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

BOLIVARIAN REPUBLIC OF VENEZUELA ET AL. *v.* HELMERICH & PAYNE INTERNATIONAL DRILLING CO. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15–423. Argued November 2, 2016—Decided May 1, 2017

The Foreign Sovereign Immunities Act (FSIA) shields foreign states from suits in United States Courts, 28 U. S. C. §1604, with specified exceptions. The expropriation exception applies to "any case . . . in which rights in property taken in violation of international law are in issue and that property . . . is owned or operated by an agency or instrumentality of the foreign state . . . engaged in a commercial activity in the United States." §1605(a)(3).

A wholly owned Venezuelan subsidiary (Subsidiary) of an American company (Parent) has long supplied oil rigs to oil development entities that were part of the Venezuelan Government. The American Parent and its Venezuelan Subsidiary (plaintiffs) filed suit in federal court against those entities (Venezuela), claiming that Venezuela had unlawfully expropriated the Subsidiary's rigs by nationalizing them. Venezuela moved to dismiss the case on the ground that its sovereign immunity deprived the District Court of jurisdiction. Plaintiffs argued that the case falls within the expropriation exception, but Venezuela claimed that international law did not cover the expropriation of property belonging to a country's nationals like the Subsidiary and that the American Parent did not have property rights in the Subsidiary's assets. The District Court agreed as to the Subsidiary, dismissing its claim on jurisdictional grounds. But it rejected the claim that the Parent had no rights in the Subsidiary's property. The District of Columbia Circuit reversed in part and affirmed in part, finding that both claims fell within the exception. With respect to the Subsidiary's claim, it concluded that a sovereign's taking of its own nationals' property would violate international law

if the expropriation unreasonably discriminated based on a company's shareholders' nationality. With respect to the Parent's claim, it held that the exception applied because the Parent had raised its rights in a nonfrivolous way. The court decided only whether the plaintiffs might have a nonfrivolous expropriation claim, making clear that, under its standard, a nonfrivolous argument would be sufficient to bring a case within the scope of the exception. Given the factual stipulations, the court concluded, the Subsidiary had satisfied that standard for purposes of surviving a motion to dismiss.

Held: The nonfrivolous-argument standard is not consistent with the FSIA. A case falls within the scope of the expropriation exception only if the property in which the party claims to hold rights was indeed "property taken in violation of international law." A court should decide the foreign sovereign's immunity defense "[a]t the threshold" of the action, *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U. S. 480, 493, resolving any factual disputes as near to the outset of the case as is reasonably possible. Pp. 6–16.

(a) The expropriation exception grants jurisdiction only where there is 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). Simply making a nonfrivolous argument to that effect is not sufficient. This reading is supported by the provision's language, which applies in a "case. . . in which rights in property taken in violation of international law are in issue." Such language would normally foresee a judicial decision about the jurisdictional matter. This interpretation is supported by precedent. See, *e.g., Permanent Mission of India to United Nations* v. *City of New York*, 551 U. S. 193, 201–202. It is also supported by a basic objective of the FSIA, which is to follow international law principles, namely, that granting foreign sovereigns immunity from suit both recognizes the "absolute independence of every sovereign authority" and helps to "induc[e]" each nation state, as a matter of "international comity," to "respect the independence and dignity of every other," *Berizzi Brothers Co.* v. *S. S. Pesaro*, 271 U. S. 562, 575. Nothing in the FSIA's history suggests that Congress intended a radical departure from these principles in codifying the mid-20th-century doctrine of "restrictive" sovereign immunity, which denies immunity in cases "arising out of a foreign state's strictly commercial acts," but applies immunity in "suits involving the foreign sovereign's public acts," *Verlinden*, *supra,* at 487. It is thus not surprising that the expropriation exception on its face emphasizes conformity with international law, requiring both a commercial connection with the United States and a taking of property "in violation of international law."

