

Foreign Dictators in U.S. Court

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It's almost impossible to sue a foreign government in U.S. courts. The Foreign Sovereign Immunities Act, the court-created "act of state" doctrine, and other common-law immunities shield foreign officials and governments from most lawsuits. For instance, courts have dismissed claims against China, Cuba, Venezuela, and Russia over allegations of torture, detentions, and election interference. Yet foreign governments have unfettered access to U.S. courts as plaintiffs. And foreign dictatorships—including Russia, China, Turkey, and Venezuela—have leveraged this access to harass political dissidents, critics, and even newspapers in the United States. These doctrines create an asymmetry at the heart of this Article: foreign dictators and their proxies can access our courts as plaintiffs to harass their opponents, but their regimes are, in turn, immune from lawsuits here.

This Article exposes that asymmetry and argues that U.S. courts and Congress should make it harder for foreign dictators to abuse our legal system. This Article offers three novel contributions. First, this Article provides the first systematic assessment of foreign dictatorships in U.S. courts. While much of the literature is siloed by area of substantive law—focusing on contexts like human rights or property expropriations—this Article treats dictators as a transsubstantive category of litigants, worthy of special analysis. Second, this Article exposes how foreign dictators are increasingly taking advantage of U.S. courts and comity doctrines, especially as plaintiffs. In a misguided effort to promote harmonious foreign relations, courts have provided foreign dictators an array of protections and privileges, which dictators are eagerly exploiting. Finally, this Article demonstrates that there is no historical, constitutional, or statutory obligation on U.S. courts to give foreign dictators these legal protections and unfettered access to our courts. Because of that, I offer four concrete proposals to both stymie dictators' access to U.S. courts as plaintiffs—through a proposed foreign sovereign anti-SLAPP statute—and weaken the protections that dictators enjoy as defendants. Simply stated, U.S. courts should not be instruments of foreign authoritarian oppression.

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INTRODUCTION

In 2018, the Chinese Communist Party launched a “multidimensional ‘legal war’” against Chinese corruption suspects in the United States, filing a flurry of meritless lawsuits to harass political targets and force them to return to China.¹ Chinese officials have indicated that these lawsuits are manufactured to drain defendants’ financial resources.² Between 2013 and 2019, Turkey’s and Russia’s authoritarian governments used proxy plaintiffs to file claims in U.S. court against dissidents and exiled politicians, including a major Turkish political figure, Muhammed Fethullah Gülen, who lives in Pennsylvania.³ Turkey’s lawyer claimed that the lawsuit “represent[ed] a . . . political battle” that would show that the defendant’s movement was “not untouchable in the United States.”⁴ These lawsuits are part of global harassment campaigns, leading a judge to call one of the Russian cases a “blatant misuse of the federal forum.”⁵ Venezuela’s autocratic regime has also recently litigated several cases against its opponents, forcing U.S. courts to decide whether Nicolás Maduro is still that country’s president.⁶ Though they vary on the specifics, these cases involve foreign dictatorships filing frivolous claims in U.S. courts to pursue political ends, harass dissidents, and strengthen their rule. And these cases are the least of it.⁷

¹ See Aruna Viswanatha & Kate O’Keeffe, *China’s New Tool to Chase Down Fugitives: American Courts*, WALL ST. J. (July 29, 2020), <https://www.wsj.com/articles/china-corruption-president-xi-communist-party-fugitives-california-lawsuits-us-courts-11596032112>.

² See *id.*

³ See Humeyra Pamuk, *Foe of Turkish President Erdogan Slapped with U.S. Lawsuit*, REUTERS (Dec. 9, 2015), <https://perma.cc/JC3F-XF5F>; ANDERS ÅSLUND, ATL. COUNCIL, RUSSIA’S INTERFERENCE IN THE US JUDICIARY 24–27 (2018), <https://perma.cc/9RVS-32UZ>; see, e.g., Ateş v. Gülen, No. 15-CV-2354, 2016 WL 3568190, at *1 (M.D. Pa. June 29, 2016); Smagin v. Yegiazaryan, 733 F. App’x 393, 394 (9th Cir. 2018).

⁴ Motion for Rule 11 at 3, 13, Ateş, 2016 WL 3568190 (No. 15-CV-2354) (quotation marks omitted).

⁵ Avilon Auto. Grp. v. Leontiev, No. 656007/16, 2017 WL 4422593, at *4 (N.Y. Sup. Ct. Oct. 05, 2017), *rev’d*, 91 N.Y.S.3d 379 (N.Y. App. Div. 2019).

⁶ See Jiménez v. Palacios, 250 A.3d 814, 819–20 (Del. Ch. 2019), *aff’d*, 237 A.3d 68 (Del. 2020); Jef Feeley, *Juan Guaido Asks U.S. Judge to End Maduro Bid to Appoint PDVSA Board*, BNN BLOOMBERG (July 18, 2019), <https://perma.cc/BKD5-GN4D>.

⁷ Dictatorships sometimes come up in different strands of legal literature. One strand focuses on the relationship between international law and authoritarian governments. See, e.g., Tom Ginsburg, *Authoritarian International Law?*, 114 AM. J. INT’L L. 221, 225–28, 231 (2020). Most of the literature, however, is siloed by substantive area, focusing on contexts like human rights or property expropriations claims. See, e.g., Curtis A. Bradley & Jack L. Goldsmith, *Pinochet and International Human Rights Litigation*, 97 MICH. L. REV. 2129, 2161–64 (1999) (discussing the inapplicability of customary international law to claims of head-of-state immunity). Further afield, a recent paper explores the

It turns out that dictators as plaintiffs have been litigating a wide variety of civil claims in U.S. courts for decades. From Mao Zedong's fight with the Kuomintang in a 1952 Northern District of California case⁸ to Fidel Castro's 1964 attempt to enforce expropriations in the Southern District of New York,⁹ dictators have become a recognizable presence in U.S. courts. Indeed, the history of these claims traces back to a canonical 1867 case that involved, in the words of the Supreme Court, the "right of the French Emperor to sue in our courts."¹⁰ That case recognized the "privilege of bringing suit," which allows foreign sovereigns to sue in U.S. court for any reason.¹¹ Although rooted in that 1867 decision, the privilege has mostly slipped under the radar of the academic literature.¹² But recent cases filed by Venezuela, Turkey, Russia, and China involving claims against dissidents, U.S. newspapers, and critics should raise new questions about the privilege's foundations and continued operation.¹³

While the phenomenon of dictators as plaintiffs in political cases is problematic on its own, the issue is compounded by a series of foreign relations doctrines that shield foreign dictators as defendants. From Ferdinand Marcos¹⁴ and Augusto Pinochet to Manuel Noriega¹⁵ and Jiang Zemin,¹⁶ dictators have also faced claims as defendants in U.S. courts, ranging from cases over property stored in the United States to tort, human rights, breach of contract, sanctions, and other run-of-the-mill lawsuits. Recently,

application of laws from authoritarian countries in run-of-the-mill U.S. cases. Mark Jia, *Illiberal Law in American Courts*, 168 U. PA. L. REV. 1685, 1691, 1694–1701 (2020). This Article is the first to take a comprehensive and transsubstantive view—treating dictatorship cases as a distinct category—and to focus on the interaction of domestic law, the judiciary, and foreign dictators *as litigants* in U.S. courts.

⁸ *Bank of China v. Wells Fargo Bank & Union Tr. Co.*, 104 F. Supp. 59, 60–61 (N.D. Cal. 1952), *aff'd*, 209 F.2d 467 (9th Cir. 1953).

⁹ *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 401–08 (1964).

¹⁰ *The Sapphire*, 78 U.S. (11 Wall.) 164, 167 (1870).

¹¹ *See id.* at 167–68; Hannah L. Buxbaum, *Foreign Governments as Plaintiffs in U.S. Courts and the Case Against "Judicial Imperialism"*, 73 WASH. & LEE L. REV. 653, 660 (2016); Zachary D. Clopton, *Diagonal Public Enforcement*, 70 STAN. L. REV. 1077, 1092–93 (2018).

¹² One of the only papers to directly address the privilege is Buxbaum, *supra* note 11, at 660.

¹³ *See, e.g., Cabello-Rondón v. Dow Jones & Co.*, No. 16-CV-3346, 2017 WL 3531551, at *1–2 (S.D.N.Y. Aug. 16, 2017), *aff'd*, 720 F. App'x 87 (2d Cir. 2018).

¹⁴ *See Hilao v. Est. of Marcos*, 103 F.3d 767, 771 (9th Cir. 1996) (seeking damages for alleged human rights abuses perpetrated by Marcos).

¹⁵ *See United States v. Noriega*, 117 F.3d 1206, 1209 (11th Cir. 1997).

¹⁶ *See Wei Ye v. Jiang Zemin*, 383 F.3d 620, 622 (7th Cir. 2004) (seeking damages for alleged human rights abuses perpetrated by Zemin).

the U.S. Department of Justice (DOJ) recognized the importance of these cases through the Kleptocracy Asset Recovery Initiative (KARI).¹⁷ Congress responded to that initiative by passing a bill in 2021 that expanded the program to the Department of the Treasury.¹⁸ Congress itself periodically strips foreign regimes of sovereign immunity and most recently did so in the 2016 Justice Against Sponsors of Terrorism Act¹⁹ (JASTA), which permitted civil claims against states that support terrorism.²⁰ Presently, there are cases pending in U.S. courts against Venezuela, Turkey, Russia, and China concerning actions by their respective dictatorships, including seizures of assets, torts by Turkish officials in Washington, D.C., and Russian cyberattacks in the 2016 election.²¹

Even though authoritarian regimes have unfettered access to U.S. courts as plaintiffs, they can avoid liability as defendants by drawing on a series of foreign relations doctrines that give special protections to foreign sovereigns.²² For example, the court-created act of state doctrine instructs that U.S. courts cannot judge the validity of foreign sovereign acts performed in the foreign country's territory, even if authoritarian acts—like expropriation, political persecution, and torture—violate U.S. law and public policy.²³ This doctrine has shielded Cuba, China, Russia, and Venezuela from legal claims.²⁴ Dictators as defendants can also draw on unduly expansive readings of the Foreign Sovereign Immunities Act of 1976²⁵ (FSIA) and related common-law immunities that bar plaintiffs from suing sovereigns in U.S. court.²⁶ Just

¹⁷ See Leslie Wayne, *Wanted by U.S.: The Stolen Millions of Despots and Crooked Elites*, N.Y. TIMES (Feb. 16, 2016), <https://perma.cc/5Z5N-VKK4>.

¹⁸ Kleptocracy Asset Recovery Rewards Act, Pub. L. No. 116-283, 134 Stat. 4834 (2021).

¹⁹ Pub. L. No. 114-222, 130 Stat. 852 (2016) (codified at 28 U.S.C. § 1605B).

²⁰ See Jess Bravin, *Lawyers Move Quickly After Congress Enacts Bill Allowing Suits Against Saudi Arabia*, WALL ST. J. (Sept. 30, 2016), <https://www.wsj.com/articles/lawyers-in-9-11-cases-plan-to-ask-that-saudi-arabia-be-added-as-defendant-1475270658>.

²¹ See *Usoyan v. Republic of Turkey*, 438 F. Supp. 3d 1, 7–10 (D.D.C. 2020), *aff'd*, 6 F.4th 31 (D.C. Cir. 2021); *United States v. Zeese*, 437 F. Supp. 3d 86, 91–92 (D.D.C. 2020); Complaint at 2–7, *Dem. Nat'l Comm. v. Russian Federation*, 2018 WL 1885868 (S.D.N.Y. Apr. 20, 2018) (No. 18-cv-3501) (dismissed in 2019); *Missouri ex rel. Schmitt v. People's Republic of China*, No. 20-CV-99, 2021 WL 1889857, at *3 (E.D. Mo. May 11, 2021).

²² For a sampling of the literature, see, for example, Chimène I. Keitner, *Adjudicating Acts of State*, in *FOREIGN AFFAIRS LITIGATION IN UNITED STATES COURTS* 49, 50–53 (John Norton Moore ed., 2013).

²³ See John Harrison, *The American Act of State Doctrine*, 47 GEO. J. INT'L L. 507, 533–37 (2016).

²⁴ See *infra* Part I.D.

²⁵ Pub. L. No. 94-583, 90 Stat. 2891 (codified at 28 U.S.C. §§ 1330, 1602–1611).

²⁶ For a comprehensive history of immunity in U.S. courts, see generally THEODORE R. GIUTTARI, *THE AMERICAN LAW OF SOVEREIGN IMMUNITY* (1970). See also G. Edward

recently, for instance, the Supreme Court decided a Nazi expropriations case against Germany based on a narrow reading of an exception to the FSIA.²⁷ Similarly, courts have dismissed cyber-espionage cases against Russia and Ethiopia under the FSIA even though the statute allows suits when a foreign nation commits a tort in the United States.²⁸

These doctrines create the problematic asymmetry at the heart of this Article: foreign dictators and their proxies can access our courts as plaintiffs to harass their opponents, but their regimes are, in turn, usually immune from lawsuits here. For example, in 2016, a top-ranking Venezuelan official sued the *Wall Street Journal* for defamation over an article linking him with drug trafficking.²⁹ But if the *Wall Street Journal* had tried to sue a Venezuelan official for harassment of its journalists, the case would likely have been dismissed under common-law immunities.³⁰ Our legal system, then, seems to insulate dictators from the downsides of U.S. law while allowing them to reap the benefits of access to court. This asymmetry makes foreign sovereigns—and specifically foreign dictators who are willing to exploit access to U.S. courts—a unique kind of litigant, worthy of special attention.

In this Article, I argue that U.S. courts and Congress should remedy this asymmetry and make it harder for foreign dictators to take advantage of our legal system. The premise underlying the argument is simple: U.S. courts should not serve the interests of foreign dictatorships if they can avoid it. Liberal theorists from Karl Popper to John Rawls have defended a democracy's right to resist having its institutions employed for illiberal purposes.³¹ Indeed, under a Kantian view of international law, democracies are not obligated to extend comity to tyrannical states “[b]ecause dictators do not represent their people, [so] they cannot create

White, *The Transformation of the Constitutional Regime of Foreign Relations*, 85 VA. L. REV. 1, 27–28, 134–45 (1999).

²⁷ Federal Republic of Germany v. Philipp, 141 S. Ct. 703, 712–13, 715 (2021); see also Republic of Hungary v. Simon, 141 S. Ct. 691, 691 (2021) (per curiam).

²⁸ See Sam Kleiner & Lee Wolosky, *Time for a Cyber-Attack Exception to the Foreign Sovereign Immunities Act*, JUST SEC. (Aug. 14, 2019), <https://perma.cc/4EZB-87AN>; Doe v. Federal Democratic Republic of Ethiopia, 851 F.3d 7, 11–12 (D.C. Cir. 2017).

²⁹ See *Cabello-Rondón*, 2017 WL 3531551, at *1.

³⁰ Although the doctrine of foreign official immunity is currently in flux. See *Samantar v. Yousuf*, 560 U.S. 305, 325–36 (2010).

³¹ See JOHN RAWLS, *A THEORY OF JUSTICE* 216–18 (1971); KARL POPPER, *THE OPEN SOCIETY AND ITS ENEMIES* 368 (new one-vol. ed. 1995); see also Karl Loewenstein, *Militant Democracy and Fundamental Rights, II*, 31 AM. POL. SCI. REV. 638, 650–51 (1937); Samuel Issacharoff, *Fragile Democracies*, 120 HARV. L. REV. 1405, 1459 (2007).

obligations for their subjects.”³² Without necessarily embracing that view, the problem is that the foreign relations doctrines mentioned above—the privilege of bringing suit, act of state, FSIA, and related immunities—benefit all sovereigns equally, including those governed by dictatorships.³³ So then the question becomes whether domestic law requires extending comity to foreign dictators. If it does not, courts can and should discard it.

The privileges afforded to dictatorships are partly rooted in *Banco Nacional de Cuba v. Sabbatino*,³⁴ where the Supreme Court allowed Fidel Castro’s government to file suit in U.S. court and to benefit from U.S. comity doctrines.³⁵ The Court explicitly rejected the argument that Cuba “should be denied access to American courts because Cuba is an unfriendly power and does not permit nationals of this country to obtain relief in its courts.”³⁶ *Sabbatino* rested on two pillars: the potential harm on the nation’s foreign relations and the difficulty of assessing which foreign regimes deserve different treatment.³⁷ By treating Cuba’s dictatorial regime like any other sovereign (democracy or not), *Sabbatino* reinforced a principle that courts have repeatedly recognized—an equal-treatment principle for all regime types—and it allowed the comity doctrines to flourish in this context.

In Part II of this Article, I argue that *Sabbatino* and the comity doctrines rest on shaky premises because there is no obligation on U.S. courts—statutory, constitutional, or otherwise—to treat foreign dictators equally to other sovereign litigants. Although courts worry about the separation of powers and the foreign affairs consequences of judging foreign dictators, there is no convincing evidence that these cases have presented difficulties in the past.³⁸ Indeed, anticomity doctrines, U.S. statutes on state

³² See Fernando R. Tesón, *The Kantian Theory of International Law*, 92 COLUM. L. REV. 53, 89 (1992); Anne-Marie Burley, *Law Among Liberal States: Liberal Internationalism and the Act of State Doctrine*, 92 COLUM. L. REV. 1907, 1930–32 (1992); IMMANUEL KANT, *To Perpetual Peace: A Philosophical Sketch*, in PERPETUAL PEACE AND OTHER ESSAYS 107 (Ted Humphrey trans., 1983); Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT’L L. 46, 47 (1992). *But see* BRAD ROTH, SOVEREIGN EQUALITY AND MORAL DISAGREEMENT: PREMISES OF A PLURALIST INTERNATIONAL LEGAL ORDER 72–73 (2011) (rejecting the Kantian view of international law).

³³ See Burley, *supra* note 32, at 1930–32; Roth, *supra* note 32, at 72–73.

³⁴ 376 U.S. 398 (1964).

³⁵ *Id.* at 408–09.

³⁶ *Id.* at 408.

³⁷ *Id.* at 412.

