s default rule does not definitively resolve this case. While *Landgraf*’s antiretroactivity presumption aims to avoid unnecessary *post hoc* changes to legal rules on which private parties relied in shaping their primary conduct, however, foreign sovereign immunity’s princi-

## Syllabus

pal purpose is to give foreign states and their instrumentalities some *present* protection from the inconvenience of suit, *Dole Food Co. v. Patrickson*, 538 U. S. 468, 479. In this *sui generis* context, it is more appropriate, absent contraindications, to defer to the most recent decision of the political branches on whether to take jurisdiction, the FSIA, than to presume that decision *inapplicable* merely because it postdates the conduct in question. Pp. 13–18.

(c) Nothing in the FSIA or the circumstances surrounding its enactment suggests that it should not be applied to petitioners' 1948 actions. Indeed, clear evidence that Congress intended it to apply to preenactment conduct lies in its preamble's statement that foreign states' immunity "[c]laims . . . should *henceforth* be decided by [American] courts . . . in conformity with the principles set forth in this chapter," §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 and are "henceforth" to be decided by the courts. Thus, Congress intended courts to resolve *all* such claims "in conformity with [FSIA] principles" regardless of when the underlying conduct occurred. The FSIA's overall structure strongly supports this conclusion: Many of its provisions unquestionably apply to cases arising out of conduct that occurred before 1976, see, e.g., *Dole Food Co.*, *supra*, and its procedural provisions undoubtedly apply to all pending cases. 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 judges should apply in resolving sovereign immunity claims and eliminating political participation in the resolution of such claims. Pp. 18–22.

(d) This holding is extremely narrow. The Court does not review the lower courts' determination that §1605(a)(3) applies here, comment on the application of the so-called "act of state" doctrine to petitioners' alleged wrongdoing, prevent the State Department from filing statements of interest suggesting that courts decline to exercise jurisdiction in particular cases implicating foreign sovereign immunity, or express an opinion on whether deference should be granted such filings in cases covered by the FSIA. The issue here concerns only the 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. Pp. 22–24.

## Syllabus

327 F. 3d 1246, affirmed.

STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a concurring opinion. BREYER, J., filed a concurring opinion, in which SOUTER, J., joined. KENNEDY, J., filed a dissenting opinion, in which REHNQUIST, C. J., and THOMAS, J., joined.