A "nonfrivolous-argument" reading of the exception would under-

Syllabus

mine the objectives embedded in the statute's language, history, and structure. It could also embroil a foreign sovereign in an American lawsuit for some time by adopting a standard limited only by the bounds of a lawyer's (nonfrivolous) imagination. And it could cause friction with other nations, leading to reciprocal actions against this country. Pp. 6–12.

(b) Plaintiffs' arguments to the contrary are unpersuasive. They suggest that the expropriation exception should be treated similarly to 28 U. S. C. §1331's "arising under" jurisdiction, which applies if a plaintiff can make a nonfrivolous argument that a federal law provides the relief sought—even if, in fact, it does not, *Bell* v. *Hood*, 327 U. S. 678 685. But §1331 differs from the exception in language and concerns. Section 1331 often simply determines which court doors—federal or state—are open, and neither it nor related jurisdictional sections seek to provide a sovereign foreign nation with immunity—the FSIA's basic objective. Nor does the text of §1331 suggest that consistency with international law is of particular importance.

Plaintiffs also claim that the nonfrivolous-argument approach will work little harm since the matter could be resolved by motion practice before the sovereign bears the expense of a full trial. But resolving a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) or summary judgment under Rule 56 may impose increased burdens of time and expense upon the foreign nation. And a district court's decision that there is a "violation of international law" as a matter of jurisdiction may be immediately appealable as a collateral order, while the same decision made pursuant to a Rule 12(b)(6) or Rule 56 motion would be a decision on the "merits" not subject to immediate appeal. Moreover, the Circuit would part with its nonfrivolous-argument standard where a "violation of international law" is not an element of the claim to be decided on the merits. This bifurcated approach is difficult to reconcile with the statute's language, history, or purpose; and it creates needless complexity for judges and lawyers, domestic and foreign. Pp. 12–16.

784 F. 3d 804, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which all other Members joined, except GORSUCH, J., who took no part in the consideration or decision of the case.

SUPREME COURT OF THE UNITED STATES

No. 15–423

BOLIVARIAN REPUBLIC OF VENEZUELA, ET AL., PETITIONERS *v.* HELMERICH & PAYNE INTERNATIONAL DRILLING CO., ET AL.

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

[May 1, 2017]

JUSTICE BREYER delivered the opinion of the Court.

The Foreign Sovereign Immunities Act of 1976 (FSIA or Act), provides, with specified exceptions, that a "foreign state shall be immune from the jurisdiction of the courts of the United States and of the States . . . ." 28 U. S. C. §1604. One of the jurisdictional exceptions—the expropriation exception—says that

> "[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 . . . is owned or operated by an agency or instrumentality of the foreign state . . . engaged in a commercial activity in the United States." §1605(a)(3).

The question here concerns the phrase "case . . . in which rights in property taken in violation of international law are in issue."

Does this phrase mean that, to defeat sovereign immunity, a party need only make a "nonfrivolous" argument

that the case falls within the scope of the exception? Once made, does the existence of that nonfrivolous argument mean that the court retains jurisdiction over the case until the court decides, say, the merits of the case? Or does a more rigorous jurisdictional standard apply? To put the question more generally: What happens in a case where the party seeking to rely on the expropriation exception makes a nonfrivolous, but ultimately incorrect, claim that his property was taken in violation of international law?

In our view, a party's nonfrivolous, but ultimately incorrect, argument that property was taken in violation of international law is insufficient to confer jurisdiction. Rather, state and federal courts can maintain jurisdiction to hear the merits of a case only if they find that the property in which the party claims to hold rights was indeed "property taken in violation of international law." Put differently, 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). A good argument to that effect is not sufficient. But a court normally need not resolve, as a jurisdictional matter, disputes about whether a party actually held rights in that property; those questions remain for the merits phase of the litigation.

Moreover, where jurisdictional questions turn upon further factual development, the trial judge may take evidence and resolve relevant factual disputes. But, consistent with foreign sovereign immunity's basic objective, namely, to free a foreign sovereign from *suit*, the court should normally resolve those factual disputes and reach a decision about immunity as near to the outset of the case as is reasonably possible. See *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U. S. 480, 493–494 (1983).

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.