³⁸ One contested question here is courts’ role in developing the common law of foreign relations, which has provoked heated debates. See Bradford R. Clark, *Federal Common Law: A Structural Reinterpretation*, 144 U. PA. L. REV. 1245, 1264–70, 1291–1311 (1996)

sponsors of terrorism, and an international law doctrine on odious debts explicitly allow U.S. courts to judge foreign countries or regimes.³⁹ Those cases suggest that U.S. courts can, and often do, treat foreign dictatorships differently from democratic regimes without significant foreign affairs consequences. Moreover, *Sabbatino* and its progeny are not fit for a world that is dealing with widespread democratic recession—which is so globalized that foreign dictators can extend their tentacles into the United States.⁴⁰

While U.S. courts could (and sometimes do) treat dictatorships differently than democratic regimes, Part III concludes that there is no easy way for courts to administer a categorical anti-dictatorship standard. Even setting aside fundamental concerns with separation of powers, dictatorships may not be the right category to target. The problem with dictatorial acts is that they fundamentally challenge basic human rights and liberties. But democratic governments can do that too. That is why U.S. courts have previously refused to enforce libel awards from the United Kingdom.⁴¹ Judging all dictatorships as different than democratic governments for purposes of all claims would also be substantively overinclusive. There is no need to prevent dictatorships from litigating nonpolitical claims like contract disputes or embassy hit-and-run accidents.⁴²

Lastly, forcing U.S. courts to distinguish between friendly and unfriendly dictatorships, as well as among the different shades of authoritarian governments (e.g., hybrid, semiauthoritarian, or competitive authoritarian), would be unfeasible. Courts would even have difficulty determining whether a foreign dictator is a U.S. ally or rival. This problem is best captured by the apocryphal

(describing the debates); Jack L. Goldsmith, *Federal Courts, Foreign Affairs, and Federalism*, 83 VA. L. REV. 1617, 1632 (1997) (arguing that although the validity of the common-law nature of foreign relations is uncontested, its scope remains in flux); Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 HARV. L. REV. 815, 860–62 (1997).

³⁹ See *infra* Part I.

⁴⁰ See Christopher Walker, *Dealing with Authoritarian Resurgence*, in *AUTHORITARIANISM GOES GLOBAL: THE CHALLENGE TO DEMOCRACY* 216, 217–22 (Larry Diamond et al. eds., 2016); Mathew Burrows, *The Long View on Authoritarianism's Second Wind*, in *IS AUTHORITARIANISM STAGING A COMEBACK?* 3, 5–9 (Mathew Burrows & Maria J. Stephan eds., 2015); Tom Ginsburg & Aziz Huq, *How We Lost Constitutional Democracy*, in *CAN IT HAPPEN HERE? AUTHORITARIANISM IN AMERICA* 135, 141 (Cass R. Sunstein ed., 2018); Valeriya Mechkova, Anna Lührmann & Staffan I. Lindberg, *How Much Democratic Backsliding?*, 28 J. DEMOCRACY 162, 162–66 (2017).

⁴¹ See *Bachchan v. India Abroad Publ'ns Inc.*, 585 N.Y.S.2d 661, 664–65 (N.Y. Sup. Ct. 1992).

⁴² See *infra* notes 73–82 for an extended discussion of “political” cases.

quotation attributed to President Franklin Roosevelt that Nicaraguan dictator Anastasio Somoza “may be a son of a bitch, but he’s our son of a bitch.”⁴³ As I discuss below, the complexity of U.S. foreign policy is why doctrines like the political offense exception to extradition are rooted in attempts to promote democracy but are nonetheless neutral as to regime type.⁴⁴

These problems make one conclusion clear: whatever rule we create to discriminate against foreign dictatorships risks being over- or underinclusive and difficult to administer.

Because of the aforementioned difficulties, Part IV of this Article offers four prescriptions that avoid these problems. We need not categorically judge foreign dictatorships qua dictatorships. Instead, courts and Congress can weaken the foreign relations doctrines in cases that disproportionately advantage foreign dictatorships. To improve the dictators-as-plaintiffs side of the asymmetry, the sovereign privilege of bringing suit should be subjected to the robust procedural protections of a new federal anti-SLAPP statute so that defendants can quickly move to dismiss political harassment claims filed by *any* sovereign—democracy or dictatorship—or its proxy. Such a statute would bring the legitimacy of the political branches and would spare the judiciary from categorically judging between different regime types. Importantly, such a statute is likely to enjoy bipartisan support, and the proposal has already received national media coverage.⁴⁵

To improve the dictators-as-defendants side of the asymmetry, courts should (1) narrow the act of state doctrine, (2) limit the scope of foreign official immunity, and (3) interpret existing FSIA exceptions broadly, allowing more claims against foreign dictators. To be sure, to the extent that these changes apply across the board, they will also impact democratic governments. That means some of these solutions will be overinclusive. But, as I discuss below, some of these suggestions are narrowly tailored to influence mostly dictator cases.

⁴³ Somoza’s son, another dictator, had cases in U.S. court. Robert Funk, *He’s Our Son of a Bitch*, HUM. RTS. & HUM. WELFARE, <https://perma.cc/59Q7-88EJ>. See generally *Ope Shipping, Ltd. v. Allstate Ins.*, 521 F. Supp. 342 (S.D.N.Y. 1981), *aff’d in part and rev’d in part*, 687 F.2d 639 (2d Cir. 1982). See also Toke S. Aidt & Facundo Alborno, *Political Regimes and Foreign Intervention*, 94 J. DEV. ECON. 192, 200 (2011) (discussing various U.S. interventions aimed at consolidating autocracies abroad).

⁴⁴ See *infra* Part II.B.

⁴⁵ See Diego A. Zambrano, *Foreign Tyranny by U.S. Lawsuit*, WALL ST. J. (Sept. 2, 2020), <https://www.wsj.com/articles/foreign-tyranny-by-u-s-lawsuit-11599087161>.

The complete scale of harm to political dissidents and democracy is hard to grasp. Although we can identify dozens of claims across U.S. courts, most cases likely remain hidden because authoritarian governments use proxies to file them.⁴⁶ Moreover, these claims may be most significant because of litigation's chilling effect on other dissidents and journalists. Even a single claim sends a powerful message to would-be critics: no matter if you are in the United States, we can bring our harassment to U.S. courts. Take the case of Peng Xufeng, who claims he fled China after he refused to testify against enemies of the Chinese Premier, Xi Jinping.⁴⁷ In response, Chinese officials allegedly harassed him in California, smashed his windows, arrested his family in China, moved his child to an orphanage, and, finally, used a state-owned company to sue him in U.S. court.⁴⁸ Or consider Xiao Jianming, a Chinese businessman who fled to the United States.⁴⁹ In 2019, a Chinese state-owned company sued Xiao and his daughter in U.S. courts, alleging that Xiao diverted to his daughter hundreds of thousands of dollars in company funds.⁵⁰ Facing this costly lawsuit, Xiao returned to China.⁵¹ Immediately thereafter, the company dismissed its U.S. claim and, simultaneously, a Chinese anticorruption entity called the Central Commission for Discipline Inspection celebrated the success of the litigation pressure.⁵² Similar stories abound involving Russian and Venezuelan cases.

Beyond its focus on the doctrinal asymmetry, this Article addresses the need for a national reckoning with the United States' cooperation with foreign autocrats—especially in the wake of Jamal Khashoggi's murder by agents of the Saudi Arabian government—and the recent rise of foreign autocracies.⁵³ Despite a longstanding scholarly debate on human rights, the legal literature has almost entirely overlooked the relationship between domestic law and foreign dictators. Yet, as more nations join the bandwagon of illiberal authoritarianism, from Hungary to Poland,

⁴⁶ See *infra* Part I.A.1.c.

⁴⁷ See Viswanatha & O'Keeffe, *supra* note 1.

⁴⁸ *Id.*

⁴⁹ See *id.*

⁵⁰ *Id.* See generally Complaint, Yuntinic Res., Inc. v. Jianming Xiao, No. 19CIV1868 (Cal. Super. Ct. Apr. 2, 2019).

⁵¹ Viswanatha & O'Keeffe, *supra* note 1.

⁵² *Id.*

⁵³ There are pending cases in U.S. courts against Saudi Crown Prince Mohammed bin Salman. See William S. Dodge & Chimène I. Keitner, *A Roadmap for Foreign Official Immunity Cases in U.S. Courts*, 90 FORDHAM L. REV. 677, 679, 697–98 (2021).

Turkey to Venezuela, and Russia to Brazil, our legal system is facing questions of how to treat these countries, their rulers, and their sovereign interests.⁵⁴ Foreign authoritarians have manipulated their own laws to stay in power and now seem to be doing something similar in foreign courts. Even more, dictators also take advantage of other U.S. institutions, including real estate markets, banks, and social media. While this Article focuses on the judiciary's role in opposing illiberal foreign actors,⁵⁵ it may be that blunting foreign dictators' access to our courts would disincentivize a larger pattern of conduct.

This Article pays other dividends for a variety of literatures. Stepping back from the minutiae of these cases reveals that at their core is the principle of international comity, a free-floating ideal by which U.S. courts address questions involving foreign affairs. This principle is the subject of a rich literature, provoking recent debates over its continued viability and force.⁵⁶ Dictator claims are deeply intertwined with international-comity-related doctrines.⁵⁷ By offering a deeper account of foreign dictators in U.S. court, then, I seek to both influence courts' handling of these cases and also to enrich our understanding of international comity.⁵⁸ Moreover, this Article discusses the possibility of party-specific rules that offer unequal treatment,⁵⁹ as well as the judiciary's role in foreign affairs.⁶⁰ In one sense, this Article presents a case study in the failures of foreign relations law to adapt to modern currents. We have a doctrinal landscape in which some of the

⁵⁴ See generally Ingrid Wuerth, *The Due Process and Other Constitutional Rights of Foreign Nations*, 88 FORDHAM L. REV. 633 (2019) (arguing that foreign states are entitled to certain due process rights under the Constitution).

⁵⁵ See, e.g., SAMUEL ISSACHAROFF, PAMELA S. KARLAN & RICHARD H. PILDES, *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* 1453–57 (4th ed. 2012).

⁵⁶ See, e.g., CURTIS A. BRADLEY & JACK L. GOLDSMITH, *FOREIGN RELATIONS LAW* 4 (6th ed. 2017); Ganesh Sitaraman & Ingrid Wuerth, *The Normalization of Foreign Relations Law*, 128 HARV. L. REV. 1897, 1974–78 (2015); William S. Dodge, *International Comity in American Law*, 115 COLUM. L. REV. 2071, 2214–24 (2015); Samuel Estreicher & Thomas H. Lee, *In Defense of International Comity*, 93 S. CAL. L. REV. 169, 173–77 (2020); Maggie Gardner, *Retiring Forum Non Conveniens*, 92 N.Y.U. L. REV. 390, 423–27 (2017); Eric A. Posner & Cass R. Sunstein, *Chevronizing Foreign Relations Law*, 116 YALE L.J. 1170, 1179–81 (2007).

⁵⁷ For a sampling of the literature, see Keitner, *supra* note 22, at 50–61.

⁵⁸ Courts' interaction with executive power in this context is also the subject of a vast literature. See, e.g., THOMAS M. FRANCK, *POLITICAL QUESTIONS/JUDICIAL ANSWERS, DOES THE RULE OF LAW APPLY IN FOREIGN AFFAIRS?* 100 (1992); HAROLD HONGJU KOH, *THE NATIONAL SECURITY CONSTITUTION: SHARING POWER AFTER THE IRAN-CONTRA AFFAIR* 147–48 (1990).

⁵⁹ See Roger Michalski, *Trans-personal Procedures*, 47 CONN. L. REV. 321, 338–42 (2014).

⁶⁰ See *infra* Part I.B.

doctrines (like the act of state doctrine) are doing too much work while, at the same time, entire problems (like the sovereign abuse of U.S. courts) fall through the cracks.⁶¹ In Part III, I provide some guidance on the future of foreign relations law.

The Article develops in four parts. Part I provides a definition of foreign “dictatorships,” taxonomizes types of dictator cases, and outlines specific problems with existing rules and doctrines. It then unfolds with an investigation of dictator-related cases. While international law is in the background of these cases, courts ultimately tend to focus on domestic doctrines. After this descriptive account, Part II of this Article demonstrates that U.S. courts need not treat dictatorships like regular litigants and have the power to prevent politically vexatious litigation. Parts III and IV introduce an array of potential ways to indirectly handicap foreign dictators in U.S. litigation.

I. FOREIGN DICTATORS IN U.S. COURT

In this Part, I introduce the phenomenon of foreign dictators participating in U.S. litigation, focusing especially on the post-World War II cases that have shaped international comity doctrines. Part I.A provides a snapshot of dictator-related suits, categorized by (1) dictators as plaintiffs and (2) dictators as defendants as well as by the underlying substantive claims. Part I.B then canvasses the history of these claims from the first monarchy-related cases in the nineteenth century to more recent changes. The goal here is not to engage in a historical exegesis but to instead briefly recapitulate the major cases that have shaped our doctrines. Part I.C uses this history to provide a brief survey of the relevant doctrines—privilege of bringing suit, act of state, and related immunities—as they stand today. Finally, Part I.D draws from this background—substantive claims, history, and doctrines—to focus on existing problems with dictator cases.

Before that background, let’s first settle on terms and the scope of the project. By foreign “dictator,” I am drawing on the minimalist definition for an autocratic regime, encompassing any instance when an executive gained power through “any means

⁶¹ Robin J. Effron, *Doctrinal Redundancy and the Two Paradoxes of Personal Jurisdiction*, 88 *FORDHAM L. REV. ONLINE* 117, 122–27 (2019).

besides direct, reasonably fair, competitive elections.”⁶² This is an admittedly loose use of the term because it encompasses authoritarian leaders that are part of vastly different regimes, from formally competitive authoritarian systems, like Russia under Vladimir Putin, all the way to royal autocracies like Saudi Arabia. My main source of information is the popular Polity IV database, which provides a comprehensive list of independent states between 1800 and 2017, coded by regime characteristics.⁶³ The database specifically develops a score that tags regimes on a scale from most democratic (+10) to most autocratic (−10).⁶⁴ The sections below draw from this database, allowing me to run a methodical search of cases involving authoritarian leaders after 1945. In order to narrow down my search, I focused on twenty recognizable dictators on the list.⁶⁵

Even if we stipulate the meaning of “dictator,” we must also define when a dictator is involved in civil litigation. In general, I am interested in cases where a foreign dictatorship or its proxy is in U.S. court for actions related to the dictatorship’s power. Those actions can be personal to the dictator, but they can also be related to the dictatorial regime’s political interests. Sometimes dictators sue or are sued in their individual capacity while at other times plaintiffs sue the state itself or an official.⁶⁶ For example, the Democratic National Committee (DNC) named Russia rather than Putin as defendant in its suit over election interference and hacking.⁶⁷ Dictatorships can also be less individualistic and more institutional, like the Chinese Communist Party.⁶⁸ Of course, it

⁶² Barbara Geddes, Joseph Wright & Erica Frantz, *Autocratic Breakdown and Regime Transitions: A New Data Set*, 12 PERSPS. ON POL. 313, 317 (2014).

⁶³ See generally MONTY G. MARSHALL, TED ROBERT GURR & KEITH JAGGERS, CTR. FOR SYSTEMIC PEACE, POLITY IV PROJECT: POLITICAL REGIME CHARACTERISTICS AND TRANSITIONS, 1800-2017 DATASET USERS’ MANUAL (2018), <https://perma.cc/23L2-VGDC>.

⁶⁴ I specifically focused on twenty dictators, see *infra* Appendix A, and I supplemented it with modern heads of state of countries that have shown clear signs of autocratic backsliding, such as Vladimir Putin, Xi Jinping, Nicolás Maduro, and Recep Tayyip Erdoğan.

⁶⁵ I compared my list with dictators mentioned in the *New York Times* archives, using frequency of mention as a proxy for public awareness of a given dictator. These mostly overlapped, but I ignored a handful of the most-mentioned dictators.

⁶⁶ See *supra* note 21; *infra* Appendix A.

⁶⁷ See *Democratic Nat’l Comm. v. Russian Federation*, No. 18-cv-3501, 2018 WL 1885868 (S.D.N.Y. Apr. 20, 2018); see also Ingrid Wuerth, *Russia Asserts Immunity in the DNC Case*, LAWFARE (Nov. 16, 2018), <https://perma.cc/DBP4-E9NG>.

⁶⁸ See generally Manuel E. Delmestro, *The Communist Party and the Law: An Outline of Formal and Less Formal Linkages Between the Ruling Party and Other Legal Institutions in the People’s Republic of China*, 43 SUFFOLK U. L. REV. 681 (2010).

would be problematic to tag every case by a foreign government that happens to be dictatorial as a case involving a foreign dictator. Thus, I use a definition that is both over- and underinclusive in the following ways. On the one hand, I include some cases where foreign dictators were involved indirectly in U.S. courts, either through proxies or government lawyers. On the other hand, I include only cases where either (1) the foreign dictator is named in any of the documents pertaining to the suit or (2) a foreign government or official appears to be litigating on behalf of the foreign dictatorship or attempting to defend the regime's interests. These definitions are admittedly imperfect, but they do offer a narrow lens through which to focus on the phenomenon that this Article addresses.

A. Substantive Claims in Foreign Dictator Suits

The first landmark case involving a foreign autocrat was filed in 1811, when two boat owners sought to reclaim a ship that, allegedly, was “violently and forcibly taken by certain persons, acting under the decrees and orders of Napoleon.”⁶⁹ So began two hundred years of interactions between our courts and foreign authoritarian governments. Looking specifically at post-1945 cases, dictators have been common litigants in U.S. courts. Focusing on just twenty dictators in the past few decades, there have been more than one hundred cases across U.S. district courts. These include names like Mao Zedong, Fidel Castro, Augusto Pinochet, Ferdinand Marcos, and Saddam Hussein.⁷⁰ Usually, the official party named in the suit was the country's government or an instrumentality like a central bank. More recently, official parties tend to be proxies, lower-level officials, or cronies. For example, the Chinese Communist Party has filed civil cases in U.S. courts through proxy companies or agents to conceal its involvement in political harassment lawsuits.⁷¹ But within China, officials have explicitly acknowledged that they were responsible for the claims.⁷² Cases included countries like Venezuela, Cuba, Iran, the

⁶⁹ *The Schooner Exch. v. McFaddon*, 11 U.S. (7 Cranch) 116, 117 (1812).

⁷⁰ My list of dictators also included: Vladimir Putin, Manuel Noriega, Hugo Chávez, Nicolás Maduro, Shah Mohammed Reza, Anastasio “Tachito” Somoza Debayle, Marcos Pérez Jiménez, Recep Tayyip Erdoğan, Pol Pot, François Duvalier, Jean-Claude Duvalier, Lee Kuan Yew, Nicolae Ceaușescu, Francisco Franco, Muammar Gaddafi, Suharto, Josip Broz Tito, Mobutu Sese Seko, Chiang Kai-shek, Hosni Mubarak, Bashar al-Assad, Hafez al-Assad. *See infra* Appendix A.

⁷¹ *See* Viswanatha & O’Keeffe, *supra* note 1.

⁷² *See id.*

Philippines, Russia, Turkey, and China. Sometimes, however, the dictator was named in his individual capacity, including cases against Ferdinand Marcos, Jiang Zemin, and Radovan Karadžić.

Foreign dictators have litigated claims as both plaintiffs and defendants in U.S. courts. In general, the types of cases in which foreign dictators litigate can also be grouped into several substantive categories (although sometimes dictators are both plaintiffs and defendants within these categories):

1. Dictators as plaintiffs.

a) Disputes over sovereign funds. Disputes over sovereign funds deposited in U.S. banks abound.⁷³ Typically, foreign countries deposit funds in U.S. financial institutions to conduct sovereign transactions. These funds become a source of litigation when democratic opponents contest a dictatorial regime's power, both claiming to represent the country. These cases are, at bottom, about executive recognition of foreign regimes. To name a few, Venezuela, China, Iran, Chile, Nicaragua, and Panama have all had dictators litigate against competing leaders over funds that nominally belong to their respective countries. For example, in 1988, Panamanian President Eric Arturo Delvalle dismissed the then-reigning dictator Manuel Noriega from his military post in Panama.⁷⁴ But Noriega refused to step down, setting up a parallel administration to govern the country.⁷⁵ This turmoil pushed Delvalle to file a case in U.S. court, seeking to freeze all Panamanian funds deposited in several bank accounts.⁷⁶ This, in turn, prompted Noriega's regime to file motions to intervene in the case.⁷⁷ Ultimately, the court deferred to the U.S. president's recognition of Delvalle as the representative of "the only lawful government of the Republic of Panama," freezing the funds and

⁷³ There is even treatment of this in the international law context. See, e.g., BRAD ROTH, GOVERNMENTAL ILLEGITIMACY IN INTERNATIONAL LAW 331 (1999); Victorino J. Tejera, *The U.S. Law Regime of Sovereign Immunity and the Sovereign Wealth Funds*, 25 U. MIAMI BUS. L. REV. 1, 17–20 (2016).

⁷⁴ See Elaine Sciolino, *Panama President Dismisses Noriega; Situation Unclear*, N.Y. TIMES (Feb. 26, 1988), <https://perma.cc/BL9L-FKVQ>.

⁷⁵ See Stephen Kinzer, *Noriega Prevails as Assembly Picks a New President*, N.Y. TIMES (Feb. 27, 1988), <https://perma.cc/Q7Q9-6PKN>.

⁷⁶ See *Republic of Panama v. Republic Nat'l Bank of N.Y.*, 681 F. Supp. 1066, 1069 (S.D.N.Y. 1988).

⁷⁷ *Republic of Panama v. Citizens & S. Int'l Bank*, 682 F. Supp. 1544, 1545 (S.D. Fla. 1988).

putting them at the order of the Delvalle administration.⁷⁸ The Panama cases closely resemble cases involving the Shah of Iran, Augusto Pinochet, and Tachito Somoza.⁷⁹

b) Enforcing expropriation. Foreign dictators have filed cases in the United States to enforce property expropriations. Although expropriations typically take place in a foreign country, they can often have ramifications for U.S. individuals, companies, and funds. Notably, communist regimes—including those in Cuba, Nicaragua, Venezuela, and the Soviet Union—initiated prominent expropriation cases in U.S. courts.⁸⁰ And, on closer inspection, many of these cases resulted from dictators' attempts to consolidate power. For instance, when Fidel Castro gained power in 1959, he selectively expropriated strategic businesses to neutralize potential opposition. As I discuss below, this led to a legal dispute between Cuba and a U.S. company that reached the U.S. Supreme Court.⁸¹

c) Proxy claims against opponents, dissidents, and newspapers. A more recent crop of cases includes foreign dictatorships using proxies to pursue dissidents around the world. As discussed above, this category includes cases linked to the Chinese Communist Party, Russia's Putin, Turkey's Erdoğan, and Venezuela's Maduro.⁸² While many cases have been successful, some of these claims have been dismissed at early stages. For instance, in 2020, a Chinese state-owned entity sued a Chinese corruption suspect in California state court apparently with the sole goal of forcing him to return to China.⁸³ One month after the suit was filed, the defendant returned to China and the plaintiff

⁷⁸ *Republic Nat'l Bank of N.Y.*, 681 F. Supp. at 1068–69; see also *Citizens & S. Int'l Bank*, 682 F. Supp. at 1545.

⁷⁹ See, e.g., *Islamic Republic of Iran v. Pahlavi*, 467 N.E.2d 245, 246–47 (N.Y. 1984); Amended Complaint at 1–2, *Consejo de Defensa del Estado de la Republica de Chile v. Banco Santander Central Hispano, S.A.*, 2009 WL 2336429 (S.D. Fla. May 29, 2009) (No. 09-20621); Complaint & Demand for Jury Trial at 1, *Banco Santander Central Hispano, S.A.*, 2009 WL 1612257 (S.D. Fla. Mar. 11, 2009) (No. 109CV20621); *Ope Shipping, Ltd. v. Allstate Ins.*, 521 F. Supp. 342, 350 (S.D.N.Y. 1981).

⁸⁰ See, e.g., *Bandes v. Harlow & Jones, Inc.*, 852 F.2d 661, 663 (2d Cir. 1988); *Sabbatino*, 376 U.S. at 401–08; *Federal Republic of Germany v. Philipp*, 141 S. Ct. 703, 712–13, 715 (2021); *Republic of Hungary v. Simon*, 141 S. Ct. 691, 691 (2021) (per curiam).

⁸¹ *Sabbatino*, 376 U.S. 398.

⁸² See, e.g., *Viswanatha & O'Keeffe*, *supra* note 1; *Avilon Auto. Grp. v. Leontiev*, 168 A.D.3d 78, 84 (N.Y. App. Div. 2019); *Smagin v. Yegiazaryan*, 733 F. App'x 393, 394 (9th Cir. 2018); *Cabello-Rondón v. Dow Jones & Co.*, No. 16-CV-3346, 2017 WL 3531551, at *1–2 (S.D.N.Y. Aug. 16, 2017), *aff'd*, 720 F. App'x 87 (2d Cir. 2018); *Ateş v. Gülen*, No. 15-CV-2354, 2016 WL 3568190, at *1 (M.D. Pa. June 29, 2016).

⁸³ See *Viswanatha & O'Keeffe*, *supra* note 1.

thereafter dismissed the complaint.⁸⁴ The Chinese government explicitly recognized that the lawsuit was a success precisely because it forced the defendant to return to China.⁸⁵ Similarly, between 2015 and 2020, the Russian government and Putin proxies filed a series of claims in U.S. district courts aimed at harassing opponents or expanding the dictatorship's reach.⁸⁶ Some of the most recent cases include defamation claims by three Russian oligarchs against BuzzFeed News and Fusion GPS over the Steele dossier.⁸⁷

2. Dictators as defendants.

a) Alien Tort Statute and Torture Victim Protection Act. In the latter part of the twentieth century, victims of foreign dictatorships began to file dozens of cases in U.S. courts. These foreign tort claims are rooted in a 1789 statute⁸⁸ that gives plaintiffs a cause of action for “torts committed anywhere in the world against aliens in violation of the law of nations”⁸⁹ and a 1991 statute⁹⁰ that “authorizes a cause of action against ‘[a]n individual’ for acts of torture and extrajudicial killing committed under authority or color of law of any foreign nation.”⁹¹ Victim-plaintiffs in these cases alleged torts including torture, rape, and murder. One notable case involved claims by victims of the Marcos dictatorship against Marcos in his individual capacity, resulting in a \$2 billion award.⁹² There were similar claims by victims against Srpska’s Radovan Karadžić,⁹³ Iraq’s Saddam Hussein,⁹⁴ and China’s Jiang Zemin.⁹⁵

⁸⁴ *Id.*

⁸⁵ *See id.*

⁸⁶ *See* ÅSLUND, *supra* note 3, at 23–27.

⁸⁷ *See* Josh Gerstein, *3 Russians Named in Trump Dossier Sue Fusion GPS for Libel*, POLITICO (Oct. 4, 2017), <https://perma.cc/RZ5J-YY7A>; Josh Gerstein, *Russian Bank Owners Sue BuzzFeed over Trump Dossier Publication*, POLITICO (May 26, 2017), <https://perma.cc/7DRU-E4QH>.

⁸⁸ Judiciary Act of 1789, ch. 20, § 9, 1 Stat. 73, 77, *amended by* Alien Tort Statute, ch. 646, 62 Stat. 869, 934 (1948) (codified at 28 U.S.C. § 1350).

⁸⁹ *Kadic v. Karadžić*, 70 F.3d 232, 236 (2d Cir. 1995).

⁹⁰ Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73.

⁹¹ *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 451 (2012).

⁹² *Hilao v. Est. of Marcos*, 103 F.3d 767, 771, 781 (9th Cir. 1996).

⁹³ *Kadic*, 70 F.3d at 236.

⁹⁴ *Kalasho v. Iraqi Gov’t*, No. 1:00CV447, 2001 WL 34056852 (W.D. Mich. May 28, 2001).

⁹⁵ *Doe v. Qi*, 349 F. Supp. 2d 1258 (N.D. Cal. 2004).

b) Torts, extradition, and criminal prosecutions. A few dictators have had unusual interactions with U.S. courts.⁹⁶ One remarkable case stemmed from Augusto Pinochet's order to assassinate a Chilean critic in the United States by detonating explosives in the middle of Washington, D.C.⁹⁷ Surprisingly, at least three dictators have been criminal defendants: Marcos Pérez Jiménez, Saddam Hussein, and Manuel Noriega.⁹⁸ All of them, along with Ferdinand Marcos, ended up in the United States or under U.S. military custody after their rule. After fleeing a democratic uprising in Venezuela, Pérez Jiménez relocated to Florida in 1959. But after the Venezuelan government requested extradition, U.S. authorities detained Pérez Jiménez, leading to a series of cases where the former dictator filed habeas corpus proceedings and contested his extradition.⁹⁹ Similarly, Manuel Noriega became a criminal defendant after the U.S. military seized him in Panama and the DOJ prosecuted him in U.S. court for narcotrafficking.¹⁰⁰ And Saddam Hussein requested a stay of execution while in the custody of Iraqi and U.S. officials in 2006.¹⁰¹

c) Resisting expropriation. While foreign dictators have at times enforced expropriation orders in U.S. courts, their victims have filed cases against dictators to seek payment for expropriated property.¹⁰² These cases, again, involved mostly communist

⁹⁶ Yet another category of claims covers corruption cases involving agents or instrumentalities of foreign dictatorships. *See, e.g.,* Harvest Nat. Res., Inc. v. Ramirez Carreno, No. CV H-18-483, 2020 WL 3063940, at *1–2 (S.D. Tex. June 9, 2020).

⁹⁷ *See* De Letelier v. Republic of Chile, 748 F.2d 790, 791 (2d Cir. 1984).

⁹⁸ *See infra* Appendix A.

⁹⁹ *See* Judith Ewell, *The Extradition of Marcos Pérez Jiménez, 1959-63: Practical Precedent for Enforcement of Administrative Honesty?*, 9 J. LATIN AM. STUD. 291, 291–97 (1977).

¹⁰⁰ *See* United States v. Noriega, 117 F.3d 1206, 1209 (11th Cir. 1997).

¹⁰¹ *See In re Hussein*, 468 F. Supp. 2d 126, 127 (D.D.C. 2006).

¹⁰² *See, e.g.,* Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co., 137 S. Ct. 1312, 1317 (2017); Alfred Dunhill of London, Inc. v. Republic of Cuba, 425 U.S. 682, 682 (1976); Comparelli v. Republica Bolivariana de Venezuela, 891 F.3d 1311, 1315 (11th Cir. 2018); Villoldo v. Castro-Ruz, 821 F.3d 196, 198–99 (1st Cir. 2016); Empresa Cubana Exportadora de Azúcar y Sus Derivados v. Lamborn & Co., 652 F.2d 231, 232–33 (2d Cir. 1981); Menendez v. Saks & Co., 485 F.2d 1355, 1360–61 (2d Cir. 1973), *rev'd sub nom. Alfred Dunhill of London, Inc.*, 425 U.S. 682; Wahba v. Nat'l Bank of Egypt, 457 F. Supp. 2d 721, 724–29 (E.D. Tex. 2006); Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela, 300 F. Supp. 3d 137, 141–45 (D.D.C. 2018); Davoyan v. Republic of Turkey, 116 F. Supp. 3d 1084, 1090 (C.D. Cal. 2013), *aff'd on other grounds sub nom. Bakalian v. Cent. Bank of Republic of Turk.*, 932 F.3d 1229 (9th Cir. 2019); McKesson Corp. v. Islamic Republic of Iran, 116 F. Supp. 2d 13, 18–21 (D.D.C. 2000), *aff'd in part sub nom. McKesson HBOC, Inc. v. Islamic Republic of Iran*, 271 F.3d 1101 (D.C. Cir. 2001), *vacated in part*, 320 F.3d 280 (D.C. Cir. 2003).

regimes, including those in Cuba, Nicaragua, Venezuela, and the Soviet Union.

Setting the type of claim aside, it is difficult to gauge whether foreign dictators have succeeded in U.S. courts. Measuring whether foreign dictators won on the merits provides no real answer for a few reasons. First, when foreign dictators are plaintiffs in U.S. courts, they may be interested in harassing, intimidating, or imposing costs on opponents. So losing on the merits may still be a “win” as part of a broader political harassment campaign. Second, when dictators are defendants, success may not be on the merits either because claims can be dismissed due to sovereign or official immunity. But even when foreign dictators lose on the merits, plaintiffs may have an extremely difficult time collecting on their awards.¹⁰³ Finally, it is not easy to isolate litigation results from parallel diplomatic efforts. What looks like a win or loss on the merits may look very different once we account for diplomatic channels. Still, taking all of this into account, dictators’ success on the merits is rare when they are plaintiffs but common when they are defendants.¹⁰⁴ That is because courts usually find dictatorships immune. Below, in Part I.C–D, I discuss dictators’ legal defenses and related doctrines in more detail.

B. Relevant Historical Cases

In this Section, I explore the development of dictator-related cases and related comity doctrines over time. The point of this Section is to understand the principles that govern these cases and how U.S. courts have evolved to treat dictators over the past few decades.

There are three common and relevant themes. First, courts have used the extraordinary nature of these cases to bolster a series of foreign relations doctrines and statutes, including the privilege of bringing suit, act of state, and sovereign and official immunities. To be sure, these doctrines have their own complex histories involving democratic governments too. I do not cover that broader history—only the cases where these doctrines and dictatorships overlap. Second, in this context, the separation of powers between the judiciary and the executive waxes and wanes—sometimes courts completely defer to the executive, and

¹⁰³ Cf. *Republic of Argentina v. NML Cap., Ltd.*, 573 U.S. 134, 136–37 (2014).

¹⁰⁴ See *infra* Appendix A.

at other times they insist on judicial prerogatives.¹⁰⁵ Third, while courts have struggled with whether to treat dictatorships differently than democratic governments, most courts have embraced an equal-treatment principle that does not draw a distinction between regime types. Importantly, there is a sprinkle of cases that suggest that courts are capable of drawing distinctions between foreign governments but are also wary of disrupting foreign affairs. On the whole, these decisions are dominated by functionalist concerns. Again, the cases below are not comprehensive. I cover only the most relevant dictator cases for purposes of this study.

1. The first cases in the nineteenth century: sovereign immunity and the privilege of bringing suit.

Foreign authoritarian leaders have been in our courts from the beginning of the republic.¹⁰⁶ The landmark case *The Schooner Exchange v. McFaddon*¹⁰⁷ began in 1811 when two U.S. plaintiffs claimed ownership of a French ship in the port of Philadelphia.¹⁰⁸ The case was unusual, however, because it directly implicated property of a foreign emperor, Napoleon Bonaparte.¹⁰⁹ Facing this delicate fact pattern, Chief Justice John Marshall held for a unanimous Supreme Court that foreign government vessels entering the United States “are to be considered as exempted by the consent of that power from its jurisdiction.”¹¹⁰ Chief Justice Marshall rooted what is now called “absolute sovereign immunity”¹¹¹ in the need for courts to avoid “breach[es] of faith” that might impact the nations’ foreign affairs.¹¹² Setting aside the details, *Schooner Exchange* stands for two lasting principles: (1) that, while a

¹⁰⁵ As Professors Ganesh Sitaraman and Ingrid Wuerth note, in the early nineteenth century, courts mostly resolved foreign affairs cases without fully deferring to the executive. Sitaraman & Wuerth, *supra* note 56, at 1911–12; *see also* White, *supra* note 26, at 27–28, 44, 81, 95, 141, 144–45.

¹⁰⁶ I’m not suggesting here that all foreign emperors or monarchs were dictators. But they do fall under the umbrella of authoritarian leaders that have shaped the history of dictator-related doctrines and cases.

¹⁰⁷ 11 U.S. (7 Cranch) 116 (1812).

¹⁰⁸ *Id.* at 117.

¹⁰⁹ Although the case was in rem and the defendant was officially a boat. *See id.* at 118. At that time, as King Louis XIV had previously recognized with the apocryphal phrase “L’État, c’est à moi,” the King *was* the state. *See* Wuerth, *supra* note 54, at 677–78 (collecting cases); Herbert H. Rowen, “L’État c’est à moi”: Louis XIV and the State, 2 FRENCH HIST. STUD. 83, 83 (1961).

¹¹⁰ *Schooner Exch.*, 11 U.S. at 145–46.

¹¹¹ *See* Garb v. Republic of Poland, 440 F.3d 579, 585 (2d Cir. 2006).

¹¹² *Schooner Exch.*, 11 U.S. at 146. Courts have called this “international comity.” *See, e.g., Sabbatino*, 376 U.S. at 417.

nation has jurisdiction over disputes in its territory, there is also absolute immunity for foreign government property and (2) that U.S. courts can consider the executive's input on questions of sovereign immunity.¹¹³

Although U.S. courts repeatedly hosted cases against foreign monarchs in the early nineteenth century,¹¹⁴ the next relevant case for our purposes also involved a Napoleon. But this time, it was Bonaparte's nephew, Emperor Napoleon III. In 1867, an American ship collided with a French transport ship named *The Sapphire* near San Francisco. Unlike in *Schooner Exchange*, it was the French government—in the name of the emperor—that filed suit in a U.S. district court to recover damages for the crash.¹¹⁵ With an emperor as plaintiff, the question was now whether “the French Emperor [could] sue in our courts.”¹¹⁶ The Supreme Court held that foreign sovereigns were allowed to “prosecute [cases] in our courts,” because to deny them that privilege “would manifest a want of comity and friendly feeling.”¹¹⁷ The Court rooted this privilege, among other areas, in the diversity jurisdiction clause of Article III, noting that “[t]he Constitution expressly extends the judicial power to controversies between a State, or citizens thereof, and *foreign States*, citizens, or subjects.”¹¹⁸ Importantly, the Court explicitly refused to draw a distinction between Napoleon as emperor and his potential successors in France, noting that “[t]he reigning Emperor, or National Assembly, or other actual person or party in power, is but the agent and representative of the national sovereignty.”¹¹⁹ The privilege of suing in our courts, the Court affirmed, was given to the foreign sovereign, regardless of who was officially in power in that

¹¹³ This immunity is comity based. And there is also a distinction between immunity from suit and immunity of property from execution. For a broader discussion of absolute sovereign immunity, see generally Letter from Jack B. Tate, Acting Legal Adviser, Dep't of State, to Philip B. Perlman, Acting Att'y Gen., Dep't of Just. (May 19, 1952), in 26 DEP'T STATE OF BULL. 984–85 (1952). The role of executive suggestions has its own complicated history and continues to be contested. See, e.g., Keitner, *supra* note 22 at 51–52; Ingrid Wuerth, *Foreign Official Immunity Determinations in U.S. Courts: The Case Against the State Department*, 51 VA. J. INT'L L. 915, 943–45 (2011).

¹¹⁴ See Wuerth, *supra* note 54, at 671–73, 676–77 (collecting cases).

¹¹⁵ See *The Sapphire*, 78 U.S. (11 Wall.) 164, 164 (1870).

¹¹⁶ *Id.* at 167.

¹¹⁷ *Id.*

¹¹⁸ *Id.* (emphasis in original).

¹¹⁹ *Id.* at 168.

country.¹²⁰ This was an embrace of an equal-treatment principle for all regime types.

The end of the nineteenth century brought two blockbuster cases, one with lasting effects and the other largely forgotten. In 1897, the Supreme Court first recognized the act of state doctrine, holding in *Underhill v. Hernandez*¹²¹ that U.S. courts could not sit in judgment of actions by a Venezuelan military leader on Venezuelan land.¹²² The act of state holding set the foundation for a long line of cases that have refused to judge foreign authoritarian actions, even if such actions would otherwise be cognizable under U.S. law.

Despite the apparent trend of refusing to treat dictators any differently than democratic governments, only a year after *Underhill*, the Court seemed to take a different tack in *Camou v. United States*¹²³ (albeit in a case where the dictator was a non-party). In 1891, a landowner filed a claim for a tract of land in the Court of Private Lands Claims for the territory of Arizona.¹²⁴ The land claim hinged on an unusual source—an 1828 auction conducted by local authorities in what was then Sonora, Mexico. To decide the petitioner's claim, however, U.S. courts first had to determine whether the Sonoran local officials or the Mexican central government possessed authority over the land in 1828. That question, in turn, depended on the effect of an 1853 proclamation by Mexican dictator Antonio López de Santa Anna, which stated—with retroactive applicability—that the Mexican central government had ultimate authority over land grants. In the face of this proclamation, which seemingly should have decided the question, the U.S. Supreme Court refused to abide by Santa Anna's decree. In an unusual passage, the Court noted the following:

While it is true that practically Santa Anna occupied for the time being the position of dictator, it must not be forgotten that Mexico, after its separation from Spain in 1821, was assuming to act as a republic subject to express constitutional limitations. While temporary departures are disclosed in her history, the dominant and continuous thought was of a popular government under a constitution which defined rights, duties and powers. In that aspect the spasmodic decrees

¹²⁰ See *The Sapphire*, 78 U.S. at 167–68.

¹²¹ 168 U.S. 250 (1897).

¹²² *Id.* at 252–53.

¹²³ 171 U.S. 277 (1898).

¹²⁴ See *id.* at 277.

made by dictators in the occasional interruptions of constitutional government should not be given conclusive weight in the determination of rights created during peaceful and regular eras.¹²⁵

Surprisingly, the Court seemed to draw a distinction between democratic actions and dictatorial decrees. “The divestiture of titles once legally vested is a judicial act. In governments subject to ordinary constitutional limitations a mere executive declaration disturbs no rights that have been vested.”¹²⁶ Taking specific note of Santa Anna’s position as “dictator,” the Court noted that it would go “too far to hold that the mere declaration of a rule of law made by a temporary dictator . . . is to be regarded as operative and determinative.”¹²⁷ The Court also explicitly set aside the fact that the executive had recognized and negotiated with Santa Anna.¹²⁸ This potential separation-of-powers conflict did not give the Court, or the executive, pause. Ultimately, the Court held that “for the reasons heretofore mentioned . . . we think this arbitrary declaration by a temporary dictator was not potent to destroy the title.”¹²⁹

In conclusion, nineteenth-century cases prompted U.S. courts to recognize the doctrines of absolute sovereign immunity, act of state, and the privilege of foreign sovereigns to sue in U.S. court. On the whole, the emerging trend was that courts were unwilling to discern different types of government, concentrating only on the rights of foreign sovereigns qua sovereigns. To be sure, most nineteenth-century governments were not fully democratic. So even the possibility of distinguishing democracies and dictatorships would have been unintuitive. However, *Camou* represents a powerful articulation of an alternative model because the Supreme Court explicitly recognized a difference between authoritarian and democratic forms of government. Perhaps all of this highlights an underlying principle in these cases: courts may want to draw distinctions between types of governments, but they are wary of impacting U.S. foreign affairs.

¹²⁵ *Id.* at 290.

¹²⁶ *Id.*

¹²⁷ *Id.* at 291.

¹²⁸ *Camou*, 171 U.S. at 290–91.

¹²⁹ *Id.* at 291.

2. Communist dictatorships and the separation of powers.

The emergence of communist dictatorships after World War I and World War II raised a host of questions for U.S. courts concerning property expropriations and the separation of powers. The October Revolution of 1917 and the Soviet government's subsequent nationalization of Russian companies—and their world-wide assets—provoked a series of contentious property disputes in the United States. In 1933, President Roosevelt recognized the Soviet Union's government and "accepted an assignment . . . of certain claims" to Russian property in the United States.¹³⁰ These developments led to a string of cases involving property claims, foreign nationalizations, and the executive's power to unilaterally recognize foreign governments. The Supreme Court generally recognized the president's power not only to negotiate executive agreements but also to determine the country's foreign affairs policies more generally.¹³¹ These decisions, of course, increased the executive's power to deal with foreign dictatorships.¹³²

While dictator cases made an imprint on foreign relations law, they were only a small part of the broader trend towards deference to the executive. As Professors Ganesh Sitaraman and Ingrid Wuerth have argued, the Supreme Court revolutionized foreign relations law in the early twentieth century, "adopt[ing] the idea that foreign affairs are an exceptional sphere of policy-making, distinct from domestic law and best suited to exclusively federal, and primarily executive, control."¹³³ This birth of "foreign relations exceptionalism" came out of a mix of cases involving both foreign democracies and dictatorships. The Court generally did not treat dictatorship cases differently.¹³⁴

Despite the growing pile of pro-executive cases in the foreign affairs context, the end of World War II brought a renewed focus on dictator cases, which continued to challenge the judiciary. In a series of cases over Nazi expropriations, lower courts held that even in such odious circumstances, U.S. courts had to recognize

¹³⁰ *United States v. Pink*, 315 U.S. 203, 211 (1942); *see also* *United States v. Belmont*, 301 U.S. 324, 330 (1937).

¹³¹ *Pink*, 315 U.S. at 211, 230.

¹³² However, courts were not obligated to recognize Russian expropriations in the United States. *See Sabbatino*, 376 U.S. at 448 (White, J., dissenting) (collecting cases).

¹³³ Sitaraman & Wuerth, *supra* note 56, at 1900.

¹³⁴ *See generally* *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304 (1936). *See* Sitaraman & Wuerth, *supra* note 56, at 1911–19; *see also* White, *supra* note 26, at 99.

actions of the Nazi regime as foreign acts of state.¹³⁵ Importantly, Judge Learned Hand qualified his decision in one such case by noting that courts should look to the executive for guidance.¹³⁶ This call for executive guidance coincided with two related developments. In *Bernstein v. N. V. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij*,¹³⁷ the State Department asked courts to allow plaintiffs to pursue claims related to Nazi expropriations.¹³⁸ Only a few years later, the 1952 Tate Letter announced a State Department policy of restrictive—not absolute—sovereign immunity.¹³⁹ Both of these executive moves explicitly pushed the judiciary to hear sovereign cases.

Then, in the early 1950s, courts faced disputes between the Mao regime and its rival, the Kuomintang. As both authoritarian regimes claimed to be the true representatives of the Chinese government, their dispute spilled into U.S. cases over property belonging to Chinese instrumentalities. In *Bank of China v. Wells Fargo Bank & Union Trust Co.*,¹⁴⁰ a district court was asked whether funds belonging to the state-owned Bank of China and deposited in Wells Fargo could be repossessed by the Mao or the Kuomintang regime.¹⁴¹ The plaintiffs initially filed the case on November 9, 1949, one month after Mao's proclamation of the People's Republic of China but still weeks before Chiang Kai-shek's exodus to Taiwan.¹⁴² The U.S. government, however, recognized only the Kuomintang.¹⁴³

With this set of facts, the court ultimately deferred to the executive's position that the Kuomintang was the true representative of China.¹⁴⁴ However, the court noted that it need not completely defer to the executive because executive recognition of a foreign government was but one "fact which properly should be considered and weighed along with the other facts before the court."¹⁴⁵ Like previous cases, the court did not take into account

¹³⁵ See, e.g., *Bernstein v. Van Heyghen Freres Societe Anonyme*, 163 F.2d 246, 248–49 (2d Cir. 1947).

¹³⁶ See *id.* at 251.

¹³⁷ 210 F.2d 375 (2d Cir. 1954).

¹³⁸ See *id.* at 375–76.

¹³⁹ Letter from Jack Tate to Philip Perlman, *supra* note 113, at 984.

¹⁴⁰ 104 F. Supp. 59 (N.D. Cal. 1952), *aff'd*, 209 F.2d 467 (9th Cir. 1953).

¹⁴¹ *Id.* at 63.

¹⁴² See *Bank of China v. Wells Fargo Bank & Union Tr. Co.*, 92 F. Supp. 920, 921–22 (N.D. Cal. 1950).

¹⁴³ *Wells Fargo*, 104 F. Supp. at 63–65.

¹⁴⁴ *Id.* at 63.

¹⁴⁵ *Id.* at 64.

that Mao's regime was dictatorial or repressive as compared to the Kuomintang, which was itself also authoritarian in Taiwan.

The Cuban Revolution and its consequences picked up the thread laid by the Soviet and Chinese precedents. In 1960, the Castro regime nationalized and expropriated any property in Cuba "in which American nationals had an interest."¹⁴⁶ This unleashed a series of disputes between U.S. Cuban-property owners and the government of Cuba, including a prominent case in the Southern District of New York.¹⁴⁷ The first Cuban case to arrive at the Supreme Court, however, was a claim by the Cuban government—through the Cuban National Bank—as plaintiff against a U.S. commodity broker alleging that the defendant misappropriated proceeds from the sale of a shipment of Cuban sugar.¹⁴⁸ Cuba's case hinged on the court's acceptance of its nationalization of the sugar companies and resulting proceeds.

The defendant responded to Cuba's claim with two relevant arguments: (1) that the privilege of suing in U.S. courts—based on international comity—should not be extended to Cuba because it was "an unfriendly foreign power in whose courts neither the United States nor its nationals can obtain relief" and (2) that the plaintiff's claim involved enforcing a property expropriation that violated international law.¹⁴⁹ Although the executive branch did not take an official position in the case, the defendant cited a series of unrelated statements by the State Department and the U.S. government that criticized Castro's dictatorship and communist regime. For instance, the defendant's brief cited a State Department bulletin criticizing Cuba for adopting "totalitarian policies and techniques to cement dictatorial control over the Cuban people."¹⁵⁰ An amicus brief similarly quoted a German court decision, noting that "expropriation cannot possibly be reconciled with the principles underlying a democratic state."¹⁵¹

With the question of foreign dictatorships teed up in the most straightforward way, the Supreme Court rejected defendants'

¹⁴⁶ *Sabbatino*, 376 U.S. at 401.

¹⁴⁷ Cf. *Berlanti Constr. Co. v. Republic of Cuba*, 190 F. Supp. 126 (S.D.N.Y. 1960) (discussing whether proper service was made on the Republic of Cuba).

¹⁴⁸ See *Sabbatino*, 376 U.S. at 406–07.

¹⁴⁹ Brief for Respondent Farr, Whitlock & Co. at 13, *Sabbatino*, 376 U.S. 398 (No. 16).

¹⁵⁰ *Id.* at 38 (quoting 46 DEP'T OF STATE BULL. 129 (1962)).

¹⁵¹ Brief for the Committee on International Law of the Association of the Bar of the City of New York as Amicus Curiae at 46, *Sabbatino*, 376 U.S. 398 (No. 16) (quotation marks omitted) (quoting Kammergericht [KG] [Higher Court of Appeal of West Berlin] Dec. 15, 1950, *JuristenZeitung* [JZ] 367, 367 (1951) (Ger.), *translated in* 18 I.L.R. 198).

arguments and refused to treat the Cuban dictatorship any differently than other sovereigns.¹⁵² First, the Court held that “principles of comity” that allow “sovereign states . . . to sue in the courts of the United States” were fully applicable in this case.¹⁵³ Never mind that the United States had severed diplomatic relations with Cuba or that Cuban courts did not extend reciprocal treatment to U.S. citizens. The majority concluded that “[t]his Court would hardly be competent to undertake assessments of varying degrees of friendliness . . . we are constrained to consider any relationship, short of war, with a recognized sovereign power as embracing the privilege of resorting to United States courts.”¹⁵⁴ As long as the United States recognized a foreign sovereign—a prerogative that was “exclusively a function of the Executive”—that sovereign would be allowed to sue in our courts.¹⁵⁵

Second, the Court held that it could not pass judgment on Cuba’s expropriation order because of the act of state doctrine. Although the Court recognized that the doctrine was mandated neither by the Constitution nor any statute or international law, it defended the principle that “conduct of one independent government cannot be successfully questioned in the courts of another.”¹⁵⁶ To do so would “imperil the amicable relations between governments and vex the peace of nations.”¹⁵⁷ Instead, foreign-government acts within their territory must be accepted by U.S. courts as a rule of decision.¹⁵⁸ For that reason, the Court held that it had to respect Cuba’s expropriation and enforce that country’s rights over the sugar proceeds.¹⁵⁹

Although Congress technically overruled *Sabbatino* through the so-called Hickenlooper Amendment in 1982,¹⁶⁰ the twentieth century solidified the case law on dictatorships: these regimes are generally no different than any other type of government for purposes of U.S. litigation, so long as the executive recognizes that government. Still, after *Sabbatino*, act of state flourished in lower courts and continued to shield foreign dictatorships—despite

¹⁵² See *Sabbatino*, 376 U.S. at 410.

¹⁵³ *Id.* at 408–09.

¹⁵⁴ *Id.* at 410.

¹⁵⁵ *Id.* The court explicitly contrasted this to the judgment enforcement context. *Id.* at 411–12.

¹⁵⁶ *Id.* at 417 (quoting *Oetjen v. Cent. Leather Co.*, 246 U.S. 297, 303–04 (1918)).

¹⁵⁷ *Sabbatino*, 376 U.S. at 418 (quoting *Oetjen*, 246 U.S. at 303–04).

¹⁵⁸ See *id.* at 417–18.

¹⁵⁹ *Id.* at 438–39.

¹⁶⁰ 22 U.S.C. § 2370(e)(2).

explicit opposition from the executive. In *First National City Bank v. Banco Nacional de Cuba*,¹⁶¹ the State Department explicitly asked the Court to waive the act of state doctrine in that case.¹⁶² But courts nonetheless applied the doctrine in the 1970s, including in a case where Libya's Colonel Gaddafi avoided anti-trust scrutiny.¹⁶³ A 1968 Supreme Court case captured the spirit of the era, invalidating an Oregon statute on estates—requiring reciprocal treatment of U.S. citizens in foreign countries—because it “seems to make unavoidable judicial criticism of nations established on a more authoritarian basis than our own.”¹⁶⁴ The Supreme Court held that this interfered with the federal government's foreign affairs powers and was therefore null and void.¹⁶⁵ Still, as I discuss in Part II, courts have applied the equal-treatment principle unevenly, often judging foreign autocrats.

3. The FSIA, Alien Tort Statute, and globalized dictatorships after 1976.

Congress adopted the FSIA in 1976, finally codifying the doctrine that foreign sovereigns are immune from suit in U.S. court.¹⁶⁶ Although the FSIA grants a baseline blanket immunity from suit, it also contains a series of important exceptions. These include cases where the foreign sovereign contractually waives immunity, participates in commercial activity in the United States, takes property in violation of international law, or causes tortious acts in the United States.¹⁶⁷

With increased globalization in the 1970s and 1980s, enactment of the FSIA coincided with a flurry of new cases involving foreign dictatorships in U.S. court.¹⁶⁸ For instance, the new Islamic dictatorship of Iran filed several cases in U.S. courts against the departed shah and his family over oil contracts and the enforcement of foreign awards.¹⁶⁹ In one of the most extraordinary

¹⁶¹ 406 U.S. 759 (1972).

¹⁶² See *id.* at 781–82.

¹⁶³ See *Hunt v. Mobil Oil Corp.*, 550 F.2d 68, 69–70, 73 (2d Cir. 1977).

¹⁶⁴ *Zschernig v. Miller*, 389 U.S. 429, 440 (1968).

¹⁶⁵ *Id.* at 436.

¹⁶⁶ For a longer history of sovereign immunity, see generally GIUTTARI, *supra* note 26; White, *supra* note 26.

¹⁶⁷ See David P. Stewart, *The Foreign Sovereign Immunities Act: A Guide for Judges*, FED. JUD. CTR. 41–66 (2013), <https://perma.cc/W52H-ZGXF>.

¹⁶⁸ See *infra* Appendix A.

¹⁶⁹ See *infra* Appendix A; Ministry of Def. of the Islamic Republic of Iran v. Gould Inc., 887 F.2d 1357, 1358–61 (9th Cir. 1989); Nat'l Petrochem. Co. of Iran v. M/T Stolt Sheaf, 860 F.2d 551, 552–53 (2d Cir. 1988).

dictator-related events, Chile's Pinochet ordered the assassination of a former Chilean ambassador (and prominent critic) living in the United States. The ensuing explosion of Orlando Letelier's car in the middle of Washington, D.C., led to a 1978 case against Chile.¹⁷⁰ A district court ultimately granted a default award against the country.¹⁷¹ As discussed above, Manuel Noriega and his democratic challengers also litigated over Panamanian funds located in the United States.¹⁷² And even Libya's military dictator, Gaddafi, faced claims for colluding with oil companies to exclude smaller oil producers from Libyan oil fields.¹⁷³

A revitalized Alien Tort Statute¹⁷⁴ became a new source of cases over foreign human rights violations.¹⁷⁵ In 1980, the Second Circuit held that "Paraguayan citizens could sue a former Paraguayan police inspector for allegedly torturing and killing a member of their family in Paraguay, in violation of international law."¹⁷⁶ That case single-handedly triggered a wave of litigation against foreign dictators, making the United States "unique in opening its courts to *civil* suits by foreign plaintiffs against foreign governmental officials for human rights violations that occurred on foreign soil."¹⁷⁷ The best example of these claims involves Philippine dictator Ferdinand Marcos. In 1986, a class action of human rights victims served Marcos in Hawaii—where he had fled after the 1986 presidential election—with a complaint alleging "torture, summary execution and disappearance of thousands of Filipinos."¹⁷⁸ Despite the fact that the complaint alleged only actions that took place abroad, the claims were cognizable in U.S. court under the Alien Tort Statute. The Ninth Circuit initially granted immunity to Marcos from similar claims¹⁷⁹ but later allowed these claims to proceed as a class action.¹⁸⁰ Notably, the executive branch submitted an amicus brief supporting plaintiffs'

¹⁷⁰ *De Letelier*, 748 F.2d at 791.

¹⁷¹ *See id.* at 791, 799. Incidentally, the United States agreed to create separate tribunals to resolve Iran- and Chile-related claims.

¹⁷² *See supra* notes 74–76.

¹⁷³ *See Hunt*, 550 F.2d at 71–72.

¹⁷⁴ Ch. 646, 62 Stat. 869, 934 (codified as amended at 28 U.S.C. § 1350).

¹⁷⁵ *See also Kadic*, 70 F.3d at 236.

¹⁷⁶ Curtis A. Bradley & Jack L. Goldsmith, *Foreign Sovereign Immunity, Individual Officials, and Human Rights Litigation*, 13 GREEN BAG 2D 9, 10 (2009); *Filartiga v. Penalra*, 630 F.2d 876, 878 (2d Cir. 1980).

¹⁷⁷ Bradley & Goldsmith, *supra* note 7, at 2181 (emphasis in original).

¹⁷⁸ *In re Est. of Ferdinand E. Marcos Hum. Rts. Litig.*, 536 F.3d 980, 985 (9th Cir. 2008).

¹⁷⁹ *Republic of Philippines v. Marcos*, 818 F.2d 1473, 1489–90 (9th Cir. 1987).

¹⁸⁰ *Trajano v. Marcos*, No. 86-2448, 1989 WL 76894, at *1–2 (9th Cir. July 10, 1989).

actions only to the extent that Marcos's violations of international law formed part of U.S. law.¹⁸¹ In 1992, the Ninth Circuit held that the FSIA did not provide immunity to Marcos because his crimes were not "committed in an official capacity."¹⁸² After years of litigation, one of the cases reached a jury trial and resulted in an award of nearly \$2 billion against Marcos and other defendants.¹⁸³

Even when plaintiffs were able to avoid sovereign immunity and obtain awards—as in the Marcos cases—they found it extremely difficult to actually obtain payment or attach foreign assets. In light of this problem, especially in suits related to terrorism, Congress amended the FSIA in 1998 to "provide for attachment and execution of otherwise-blocked assets and government assistance in locating the assets in suits against state sponsors of terrorism."¹⁸⁴

Finally, in the 2000s, courts conclusively addressed the status of head-of-state immunity. In 2004, a group of unidentified plaintiffs belonging to the Chinese group Falun Gong filed a claim against China's former premier, Jiang Zemin, while he traveled through the United States.¹⁸⁵ The plaintiffs alleged that Jiang "organize[d] and direct[ed] the suppression of Falun Gong throughout China," leading to a series of human rights violations—including rape, execution, disappearances, and torture.¹⁸⁶ The U.S. government, however, filed an amicus brief suggesting that Jiang was "immune from the jurisdiction of the Court because he is China's former head of state."¹⁸⁷ The court accepted the executive's suggestion, holding that although the FSIA judicialized immunity determinations, it was never intended to cover head-of-state claims.¹⁸⁸ Six years later, in *Samantar v. Yousuf*,¹⁸⁹ the Supreme Court agreed, holding that the FSIA did not apply to foreign officials sued in their official capacity.¹⁹⁰ Instead, the

¹⁸¹ Brief for the United States as Amicus Curiae at 20–24, *Trajano*, No. 86-2448 (9th Cir. Oct. 29, 1987).

¹⁸² *In re Est. of Ferdinand E. Marcos Hum. Rts. Litig.*, 978 F.2d 493, 497–98 (9th Cir. 1992).

¹⁸³ *See Hilao*, 103 F.3d at 771, 781.

¹⁸⁴ Bradley & Goldsmith, *supra* note 7, at 2182 n.261.

¹⁸⁵ *See* Plaintiffs A, B, C, D, E, F v. Jiang Zemin, 282 F. Supp. 2d 875, 879 (N.D. Ill. 2003), *aff'd sub nom.* Wei Ye v. Jiang Zemin, 383 F.3d 620 (7th Cir. 2004).

¹⁸⁶ *Jiang Zemin*, 282 F. Supp. 2d at 878.

¹⁸⁷ *Id.* at 879.

¹⁸⁸ *See id.* at 879, 881.

¹⁸⁹ 560 U.S. 305 (2010).

¹⁹⁰ *See id.* at 325.

common law governs foreign official immunity, with potential input by the State Department.¹⁹¹

4. Twenty-first century democratic recession: how new dictators and their proxies take advantage of U.S. courts.

The last fifteen years have brought new kinds of cases, which stem from a rise in global terrorism and a worldwide democratic recession. To be sure, the Supreme Court and “the federal political branches have, with limited exceptions, taken steps to limit international human rights litigation in U.S. courts.”¹⁹² But in dozens of other cases, plaintiffs have been able to sue foreign regimes over alleged sponsorship of terrorism.¹⁹³ While courts have constrained the reach of the Alien Tort Statute, Congress has expanded exceptions to the FSIA. One major growth area comes from new dictatorships in countries that have long been considered U.S. allies—like Venezuela and Turkey—and in states with commercial and historical links to the United States. Because of these previous relationships, recent claims have often involved sovereign property in the United States or political emigres who have fled here. Moreover, these dictatorships have used proxies or cronies to file their cases in U.S. court, hiding any official involvement.¹⁹⁴

The most worrisome cases involve efforts by foreign dictators to exploit the U.S. judiciary to their advantage. Regimes dress up these cases as run-of-the-mill claims (e.g., defamation, contract claims, enforcement of foreign awards, discovery requests pursuant to 28 U.S.C. § 1782, and bankruptcy disputes). Sometimes, state-affiliated companies—like China’s Huawei or Russia’s Kaspersky Lab—sue in U.S. courts to pursue seemingly commercial interests that are, on closer look, aligned with an authoritarian regime’s goals.¹⁹⁵ Notable cases involve dictatorships in China, Venezuela, Russia, and Turkey.

For instance, in 2014, a Chinese anticorruption program announced a “multidimensional ‘legal war’” against corruption

¹⁹¹ See *id.* at 325–26.

¹⁹² Bradley & Goldsmith, *supra* note 7, at 2172; see also *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 117 (2013) (limiting the Alien Tort Statute).

¹⁹³ See, e.g., *Shoham v. Islamic Republic of Iran*, No. 12-CV-508, 2017 WL 2399454, at *3–4 (D.D.C. June 1, 2017).

¹⁹⁴ See *supra* note 82.

¹⁹⁵ See *Kaspersky Lab, Inc. v. U.S. Dep’t of Homeland Sec.*, 909 F.3d 446, 450–53 (D.C. Cir. 2018); see also Stephanie Zable, *Huawei Technologies v. U.S.: Summary and Context*, LAWFARE (Apr. 9, 2019), <https://perma.cc/L3BM-BXVN>.

suspects around the world.¹⁹⁶ As part of this plan, the Chinese government decided to “sue fugitives in American courts” with the apparent goal of harassing defendants, draining their financial resources, and forcing them to return to China.¹⁹⁷ But, instead of filing those cases in China’s sovereign capacity, the program recruited state-owned businesses to do its bidding. This has resulted in at least six civil cases in state and federal courts on claims ranging from breach of fiduciary duty to fraud.¹⁹⁸ Surprisingly, Chinese officials have called “the lawsuit strategy a success, publicly citing one of the suits as helping to force one of their most-wanted home.”¹⁹⁹ U.S. officials, however, have called the lawsuits an “effort to pursue political targets rather than just criminal ones.”²⁰⁰ Allegedly, the Chinese suits have been paired with physical harassment, stalking—including by Chinese agents dressed as fake FBI officials—and outright threats.²⁰¹ All of this appears to be an organized attempt by a foreign dictatorship to use U.S. civil lawsuits for political ends.

Similarly, Turkey’s dictator, Erdoğan, used government lawyers to go after his main opponent—Muhammed Fethullah Gülen, a cleric who lives in Pennsylvania.²⁰² But instead of filing the case in the name of Turkey, it appears that Erdoğan’s regime recruited regular citizens as proxies to file a seemingly private case. The complaint alleged that Gülen engaged in religious persecution against plaintiffs within Turkey.²⁰³ But the litigation coincided with a broader effort by Erdoğan to purge the Turkish opposition and weaken Gülen’s status as his most important political opponent.²⁰⁴ Moreover, the fact that Turkish government lawyers represented these supposed individual plaintiffs suggests a broader government plan. Not only did the Turkish government hire the law firm, but the main plaintiffs’ lawyer also admitted that the

¹⁹⁶ Viswanatha & O’Keeffe, *supra* note 1.

¹⁹⁷ *See id.*

¹⁹⁸ *See, e.g.,* Xinba Constr. Grp. Co. v. Jin Xu, No. ESX-L-2889-18, 2019 BL 383407, at *1 (N.J. Super. Ct. Law Div. Sept. 20, 2019); Changsha Metro Grp. Co. v. Peng Xueng, No. E072596, 2020 WL 2537521, at *1–2 (Cal. Ct. App. May 19, 2020); Viswanatha & O’Keeffe, *supra* note 1.

¹⁹⁹ Viswanatha & O’Keeffe, *supra* note 1.

²⁰⁰ *Id.*

²⁰¹ *See id.*

²⁰² *See* Pamuk, *supra* note 3; Gülen, 2016 WL 3568190, at *14.

²⁰³ *See* Gülen, 2016 WL 3568190, at *2.

²⁰⁴ Joe Parkinson & Emre Peker, *In University Purge, Turkey’s Erdogan Hits Secularists and Boosts Conservatives*, WALL ST. J. (Aug. 24, 2016), <https://www.wsj.com/articles/after-failed-coup-turkeys-erdogan-is-purging-universities-of-potential-enemies-1472053608>.

lawsuit “represents a legal battle as well as a political battle and an investigation targeting the Gülen Movement” and would show that Gülen is “not untouchable in the United States.”²⁰⁵ Never mind that the district court dismissed the case early on; it appears that Erdoğan decided to use the U.S. legal system to harass Gülen in his home state of Pennsylvania. Turkey seems to be using other types of claims to pursue its interests as well.²⁰⁶

Or take, for example, claims by Venezuela in U.S. court. In 2016, the second-most powerful official in Venezuela’s dictatorship, Diosdado Cabello, sued the *Wall Street Journal* over an article that suggested he was a narcotrafficker. Although the district court dismissed the claim, Cabello appealed to the Second Circuit and pursued his claim for nearly two years.²⁰⁷ This case involved Cabello’s individual interests in his reputation but, importantly, also implicated the dictatorship’s political goals to push back against U.S. pressure. Another notorious regime crony also sued the U.S. network Univision for defamation on similar grounds.²⁰⁸ In 2019, disputes between dictator Nicolás Maduro and his opponent, Juan Guaidó, triggered another series of cases. Guaidó, as opposition leader and president of the Venezuelan legislature, assumed the Venezuelan presidency in 2019 after Maduro refused to hold free and fair elections.²⁰⁹ The United States recognized Guaidó, leading to two separate regimes both claiming to represent Venezuela in many contexts. This situation resulted in legal disputes over Venezuelan property in the United States, including ownership over oil distributor CITGO, which is based in the United States. Cases have proliferated, with nearly half a dozen claims filed in Massachusetts, Florida, Illinois, D.C., and Delaware.²¹⁰ These cases have put U.S. courts in the difficult position of deciding whether Guaidó or Maduro has standing to

²⁰⁵ Defendant Muhammed Fethullah Gülen’s Memorandum of Law in Support of His Motion for Rule 11 Sanctions Against Plaintiffs & Their Counsel at 3, 13, *Gülen*, 2016 WL 3568190 (No. 15-cv-2354).

²⁰⁶ See generally, e.g., *In re* Petition of the Republic of Turkey for an Order Directing Discovery from Hamit Çiçek Pursuant to 28 U.S.C. § 1782, No. 19-CV-20107, 2020 WL 2539232 (D.N.J. May 18, 2020) (order granting the Republic of Turkey’s motion to compel discovery), *vacated sub nom.* Republic of Turkey v. Cicek, No. 19-20107, 2020 WL 8073613 (D.N.J. June 4, 2020).

²⁰⁷ See *Cabello-Rondón*, 720 F. App’x at 88.

²⁰⁸ See generally *Alex Saab v. Univision Comm’n’s Inc.*, No. 2018-031253-CA-01 (Fla. Cir. Ct. Sept. 14, 2018).

²⁰⁹ See Diego Zambrano, *Guaidó, Not Maduro, Is the De Jure President of Venezuela*, LAWFARE (Feb. 1, 2019), <https://perma.cc/FP52-PJZ8>.

²¹⁰ See *infra* Appendix A.

sue. Despite U.S. actions to recognize Guaidó and even to issue indictments against Maduro, Venezuela's dictatorial regime continues to litigate across the country and in other foreign courts.²¹¹

Russia has been one of the most prolific foreign authoritarian governments to take advantage of U.S. courts.²¹² Since roughly 2004, Russian proxies have filed several cases against dissidents and Putin critics.²¹³ Some of these cases involve enforcement of foreign awards against dissident politicians, bankruptcy disputes, and discovery requests for foreign proceedings that "were part of a coordinated effort to use the US courts to harass and further extort assets" from opponents.²¹⁴ In one example, Putin's attempt to expropriate a Russian alcohol manufacturer included "fabricated criminal charges" against the owner, extradition requests, and trademark infringement cases.²¹⁵ The Atlantic Council called some of these cases an orchestrated Russian effort to "exploit[] US courts by pursuing superficially legitimate lawsuits with a two-part purpose: perpetrating global harassment campaigns against the Kremlin's enemies, while seeking to enrich themselves through bad faith claims made possible by the Russian state's abuse."²¹⁶ Some of these cases have led to protracted struggles in both federal and state courts, including extensive discovery requests and claims by a state judge that there was a "blatant misuse of the federal forum."²¹⁷ Two cases involved defamation claims by three Russian oligarchs against BuzzFeed News and Christopher Steele over the Steele dossier.²¹⁸

In addition to these dictatorships-as-plaintiffs claims, there are also cases where these dictatorships are defendants. In the past decade, Venezuela has faced at least ten claims related to expropriations or arbitral awards.²¹⁹ The DNC sued Russia and

²¹¹ See *Venezuela Gold: Maduro Government Wins in UK Appeals Court*, BBC (Oct. 5 2020), <https://perma.cc/XH63-LLSU>.

²¹² See ÅSLUND, *supra* note 3 at 23–27.

²¹³ See *infra* Appendix A.

²¹⁴ ÅSLUND, *supra* note 3, at 18.

²¹⁵ *Id.* at 17; see also Fed. Treasury Enter. Sojuzplodoimport v. Spirits Int'l N.V., 425 F. Supp. 2d 458, 460–61 (S.D.N.Y. 2006), *aff'd in part and vacated in part*, 623 F.3d 61, 71 (2d Cir. 2010).

²¹⁶ ÅSLUND, *supra* note 3, at 23–24.

²¹⁷ *Leontiev*, 168 A.D.3d at 84 (noting that plaintiffs refiled their case in state court just prior to their federal action being dismissed).

²¹⁸ See, e.g., *Fridman v. Bean LLC*, No. 17-2041, 2019 WL 231751, at *1–2 (D.D.C. Jan. 14, 2019); *Tatintyan v. Barr*, 799 F. App'x 965, 966 (9th Cir. 2020).

²¹⁹ See *infra* Appendix A.

several officials over cyberattacks during the 2016 election.²²⁰ And Cuba, Iran, Turkey, and Syria continue to face claims for torts, forfeitures, or takings.²²¹ Continuing democratic recession will almost surely expand these kinds of claims.

It's difficult to measure the importance of these cases. The fact that there are dozens of such claims likely hides their impact on defendants and other related parties. These claims may be most significant not because of each case's outcome on the merits but because of litigation's chilling effect on dissidents and journalists. Easy access to U.S. courts is itself a victory for autocratic regimes.

C. Current Doctrines and the Executive's Role

As the history indicates, dictator cases have been part and parcel of the development of domestic law on foreign relations. Courts have used dictator cases to bolster doctrines that emerge out of international comity. As Professor William Dodge has recognized, "no rule of customary international law requires the United States to recognize the judgment of a foreign court, to treat a foreign act of state as valid, or to allow foreign governments to bring suit as plaintiffs in U.S. courts."²²² And yet courts recognize these rules on a regular basis.

One underlying principle to all these doctrines is the court-created equal-treatment principle. Courts have repeatedly expressed unwillingness to draw distinctions between foreign government types, embracing instead regime-neutral doctrines. This principle traces back to *The Sapphire*,²²³ where the Court noted that "[t]he reigning Emperor, or National Assembly, or other actual person or party in power, is but the agent and representative of the national sovereignty."²²⁴ This approach resembles the domestic equal sovereignty principle.²²⁵ But it differs from the concept of sovereign equality because even if "states are equal as legal persons in international law, this equality does not require that in all matters a state must treat all other states in the same way."²²⁶

²²⁰ See Wuerth, *supra* note 67; Kristen E. Eichensehr, *Public-Private Cybersecurity*, 95 TEX. L. REV. 467, 489, 529–30 (2017).

²²¹ See *infra* Appendix A.

²²² Dodge, *supra* note 56, at 2074 (citations omitted).

²²³ 78 U.S. (11 Wall) 164 (1870).

²²⁴ *Id.* at 168.

²²⁵ See *Shelby County v. Holder*, 133 S. Ct. 2612, 2623–24 (2013).

²²⁶ 1 OPPENHEIM'S INTERNATIONAL LAW: PEACE 376, 376–77 (Robert Jennings & Arthur Watts eds., 9th ed. 1992) ("There is in customary international law no clearly established

1. Dictators and foreign relations doctrines.

We can summarize the relevant doctrines as follows:²²⁷

a) Privilege of suing in U.S. courts. As *The Sapphire* established and *Sabbatino* reaffirmed, “sovereign states are allowed to sue in the courts of the United States.”²²⁸ This privilege depends neither on friendly relations with the U.S. government nor on the specific type of government in power. The only exception to this privilege is for “governments at war with the United States”²²⁹ Dictatorships at odds with U.S. foreign policy—or even direct rivals like Cuba, Venezuela, Russia, or China—still enjoy the privilege of suing in U.S. court.

b) Sovereign immunity. *Schooner Exchange* first established the basic rule that foreign sovereigns enjoy blanket immunity from process in U.S. courts. The FSIA codified a more restrictive version of this immunity, providing that all foreign sovereigns enjoy a baseline of immunity subject to a growing number of exceptions.²³⁰ These exceptions include expropriations in violation of international law, commercial activities, domestic torts, and claims against state sponsors of terrorism.²³¹

c) Head-of-state or foreign-official immunity. Heads of state and other foreign officials sometimes enjoy immunity from U.S. proceedings. Customary international law divides this kind of immunity into status-based and conduct-based immunity.²³² Within status-based immunity, heads of state, heads of government, and foreign ministers are absolutely immune for their official acts while in office.²³³ Conduct-based immunity shields former

general obligation on a state not to differentiate between other states in the treatment it accords to them.”).

²²⁷ There are other rules, principles, and doctrines that have made some appearance in—but don’t seem to be at the center of—these cases. See, e.g., *Bigio v. Coca-Cola Co.*, 448 F.3d 176, 178 (2d Cir. 2006) (discussing international comity abstention in a case involving Egypt’s dictatorship).

²²⁸ *Sabbatino*, 376 U.S. at 408–09 (citing *The Sapphire*, 78 U.S. at 167).

²²⁹ *Id.* at 409.

²³⁰ See Stewart, *supra* note 167 at 41–66.

²³¹ See *id.*

²³² See Chimène I. Keitner, *Transnational Litigation: Jurisdiction and Immunities*, in THE OXFORD HANDBOOK OF HUMAN RIGHTS LAW 796, 801 (Dinah Shelton ed., 2013); see also *Yousuf v. Samantar*, 699 F.3d 763, 769–72 (4th Cir. 2012).

²³³ See Dodge & Keitner, *supra* note 53, at 20; William S. Dodge, *Foreign Official Immunity in the International Law Commission: The Meanings of “Official Capacity”*, 109 AM. J. INT’L L. UNBOUND 156, 156–57 (2016).

officials for their acts while in office too.²³⁴ Under domestic law, foreign-official immunity is governed by federal common law.²³⁵ Some lower courts have allowed claims to proceed against foreign officials for acts “not arguably attributable to the state” and acts in violation of jus cogens norms of international law.²³⁶ As part of the common-law determination, courts generally defer to the president’s suggestions of immunity.²³⁷ Nonetheless, “[d]isagreements persist about the appropriate role of the Executive Branch in immunity determinations,” including its constitutional basis²³⁸ and how the president can confer or withdraw immunity.²³⁹

d) Act of state. Generally, U.S. courts refuse to judge the validity of a foreign dictator’s official act “done within [his country’s] own territory.”²⁴⁰ This doctrine only applies when a court is asked to “declare invalid, and thus ineffective as ‘a rule of decision for the courts of this country,’ the official act of a foreign sovereign.”²⁴¹ It therefore operates as a choice-of-law rule, forcing U.S. courts to apply the law of the foreign state with regards to the relevant act.²⁴² The Supreme Court has justified this doctrine as avoiding threats to “the amicable relations between governments and vex[ing] the peace of nations.”²⁴³ Courts have stuck to this doctrine regardless of the government in power.²⁴⁴ However,

²³⁴ Keitner, *supra* note 232, at 801. And diplomatic immunity is also its own category. See Vienna Convention on Diplomatic Relations art. 31, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95.

²³⁵ See Lewis S. Yelin, *Head of State Immunity as Sole Executive Lawmaking*, 44 VAND. J. TRANSNAT’L L. 911, 932–33, 983–86 (2011); Ingrid Wuerth, *The Future of the Federal Common Law of Foreign Relations*, 106 GEO. L.J. 1825, 1834 (2018); *Samantar*, 560 U.S. at 311; see also RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW § 66, 19 (AM. L. INST. 1965).

²³⁶ *Samantar*, 699 F.3d at 775. To be sure, there seems to be a circuit split on whether there is a jus cogens exception to foreign-official immunity. Compare *Samantar*, 699 F.3d at 775 (recognizing a jus cogens exception), and *In re Est. of Ferdinand Marcos*, 25 F.3d 1467, 1471–72 (9th Cir. 1994) (same), with *Doğan v. Barak*, 932 F.3d 888, 896 (9th Cir. 2019) (rejecting the argument for a jus cogens exception), and *Belhas v. Ya’alon*, 515 F.3d 1279, 1286–88 (D.C. Cir. 2008) (same).

²³⁷ See *Zemin*, 383 F.3d at 626–27.

²³⁸ Chimène I. Keitner, *The Common Law of Foreign Official Immunity*, 14 GREEN BAG 2D 61, 71 (2010); Wuerth, *supra* note 113, at 926–28, 929, 967, 969–75.

²³⁹ See Keitner, *supra* note 238, at 72–73.

²⁴⁰ *Sabbatino*, 376 U.S. at 416 (quoting *Underhill*, 168 U.S. at 252).

²⁴¹ *W. S. Kirkpatrick & Co. v. Env’t Tectonics Corp., Int’l*, 493 U.S. 400, 405 (1990) (citation omitted) (quoting *Ricaud v. Am. Metal Co.*, 246 U.S. 304, 310 (1918)); see, e.g., *Sabbatino*, 376 U.S. at 416.

²⁴² See Harrison, *supra* note 23, at 564–66.

²⁴³ *Sabbatino*, 376 U.S. at 418 (quoting *Oetjen*, 246 U.S. at 303–04).

²⁴⁴ See *infra* Appendix B; see also Keitner, *supra* note 22, at 53–63.

among other exceptions,²⁴⁵ U.S. courts “will not give extraterritorial effect to a foreign state’s confiscatory law.”²⁴⁶ In addition to these foreign or external considerations, there are also concerns with separation of powers built into the doctrine.

2. The State Department and the president.

The executive branch has the power to influence dictator cases in a variety of ways. Most prominently, the president has the power to recognize that a foreign regime “is the effective government of a state.”²⁴⁷ When the president recognizes either a foreign dictator or democratic government, such recognition confers on that regime the power to benefit from sovereign immunity, the privilege of filing suits in our courts, and “deference in domestic courts under the act of state doctrine.”²⁴⁸ The sovereign-debt cases discussed above—where two regimes claim to represent a country—ultimately boil down to recognition disputes. As discussed above, presidents have leveraged this power to weigh on the side of the Kuomintang rather than the Mao regime in China²⁴⁹ as well as Delvalle rather than Noriega in Panama.²⁵⁰ Moreover, the Second Circuit recognizes a so-called *Bernstein* exception that allows the president to request an exemption to the act of state doctrine.²⁵¹

The executive has wavered in its influence on dictator cases, sometimes pushing courts to open access for victims of dictatorships and at other times asking courts to grant foreign heads of state immunity. In the fifty-seven cases cited above, the executive provided some form of input less than half of the time (nineteen cases), leaving courts without guidance in the majority of the cases.²⁵² But even when it intervened, it did not espouse a consistent position on dictators as litigants. For example, in act-of-state cases like *Bernstein* and *First National City Bank*, the State

²⁴⁵ Such examples include the *Bernstein* exception and Hickenlooper Amendment. See *infra* notes 251, 347.

²⁴⁶ *Villoldo*, 821 F.3d at 204. Courts can also sometimes defer to executive suggestions. See *infra* note 321. For an example of a dictator case in this context, see *Republic of Iraq v. First Nat’l City Bank*, 353 F.2d 47, 49–51 (2d Cir. 1965).

²⁴⁷ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 203 cmt. A (AM. L. INST. 1987).

²⁴⁸ *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 11 (2015).

²⁴⁹ See *supra* text accompanying notes 140–45.

²⁵⁰ See *supra* text accompanying notes 74–79.

²⁵¹ *Bernstein*, 210 F.2d at 376. The status of this exception is uncertain. See RESTATEMENT (FOURTH) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 441 reporters’ n.13 (AM. L. INST. 2018).

²⁵² See *infra* Appendix B.

Department asked the Court to waive act of state for claims related to Nazi and Cuban expropriations. Courts complied with this request.²⁵³ By contrast, in *Sabbatino*, the executive branch did not take a position in the case, and the Court applied the act of state doctrine.²⁵⁴ In the context of common-law immunities, the executive suggests immunity in all sitting head-of-state cases.²⁵⁵ But this approach changes for former officials. That is why the executive has sometimes supported victims' claims against former dictators like Marcos,²⁵⁶ but asked the court to give another former head of state, Jiang Zemin, immunity.²⁵⁷ The executive has not weighed in on most of the recent cases involving China, Russia, Turkey, and Venezuela (other than by recognizing Venezuela's Juan Guaidó as president).

In the minority of cases where the executive intervenes, courts almost always comply with executive requests. Some scholars have argued that executive suggestions of immunity are binding on the judiciary, while others have highlighted that courts always comply with *Bernstein* exception requests.²⁵⁸ On the whole, it appears that courts are usually more conservative than the executive, waiting to take their cues from the political branches but often left unguided.

* * *

This brief survey shows that foreign-dictator cases have played an important role in the doctrines that comprise the domestic law on foreign relations. To be sure, dictator cases have sometimes played second fiddle to the canonical cases in the context of recognition,²⁵⁹ the executive's foreign affairs powers,²⁶⁰ sovereign immunity,²⁶¹ or act of state doctrine.²⁶² But dictator cases have nonetheless left an important mark and have raised difficult questions that remain unanswered.

²⁵³ See *First Nat'l City Bank*, 406 U.S. at 782; *Bernstein*, 210 F.2d at 376.

²⁵⁴ See generally *Sabbatino*, 376 U.S. 398.

²⁵⁵ See *Dodge & Keitner*, *supra* note 53, at 36.

²⁵⁶ See *supra* text accompanying notes 178–83.

²⁵⁷ See *supra* text accompanying notes 185–88. For a more complete description, see *Dodge & Keitner*, *supra* note 53, at 17–18.

²⁵⁸ See *supra* note 113.

²⁵⁹ See *supra* text accompanying notes 247–51.

²⁶⁰ See *Curtiss-Wright Exp. Corp.*, 299 U.S. at 310.

²⁶¹ See *Samantar*, 560 U.S. at 309.

²⁶² See *Kirkpatrick*, 493 U.S. at 401.

More speculatively, there may be a few reasons why dictator cases arise often. First, to the extent that dictators gain power in democracies, they probably violate rights more often than democratic officials, especially through property expropriations or human rights abuses.²⁶³ This not only creates disputes but also forces dissidents to flee abroad.²⁶⁴ This logically gives rise to many more cases in front of U.S. courts. Second, foreign dictatorships are more likely to shut down or co-opt their own court systems, giving aggrieved plaintiffs no access to court.²⁶⁵ In doing so, foreign dictatorships push these plaintiffs to file cases in the United States.

D. The Problem of Foreign Dictators in U.S. Court

The cases above suggest problems facing U.S. courts that can be grouped into the categories of dictators as plaintiffs or defendants.

1. Dictators as plaintiffs.

It is quite easy for foreign dictators or their proxies to access our courts. They benefit from the privilege of bringing suit and can use it for both legitimate and illegitimate purposes. They can also indirectly file claims through proxies, leaving few traces of sovereign involvement. The Chinese Communist Party, Putin, or Maduro can engage in harassment campaigns against opponents, using U.S. discovery and other procedures to their advantage. Even though the number of claims is small, litigation can have an outsized chilling effect on opponents. Even a single case is enough to cause concern.

2. Dictators as defendants.

Victims have a difficult time suing foreign dictators. Two barriers are act of state doctrine and sovereign immunity. Even in theory, these rules and statutory provisions provide cover for the most egregious acts and, because of the equal-treatment

²⁶³ Cf. Yong Kyun Kim, *States Sued: Democracy, the Rule of Law, and Investor-State Dispute Settlement (ISDS)*, 43 INT'L INTERACTIONS 300, 307–08 (2017).

²⁶⁴ See, e.g., Jørgen Møller & Svend-Erik Skaaning, *Autocracies, Democracies, and the Violation of Civil Liberties*, 20 DEMOCRATIZATION 82, 83–84, 87–88 (2013).

²⁶⁵ See Pierre Landry, *The Institutional Diffusion of Courts in China: Evidence from Survey Data*, in RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES 207, 217 (Tom Ginsburg & Tamir Moustafa eds., 2008); Martin Shapiro, *Courts in Authoritarian Regimes*, in RULE BY LAW, *supra*, at 326, 330–34.

principle, remain neutral as to regime type. Another set of examples comes from recent act-of-state cases. In order to systematically review its impact, I collected seventy-six act-of-state cases decided after the Supreme Court's most recent pronouncement on the doctrine in 1990.²⁶⁶ I found the following:

- Courts applied the act of state doctrine in at least twenty-five cases between 1991 and 2020, often to shield foreign dictatorships.
- The act of state doctrine protected regimes in China, Russia, Kazakhstan, Venezuela, Cuba, and Burma.²⁶⁷

To be sure, many democracies benefited too, including Germany, Switzerland, Japan, Canada, and Mexico.²⁶⁸ But there is little doubt that the conduct at issue in the dictatorship cases presents a direct challenge to U.S. law and institutions. Examples include a 2014 claim by a Chinese dissident against Cisco for helping China build a nationwide surveillance program that led to torture and arrests,²⁶⁹ a 2015 case by an abused and harassed businessman against Hugo Chávez,²⁷⁰ and a 2014 case by Russia's Putin against a dissident businessman.²⁷¹

Even when plaintiffs obtain judgments against foreign dictators, one ever-present issue in all of these cases has been the problem of enforcement. Plaintiffs armed with a judgment often find it difficult to locate and attach assets belonging to foreign sovereigns or dictators.²⁷² Although enforcement of awards is beyond the scope of this Article, it remains a complex area with no easy solutions.

3. The asymmetry.

Taking a broader view, problems with dictators as plaintiffs or as defendants display the troubling asymmetry at the center of this Article: foreign dictatorships can pursue their interests in U.S. courts, but their opponents cannot sue them for similar

²⁶⁶ See *Kirkpatrick*, 493 U.S. at 409–10. I focused on the most “relevant” cases tagged by Westlaw that cited *Kirkpatrick*.

²⁶⁷ See *infra* Appendix B.

²⁶⁸ See *infra* Appendix B.

²⁶⁹ *Du Daobin v. Cisco Sys., Inc.*, 2 F. Supp. 3d 717 (D. Md. 2014).

²⁷⁰ *Mezerhane v. República Bolivariana de Venezuela*, 785 F.3d 545 (11th Cir. 2015).

²⁷¹ *Fed. Treasury Enter. Sojuzplodoimport v. Spirits Int'l B.V.*, 809 F.3d 737 (2d Cir. 2016).

²⁷² Under international law, immunity from execution is nearly absolute. See Stewart, *supra* note 167, at 67; John F. Coyle, *The Treaty of Friendship, Commerce and Navigation in the Modern Era*, 51 COLUM. J. TRANSNAT'L L. 302, 339–40 (2013).

concerns.²⁷³ To be sure, this asymmetry applies to all foreign states, regardless of regime type. But the asymmetry has particularly worrisome consequences in dictator-related cases because foreign authoritarians go on the offense against democratic opponents, newspapers, and dissidents in the United States. Return to the example above: Venezuela can sue the *Wall Street Journal* for a legitimate article on the government's narco-trafficking links. But U.S. journalists, nongovernmental organizations, Venezuelan dissidents, or former Venezuelan citizens cannot easily sue the Venezuelan government in the United States because of sovereign or official immunity (as well as jurisdictional limits). Or, for example, return again to the DNC's suit against Russia for its cyberattacks during the 2016 election. While Russia has pursued dissidents in U.S. courts in a variety of ways, a judge recently held that Russia was itself immune under the FSIA.²⁷⁴

There appear to be no cases of democracies taking advantage of our courts this way. And, importantly, democracies usually give Americans access to foreign court systems.²⁷⁵ Dictatorships, by contrast, generally block any cases that have political implications. This lack of reciprocal access and willingness to exploit our courts is what makes foreign dictators unique kinds of litigants.

Setting aside the FSIA and other immunities, doctrines that benefit dictators, like act of state and the privilege of bringing suit, are based on shaky premises that open them up to abuse or manipulation. Although courts purportedly ground them in international comity and separation of powers, that seems like an unsatisfying justification. Perhaps, as Professors Cass Sunstein and Eric Posner have argued, international comity is grounded in "a rough assessment of the consequences" and a quasi-cost-benefit analysis.²⁷⁶ This consequentialist calculation probably takes into account foreign affairs and the "legitimacy and strength of the American interests" in any particular case.²⁷⁷ That would explain why in *Camou*—when Santa Anna was no longer in power—the court was comfortable judging him as a "spasmodic" dictator, but

²⁷³ See *infra* text accompanying notes 444–47 for a discussion of the counterclaims exception to the FSIA.

²⁷⁴ See Kleiner & Wolosky, *supra* note 28.

²⁷⁵ See Michael T. Lii, *An Empirical Examination of the Adequate Alternative Forum in the Doctrine of Forum Non Conveniens*, 8 RICH. J. GLOB. L. & BUS. 513, 537–38 (2009).

²⁷⁶ Posner & Sunstein, *supra* note 56, at 1186.

²⁷⁷ *Id.*

just a year earlier, in *Underhill*, the Court was wary of judging the Venezuelan military leader that was still in power.²⁷⁸

While courts can make judgments about foreign affairs, they remain wary of doing so. The concern, however, is that by abdicating this responsibility, courts may not fully account for the costs of comity.

II. DOMESTIC LAW DOES NOT IMPOSE AN EQUAL-TREATMENT PRINCIPLE FOR FOREIGN SOVEREIGNS

In this Part, I argue that U.S. courts need not recognize an equal-treatment principle. Despite the long trend of cases treating foreign sovereigns as equals under U.S. law—from *The Sapphire* to *Sabbatino*—domestic law does not require courts to treat foreign dictator claims like any other sovereign claims. Courts have mistakenly assumed—and repeatedly affirmed—an equal-treatment principle that is not obligatory. Indeed, as Part II.B explains, a series of anticomity doctrines and statutes already force U.S. courts to draw distinctions among foreign governments. Although customary international law does require head-of-state and official immunity that applies to all sovereigns,²⁷⁹ there are also emerging doctrines on “odious debts” that allow unequal treatment of foreign dictators. Either way, under customary international law there is “no clearly established general obligation on a state not to differentiate between other states in the treatment it accords to them.”²⁸⁰ Finally, recent statutes and executive initiatives support a judicial push against foreign autocrats.²⁸¹

Before proceeding, let me first establish a stipulated premise: U.S. courts should, if possible, avoid aiding foreign dictatorships. Without engaging in an extended philosophical inquiry here,²⁸² suffice it to say that foreign dictators challenge the goals and foundations of a democratic polity (and its courts) as well as the underlying justifications for international comity. In the United States, our courts have defended international comity to foreign sovereigns because it strengthens a community of nations that wish to promote cooperation, free commerce, and reciprocal treatment.²⁸³ But even if most modern autocracies are not autarkic,

²⁷⁸ *Underhill*, 168 U.S. at 252–53.

²⁷⁹ See *supra* note 33; Dodge & Keitner, *supra* note 53, at 20.

²⁸⁰ 1 OPPENHEIM’S INTERNATIONAL LAW, *supra* note 226, at 376.

²⁸¹ See *infra* Part II.D.

²⁸² For such a discussion, see *supra* notes 31–32.

²⁸³ See *Hilton v. Guyot*, 159 U.S. 113, 163–64 (1895).

authoritarian governments are not reliable promoters of reciprocal judicial access.²⁸⁴ Dictators often bar our citizens from their court systems and treat U.S. companies unfairly vis-à-vis their domestic companies.²⁸⁵ Ultimately, the problem I highlight is a pragmatic one: the manipulation or abuse of our legal system. Dictators are using their privileges—as recognized by our institutions—to advance their authoritarian agendas.

If we accept that courts should refrain from helping foreign dictators where possible, then the question becomes whether courts are obligated—by the Constitution, the executive branch, or statute—to do otherwise. As I show below, there is no such obligation.

A. Domestic Law Allows Unequal Treatment

Courts are not generally bound by any statute, doctrine, or constitutional principle to treat foreign dictators the same way as they do other foreign governments. Let's begin with Justice Joseph Story's maxim that "whatever force and obligation the laws of one country have in another, depend[s] solely upon the laws and municipal regulations of the latter; that is to say, upon its own proper jurisprudence and polity, and upon its own express or tacit consent."²⁸⁶ This widely accepted maxim means that whatever respect U.S. courts owe to foreign countries is rooted in domestic law—constitutional provisions, statutes, and common-law doctrines. But none of these three sources seems to impose an equal-treatment requirement on all types of government.

The Constitution certainly does not impose a requirement of equal treatment. Article III provides that "[t]he judicial Power shall extend to all Cases . . . between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."²⁸⁷ But this provision hinges on whether the government recognizes a foreign entity as a "state" that can sue or be sued in U.S. courts and on whether Congress authorizes subject-matter jurisdiction. These, in turn, depend on executive or legislative acts.²⁸⁸ That is why courts do not interpret Article III to mean that courts must give

²⁸⁴ Ginsburg, *supra* note 7, at 228–31.

²⁸⁵ *Id.* at 231–32, 237.

²⁸⁶ JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS § 23 (Boston, Cambridge Press 2d ed. 1841).

²⁸⁷ U.S. CONST. art. III, § 2.

²⁸⁸ *See* U.S. CONST. art. II, §§ 2–3.

access to any foreign entity claiming to be a foreign state.²⁸⁹ Some have argued that foreign states may have a constitutional right to sue grounded not only in Article III but also in the First and Fifth Amendments.²⁹⁰ Courts have mostly rejected this proposition.²⁹¹ Even if true, courts have long denied the privilege of suit to “governments at war with the United States” and “those not recognized by this country.”²⁹² This shows that there has never been a textually grounded and inflexible equal-treatment principle.²⁹³

Moreover, courts have dismissed cases under doctrines like *forum non conveniens* (FNC) and abstention, explicitly recognizing that courts are not always constitutionally obligated to exercise their jurisdiction.²⁹⁴ These categorical exceptions are the product of a flexible interpretation of the Constitution that, again, undermines any textual grounding for an equal-treatment principle.

Statutes do not impose an obligation of equal treatment either, except in the important context of foreign sovereign immunity. The FSIA grants immunity to all “foreign states.”²⁹⁵ Courts have interpreted that phrase by either looking at the Restatement of Foreign Relations—which itself considers a series of factors, including international law—or deferring to executive recognition of a foreign entity as a state.²⁹⁶ In any case, courts have made clear that if an entity is recognized as a state, immunity follows. Congress has already made the choice that there shall not be discrimination by type of government. There is, therefore, no room for singling out dictatorships (unless the executive does not recognize them). Even more, the FSIA’s exceptions are based on conduct—distinguishing among states that sponsor terrorism, states that engage

²⁸⁹ This is true even though the diversity jurisdiction statute covers claims by “a foreign state, [as defined by the FSIA] . . . and the citizens of a State.” 28 U.S.C. § 1332(a)(4) (2012). *But see* *King of Spain v. Oliver*, 14 F. Cas. 577, 579 (C.C.D. Pa. 1810) (No. 7814).

²⁹⁰ *See* Wuerth, *supra* note 54, at 688.

²⁹¹ *See id.* at 643 nn.48–49 (collecting cases).

²⁹² *Sabbatino*, 376 U.S. at 409.

²⁹³ These exceptions also show that an equal-treatment principle cannot be rooted in treaties of friendship which sometimes guarantee access to court. *See* Coyle, *supra* note 272, at 318–25. It’s not even clear whether these treaties apply to government litigants at all.

²⁹⁴ Dodge, *supra* note 56, at 2109–10. However, courts have always held that they can decline to exercise jurisdiction. *See* *Louisiana v. Mississippi*, 488 U.S. 990, 990 (1988). *But see* *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) (noting that courts have a “virtually unflagging obligation” to exercise jurisdiction).

²⁹⁵ 28 U.S.C. § 1604.

²⁹⁶ *See* *O’Bryan v. Holy See*, 556 F.3d 361, 372 (6th Cir. 2009) (quoting RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 201 (AM. L. INST. 1987)); *see also* RESTATEMENT (FOURTH) OF FOREIGN RELATIONS LAW § 452 (AM. L. INST. 2018).

in commercial activities, and states that waive immunity.²⁹⁷ By singling out some kinds of states based on conduct (not status) but not others, the statute removes any judicial flexibility to treat countries differently.

While the FSIA imposes an equal-treatment principle, the Act does not extend to most of the doctrines that matter in this context: the privilege of bringing suit, act of state recognition, or head-of-state and official immunity. These doctrines are instead mostly governed by principles of international comity, which are not “a matter of absolute obligation” under constitutional or international law.²⁹⁸ The array of doctrines that emerge out of international comity is subject to judicial interpretation and has undergone dramatic change over time. That is why the privilege of bringing suit in U.S. courts is, after all, a privilege—one that is subject to control by courts, Congress, and the executive. And that is also why courts exempt countries at war with the United States and those that the executive does not recognize. Simply stated, principles of international comity do not impose an equal-treatment obligation at all.

B. The Anticomity Doctrines Allow Unequal Treatment

An array of anticomity doctrines underlines courts’ existing flexibility in the context of the privilege of bringing suit, act of state recognition, and foreign-official immunity. Scholars and courts have long recognized situations where U.S. courts can refuse to enforce foreign government actions and can draw distinctions between regimes.²⁹⁹ As some have noted, U.S. courts judge the quality of foreign laws and legal systems.³⁰⁰ For instance, U.S. courts “refuse to enforce a foreign judgment or foreign law if doing so would violate American public policy.”³⁰¹ In conflict-of-law analyses as well, courts reject foreign laws that conflict with U.S. public policy.

One important instance in which courts judge the quality of foreign legal systems is in the area of foreign judgment

²⁹⁷ 28 U.S.C. §§ 1602, 1605(a).

²⁹⁸ *Guyot*, 159 U.S. at 163–64.

²⁹⁹ See Zachary D. Clopton, *Judging Foreign States*, 94 WASH. U. L. REV. 1, 19–22 (2016); Peter B. Rutledge, *Toward a Functional Approach to Sovereign Equality*, 53 VA. J. INT’L L. 181, 185–88 (2012).

³⁰⁰ See Clopton, *supra* note 299, at 19–22.

³⁰¹ Posner & Sunstein, *supra* note 56, at 1185.

recognition and enforcement.³⁰² Parties who obtain judgments in a foreign judicial system can domesticate those judgments in U.S. court by filing a recognition claim (governed by state law). Facing those kinds of claims, U.S. courts have unequivocally held that they “will not enforce judgments that result from an unfair system or an unfair process.”³⁰³ Importantly, courts scrutinize foreign judicial systems—evaluating whether they provide due process protections, are corrupt, or are dominated by authoritarian governments. For instance, in *Osorio v. Dole Food Co.*,³⁰⁴ the district court refused to enforce a Nicaraguan award because it found, among other things, that the country had a corrupt judicial system subject to authoritarian interference.³⁰⁵ Drawing from State Department reports, the court explicitly discriminated against the Nicaraguan system because of its authoritarian nature:

The weak state of the Nicaraguan judiciary is largely the result of a compromising pact between the country’s two strongmen, Daniel Ortega and Arnoldo Alemán, who lead Nicaragua’s two main political parties, the FSLN and the PLC. Pursuant to the pact, these two men divide control of key governmental institutions, including the Nicaraguan Supreme Court, along partisan lines.³⁰⁶

This kind of judgment of a foreign state is unusual, but it shows that courts *can* take into account the quality of a foreign regime.³⁰⁷

In rare cases, courts have also refused to grant FNC because foreign countries were under a repressive government.³⁰⁸ During an FNC motion, courts must analyze the adequacy of a potential foreign forum. In doing so, judges have taken into account whether the forum is located in an autocratic country. For example, in *Canadian Overseas Ores Ltd. v. Compania de Acero Del*

³⁰² Christopher A. Whytock & Cassandra Burke Robertson, *Forum Non Conveniens and the Enforcement of Foreign Judgments*, 111 COLUM. L. REV. 1444, 1462–63 (2011); Linda J. Silberman & Aaron D. Simowitz, *Recognition and Enforcement of Foreign Judgments and Awards: What Hath Daimler Wrought?*, 91 N.Y.U. L. REV. 344, 354 (2016).

³⁰³ Clopton, *supra* note 299, at 13.

³⁰⁴ 665 F. Supp. 2d 1307 (S.D. Fla. 2009), *aff’d sub nom.* *Osorio v. Dow Chem. Co.*, 635 F.3d 1277 (11th Cir. 2011).

³⁰⁵ *Id.* at 1351–52.

³⁰⁶ *Osorio*, 665 F. Supp. 2d at 1348. Ortega, incidentally, falls into the dictatorship bucket under the Polity IV score. See generally CTR. FOR SYSTEMIC PEACE, POLITY IV COUNTRY REPORT 2010: NICARAGUA (2011), <https://perma.cc/9TAA-MXVA>.

³⁰⁷ See also *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406, 1411 (9th Cir. 1995); *Bridgeway Corp. v. Citibank*, 45 F. Supp. 2d 276, 280 (S.D.N.Y. 1999), *aff’d*, 201 F.3d 134 (2d Cir. 2000); Clopton, *supra* note 299, at 19–22.

³⁰⁸ See Clopton, *supra* note 299, at 19–20.

Pacifico S.A.,³⁰⁹ a case involving a Chilean mining company, the court rejected an FNC motion to dismiss because there were “serious questions about the independence of the Chilean judiciary vis a vis the [Pinochet] military junta currently in power.”³¹⁰ In *Rasoulzadeh v. Associated Press*,³¹¹ the court rejected an FNC motion because it had “no confidence whatsoever in the plaintiffs’ ability to obtain justice at the hands of the courts administered by Iranian mullahs.”³¹² In one case involving a suit against Azerbaijan’s autocratic government, a court refused to grant an FNC motion because of the “extent of control wielded by the executive branch of the Azeri government—a party to th[e] litigation—over the Azeri courts.”³¹³ Based on some of these cases, a California court explicitly found a dictatorship exception to FNC motions.³¹⁴

None of these cases is neutral to regime type. They instead exemplify the authority of U.S. courts to discriminate against dictatorships. To be sure, courts’ analyses in these cases consider both the conduct of foreign states and their status (or regime type). So, in a way, they use a mixed analysis. Still, one article claims to have found that a country’s record on political rights and civil liberties is significantly correlated with the likelihood that a court grants an FNC motion.³¹⁵ According to that article, courts find that countries with high rates of political liberties (i.e., liberal democracies) can more often provide an adequate forum than countries with low rates of political liberties (i.e., autocracies).³¹⁶ Although the article’s data are outdated and limited, if its main finding is correct, it is evidence of unequal treatment.

Even when the anticomity doctrines are neutral as to regime type generally, courts can still weigh democratic principles and U.S. interests against deference to foreign acts or laws in a

³⁰⁹ 528 F. Supp. 1337 (S.D.N.Y. 1982), *aff’d*, 727 F.2d 274 (2d Cir. 1984).

³¹⁰ 528 F. Supp. at 1342.

³¹¹ 574 F. Supp. 854, 861 (S.D.N.Y. 1983), *aff’d*, 767 F.2d 908 (2d Cir. 1985).

³¹² 574 F. Supp. at 861 (noting further “that if the plaintiffs returned to Iran to prosecute this claim, they would probably be shot”).

³¹³ *Daventree Ltd. v. Republic of Azerbaijan*, 349 F. Supp. 2d 736, 756 (S.D.N.Y. 2004).

³¹⁴ *See Shiley Inc. v. Superior Ct. of Orange Cnty.*, 4 Cal. App. 4th 126, 133–34 (1992); *see also Phx. Can. Oil Co. v. Texaco, Inc.*, 78 F.R.D. 445, 455–56 (D. Del. 1978) (refusing an FNC motion because Ecuador was ruled by a military government).

³¹⁵ *See Lii*, *supra* note 275, at 537–38.

³¹⁶ *See id.* at 537–39.

particular context.³¹⁷ For example, a court recently denied an FNC motion because Saudi Arabian sex-discrimination laws offend “the notion of equality before the law on which the American system of justice is premised.”³¹⁸ In the anticomity context, courts differentiate by government types, judging the kind of legal protection provided by foreign regimes.

The act of state doctrine has exceptions that recognize U.S. interests as well. Alongside the development of a robust case law on act of state, courts have also held that they “will not give extraterritorial effect to a foreign state’s confiscatory law.”³¹⁹ Suppose, for instance, that a communist dictatorship seeks to expropriate any funds owned by a particular dissident, wherever those funds may be located. If that dictatorship seeks to freeze and seize funds deposited in a U.S. bank, courts will refuse to enforce that order. Applying this exception, in 1965, the Second Circuit refused to enforce an expropriation order by Iraq’s military leader that sought to seize funds in the United States.³²⁰ The court justified this holding because the order was “contrary to our public policy and shocking to our sense of justice,” noting that “[o]ur Constitution sets itself against confiscations such as that decreed.”³²¹ Even if this analysis is based on sovereign conduct, and not regime type, it nonetheless recognizes the ability of U.S. courts to reject foreign dictatorial acts.

These cases and doctrines embody a simple principle: courts can treat foreign countries differently and can judge foreign dictatorial regimes, especially when dictators challenge U.S. constitutional rights. Still, these cases are rare, and courts remain reluctant to draw distinctions among regimes. As I argue below, focusing on regime type can be difficult to administer and therefore calls for alternative tools.

³¹⁷ See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 90 (AM. L. INST. 1971). Mark Jia has argued that U.S. courts have embraced an “anti-authoritarian” bias in many contexts. Jia, *supra* note 7, at 1722–24.

³¹⁸ *Petersen v. Boeing Co.*, 108 F. Supp. 3d 726, 732 (D. Ariz. 2015).

³¹⁹ *Villoldo v. Castro Ruz*, 821 F.3d 196, 204 (1st Cir. 2016).

³²⁰ See *Republic of Iraq v. First Nat’l City Bank*, 353 F.2d 47, 50–51 (2d Cir. 1965).

³²¹ *Id.* at 51–52 (quotation marks omitted). Of course, this exception may itself be subject to an exception “if this were a case in which the executive branch was urging us to give extraterritorial effect in this country to the foreign nation’s confiscatory law.” *Villoldo*, 821 F.3d at 202–03.

C. The Original Justifications for International Comity
Allowed Unequal Treatment

While *Sabbatino* seems to be the major reason that courts treat foreign dictatorships as they do other litigants, the case was based on outdated premises. *Sabbatino* held that principles of comity extend to all foreign sovereigns recognized by the United States, regardless of their form of government.³²² But the decision wrongly dismissed the original foundations of comity for two reasons.

First, the Court improperly set aside reciprocity arguments. As discussed above, the Supreme Court's original formulation of comity in *Hilton v. Guyot*³²³ relied almost entirely on the concept of reciprocity.³²⁴ In the face of this language, *Sabbatino* cabined reciprocity to only the "conclusiveness of judgments, and even then only in limited circumstances."³²⁵ But prior to *Sabbatino*, a few courts cited *Guyot* as standing for a broader principle of reciprocity.³²⁶ Even after *Sabbatino*, Justices have defended comity outside of judgment enforcement as a "principle under which judicial decisions reflect the systemic value of *reciprocal* tolerance."³²⁷ Requiring reciprocity makes sense because it promotes fairness and equal treatment. Reciprocity incentivizes foreign states to give U.S. citizens access to courts, and it sanctions those that refuse by removing U.S. judicial recognition. *Sabbatino*'s aggressive dispatch of reciprocity as a prerequisite was a kind of unilateral disarmament. The Supreme Court allowed foreign governments to bar the U.S. government and U.S. citizens from their court systems without any consequences.

Second, international comity doctrines have always been mediated by considerations of public policy. As Justice Story noted long ago, "No nation can . . . be required to sacrifice its own interests in favor of another; or to enforce doctrines, which, in a moral, or political view, are incompatible with its . . . conscientious regard to justice and duty."³²⁸ These considerations go beyond the foreign policy preferences of the executive. Judges could ask in

³²² See *Sabbatino*, 376 U.S. at 408–09.

³²³ 159 U.S. 113 (1895).

³²⁴ See *id.* at 163–64, 227–28.

³²⁵ *Sabbatino*, 376 U.S. at 411.

³²⁶ See *Hempel v. Weedin*, 23 F.2d 949, 956 (W.D. Wash.), *rev'd*, 28 F.2d 603 (9th Cir. 1928); *Universal Adjustment Corp. v. Midland Bank, Ltd.*, 184 N.E. 152, 160 (Mass. 1933).

³²⁷ *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 482 U.S. 522, 555 (1987) (Blackmun, J., concurring in part and dissenting in part) (emphasis added).

³²⁸ STORY, *supra* note 286, § 25.

dictator cases whether comparable acts by domestic actors would be unconstitutional. Such an inquiry could cover acts that we currently accept but are actually anathema to U.S. public policy. In determining these questions, judges could easily rely on existing constitutional doctrines.

D. The Political Branches Are Allowing Courts to Relax the Equal-Treatment Principle

While Congress has long embraced the equal-treatment principle in statutes like the FSIA, a recent series of new statutes and executive branch initiatives may signal a push against foreign authoritarian governments. Of course, the political branches are explicitly empowered to make determinations about foreign policy and have always made political decisions about foreign regimes. So we should be wary of drawing explicit links between political and judicial approaches. But these new initiatives offer two lessons: (1) by allowing claims against certain autocratic regimes, they push the judiciary to host cases against foreign autocrats, and (2) they create tools and space for the judiciary to understand how to judge foreign dictatorships.

1. Executive initiatives against autocrats.

The State Department and DOJ have created tools that allow the judiciary to discriminate against foreign autocrats and, potentially, to abandon the equal-treatment principle. For instance, the State Department produces a set of Country Reports on human rights practices abroad.³²⁹ These reports explicitly call out not just human rights violations but political and dictatorial power grabs as well. And the reports can indirectly lead to the withdrawal of aid to certain countries.³³⁰ Courts have drawn on these reports in the judgment-enforcement and FNC contexts to examine whether a foreign country respects due process or democratic norms.³³¹ In one case, the court used these reports to find that while Costa

³²⁹ *Country Reports on Human Rights Practices*, U.S. DEPT STATE, <https://perma.cc/R2MW-XUWD>.

³³⁰ *See id.*; cf. Peter Chalk, Daveed Gartenstein-Ross & Colin P. Clarke, *Can Sudan Escape Its History as a Transit Hub for Violent Extremist Organizations*, FOREIGN POL'Y RSCH. INST. (July 23, 2020), <https://perma.cc/MN4L-7ZL6> (identifying Sudan's label as a state sponsor of terror in the Country Report as a reason for the United States withholding aid).

³³¹ *See supra* text accompanying notes 299–314.

Rica had an independent judiciary and fair trials, the Philippines and Honduras could not provide a fair forum.³³²

More relevantly, the DOJ now treats foreign corrupt regimes differently through KARI. Attorney General Eric Holder created the initiative in 2010, premised on the idea that foreign corrupt governments were taking advantage of the United States to store “ill-gotten” gains.³³³ KARI attempts to stymie efforts by foreign governments to use the United States as a safe haven for corrupt money by empowering the DOJ to pursue forfeiture complaints. Assistant Attorney General Lanny Breuer explicitly defended the initiative as a way to avoid sovereign or official immunity.³³⁴ Under KARI, DOJ prosecutors find and seize these United States–based assets through civil forfeiture actions in U.S. court.³³⁵ Following civil forfeiture, the DOJ can repatriate this money to the country or individuals from which it was taken.

KARI stands for the principle that, as a matter of executive policy and DOJ discretion, foreign kleptocracies deserve special prosecutorial and judicial attention. The initiative has pursued nearly thirty cases and, unsurprisingly, has mostly focused on foreign dictators.³³⁶ One of the most celebrated cases includes a 2020 civil forfeiture agreement covering \$311.7 million in assets that were traceable to the former Nigerian dictator Sani Abacha and his co-conspirators.³³⁷ Indeed, the DOJ announcement emphasizes that Abacha was a “dictator” and ruled over a “military regime.”³³⁸

KARI exemplifies a broader trend over the past few decades of facilitating claims against foreign dictatorships. To be sure, litigation, diplomacy, and criminal enforcement are vastly different enterprises, so we should be wary of drawing direct links here. The State Department and DOJ may feel comfortable launching criminal or diplomatic initiatives that should not be replicated within the judiciary. There is, after all, a difference between

³³² See *Canales Martinez v. Dow Chem. Co.*, 219 F. Supp. 2d 719, 735, 738, 741 (E.D. La. 2002).

³³³ Eric Holder, Att’y Gen., Remarks at the Ukraine Forum on Asset Recovery (Apr. 29, 2014), <https://perma.cc/CQ4M-ERSL>; Wayne, *supra* note 17.

³³⁴ See Lanny A. Breuer, Assistant Att’y Gen. of the Crim. Div. of the Dep’t of Just., Franz-Hermann Brüner Memorial Lecture at the World Bank (May 25, 2011), <https://perma.cc/7VZZ-SHPW>.

³³⁵ See *id.*

³³⁶ Wayne, *supra* note 17.

³³⁷ OFF. OF PUB. AFFS., *U.S. Repatriates over \$311.7 Million in Assets to the Nigerian People That Were Stolen by Former Nigerian Dictator and His Associates*, DEP’T JUST. (May 4, 2020), <https://perma.cc/C2UG-GHWK>.

³³⁸ *Id.*

Articles II and III. Nonetheless, this Section aims to highlight that one legal trend of the past few decades is to funnel more of these dictator cases into U.S. courts.

2. Congressional initiatives.

Statutes or congressional amendments like the Torture Victim Protection Act of 1991,³³⁹ JASTA, Antiterrorism and Effective Death Penalty Act of 1996³⁴⁰ (AEDPA), and the Hickenlooper Amendment—as well as the Alien Tort Statute—have specifically targeted states that sponsor terrorism, violate international law, or illegally expropriate property.³⁴¹ While parts of these statutes are facially neutral, they increasingly funnel authoritarian states and officials into the U.S. legal system. This approach—along with older FSIA exceptions—perhaps shows Congress’s intent to weaken sovereign immunity in order to hold illiberal foreign regimes liable. Courts can draw from these principles to inform the common law of foreign relations.

Scholars like Wuerth have argued that foreign relations doctrines are best justified as common law that “give[s] effect to very closely related statutory frameworks.”³⁴² In other words, the doctrines emerge to support and sustain statutes like the FSIA. The FSIA, for instance, does not directly govern foreign-official immunity, but that doctrine could emerge out of the statute because “[t]he purpose of individual immunities is to protect foreign states by protecting the officials who work on their behalf.”³⁴³ Even the act of state doctrine may itself be justified by the FSIA and Hickenlooper Amendment.³⁴⁴

If Wuerth is right, then courts should interpret international comity in light of recent congressional trends. Again, one of these trends is Congress’s increasing willingness to target wrongful acts by illiberal foreign regimes. For instance, JASTA expanded the scope of the FSIA exception for foreign state sponsors of terrorism, opening up a flurry of claims against Saudi Arabia. Specifically, the Act removes immunity and provides a cause of action

³³⁹ 28 U.S.C. § 1350.

³⁴⁰ Pub. L. No. 104-132, 110 Stat. 1214 (1996) (codified at 28 U.S.C. § 2254).

³⁴¹ See, e.g., *De Sanchez v. Banco Central de Nicar.*, 770 F.2d 1385, 1395 (5th Cir. 1985); see also 28 U.S.C. § 1605A(c).

³⁴² Wuerth, *supra* note 235, at 1850; see also Clark, *supra* note 38, at 1263. But see Goldsmith, *supra* note 38, at 1632–33 (arguing against the common law).

³⁴³ Wuerth, *supra* note 235, at 1852.

³⁴⁴ See *id.* at 1854.

for claims against states aiding and abetting “an act of international terrorism in the United States.”³⁴⁵ Although broadly worded, the Act was aimed at claims against Saudi Arabia for providing support to al-Qaeda. This Act is just one of many congressional acts that, while neutral as to regime type, have a disparate impact on foreign autocratic regimes by increasing the number of cases involving foreign dictatorships in U.S. courts. It is no coincidence that claims under these statutes involve countries like Iran, Sudan, and Syria, rather than countries like Taiwan or Peru. While the statutes are de jure neutral, they are de facto attacks on autocracies.

The relationship between statutes and the common law of foreign relations raises the question of whether courts should be proactive or reactive in this context. On the one hand, Congress has shown that it can respond to specific cases by withholding immunity to foreign states. It did this through JASTA, the Hickenlooper Amendment, and the AEDPA.³⁴⁶ Instead of taking affirmative action on their own, courts could reasonably construe claims narrowly and wait for congressional acts to override them. A posture of judicial reactivity has the benefit of deferring to the political branches. On the other hand, perhaps these statutes support a broader principle that courts should be willing to host cases against foreign autocrats. The thread is arguably similar: certain claims should proceed in the United States against foreign governments that challenge liberal norms.

Although both conclusions are reasonable, the broader lesson is that courts *can* be proactive in this context. Even the legislative history of the statutes shows some impatience with courts’ unwillingness to allow claims against foreign governments, not frustration with judicial activism.³⁴⁷ This legislative history supports

³⁴⁵ 28 U.S.C. § 1605B(b)(1).

³⁴⁶ See 28 U.S.C. § 1605; 22 U.S.C. § 2370I(2); 28 U.S.C. § 2254.

³⁴⁷ Senator Bourke Hickenlooper sponsored the amendment that overturned *Sabbatino* because Congress and U.S. courts needed to take action “to stop that kind of nonsense, or to see that payment is made for property when it is seized, we shall see a wave of expropriations of property of Americans going throughout the world like a prairie fire.” 108 CONG. REC. 9,940 (June 7, 1962) (statement of Sen. Hickenlooper). Similarly, Representative Bob Goodlatte justified JASTA because U.S. courts’ dismissal of claims against foreign sponsors of terrorism for jurisdictional deficiencies was a “troubling loophole in our antiterrorism laws . . . [C]ourts have not consistently interpreted [FSIA] exceptions in such a manner that they cover the sponsoring of a terrorist attack on U.S. soil.” 162 CONG. REC. H5,241 (daily ed. Sept. 9, 2016) (statement of Rep. Goodlatte). Representative Jerry Nadler continued: “That makes no sense, and it flies in the face of what had been settled law for many years.” *Id.* at H5,242 (statement of Rep. Nadler). See also 162 CONG. REC. S2,846 (daily ed. May

a proactive position that innovates and promotes the goals of existing statutes. Moreover, these are fundamental questions about court access, not foreign affairs. The relevant questions are about immunity from suit or choice of law—not about diplomacy. As courts and the literature have moved away from foreign affairs exceptionalism, there is a broader understanding that these cases should be treated more like domestic cases. And domestic doctrines would allow more claims against dictators rather than grant immunity or act of state protection.

E. The Odious Debt Doctrine Allows Unequal Treatment

Although it is not part of customary international law, the would-be doctrine of odious debts may also support the unequal treatment of autocracies vis-à-vis other government types.³⁴⁸ Ordinarily, international law holds that new regimes inherit any debts incurred by previous regimes in control of the same territory.³⁴⁹ Debts, in other words, are incurred by sovereigns, not regimes. But the doctrine of odious debts—to the extent we can call it a doctrine—provides an exception.³⁵⁰ It holds that debts incurred during the rule of a “despotic power” do not necessarily bind successor democratic regimes,³⁵¹ who may choose to repudiate these previous debts.³⁵² The modern literature on odious debt focuses in particular on applying the doctrine to dictatorial, authoritarian, and corrupt regimes.³⁵³ Despite a long history, the

17, 2016) (statement of Sen. Schumer) (“The courts in New York have dismissed the 9/11 victims’ claims against certain foreign entities alleged to have helped fund the 9/11 attacks. These courts are following what we believe is a nonsensical reading of the Foreign Sovereign Immunities Act.”). Even the little history that we have on the Alien Tort Statute reveals that the Statute was born out of the First Congress’s “embarrass[ment]” at its “inability to provide judicial relief” in two international incidents involving foreign diplomats. *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 123 (2013).

³⁴⁸ Other international law doctrines may support this, including the idea of an international right to democratic governance. See ROTH, *supra* note 73, at 1.

³⁴⁹ See Patrick Bolton & David Skeel, *Odious Debts or Odious Regimes*, 70 LAW & CONTEMP. PROBS. 83, 102 (2007); see also Mitu Gulati & Ugo Panizza, *The Hausmann-Gorky Effect*, 166 J. BUS. ETHICS 175, 175 (2020).

³⁵⁰ See Lee C. Buchheit, G. Mitu Gulati & Robert B. Thompson, *The Dilemma of Odious Debts*, 56 DUKE L.J. 1201, 1216 (2007).

³⁵¹ See *id.* at 1216–19.

³⁵² See *id.* at 1218.

³⁵³ See Andrew Yianni & David Tinkler, *Is There a Recognized Legal Doctrine of Odious Debts?*, 32 N.C. J. INT’L L. & COM. REG. 749, 750 (2007); Jeff A. King, *Odious Debt: The Terms of the Debate*, 32 N.C. J. INT’L L. & COM. REG. 605, 624, 632 (2007); Christiana Ochoa, *From Odious Debt to Odious Finance: Avoiding the Externalities of a Functional Odious Debt Doctrine*, 49 HARV. INT’L L.J. 109, 111–12 (2008); Seema Jayachandran & Michael Kremer, *Odious Debt*, 96 AM. ECON. REV. 82, 83–85, 87–89 (2006).

doctrine is not established in customary international law but remains important only in discourse around sovereign debt.³⁵⁴

Even though it is not established, the would-be odious debt doctrine provides at least partial support for unequal treatment of foreign dictators. While the role of international law within federal common law is strongly contested, most scholars would agree that courts can use it as “one interpretive tool . . . without relying on it as controlling.”³⁵⁵ The most important lesson to draw here is the simple fact that dictatorial regimes should not always be recognized as normal by domestic or international institutions.

* * *

All the above suggests that courts can treat foreign dictatorships differently. The analysis is necessarily one-sided because it focuses on counterarguments to the current status quo. But this is a robust combination. No statute or constitutional provision mandates equal treatment of all foreign regimes. And a series of doctrines and decisions actually allows discrimination against foreign dictatorial governments, including the anticomity doctrines, the original justifications of international comity, congressional statutes, executive programs like KARI, and the odious debt doctrine. Finally, harmful consequences to foreign affairs appear to be highly unlikely. And yet, as argued below, there may be other reasons to maintain the status quo.

III. AN ANTIDICTATORSHIP STANDARD IS LIKELY NOT ADMINISTRABLE AND RUNS INTO THE SEPARATION OF POWERS

If there is no equal-treatment obligation, one way to remedy the foreign dictators’ asymmetry is to withhold foreign relations protections and privileges whenever a dictator is a litigant. At first blush, this seems like an attractive option as it would weaken the equal-treatment principle, promote democratic values, and prevent foreign tyrants from abusing our courts. But this would also force courts to face difficult administrability and separation-of-powers challenges.

In this Part, I argue that courts should not implement an anti-dictatorship exception to international comity. Part III.A shows

³⁵⁴ See King, *supra* note 353, at 633–37, 642–48; Jayachandran & Kremer, *supra* note 353, at 85–87.

³⁵⁵ Wuerth, *supra* note 113, at 961; see also William S. Dodge, *Customary International Law and the Question of Legitimacy*, 120 HARV. L. REV. F. 19, 20–21 (2007).

that an antidictatorship exception would force courts to decide on a case-by-case basis whether a dictatorship deserves equal treatment or not, bumping heads against the State Department. Courts may also be forced to evaluate foreign policy consequences of dictator-related decisions, weakening deference to the executive.³⁵⁶ These and other functionalist problems make one conclusion clear: it would be unfeasible to categorically discriminate against foreign dictatorships. Part III.B then considers an analogous context where U.S. courts retain a doctrine of neutral applicability that nonetheless polices foreign government abuse: the political offense exception to extradition. This doctrine could be a model for reforms, showing that courts can judge dictatorships by the types of cases they file.³⁵⁷

A. The Problems of Judicial Administrability and the Separation of Powers

The literature on foreign affairs has long recognized the executive branch's advantage over the judiciary in this context, mostly based on questions of expertise, speed, flexibility, and secrecy.³⁵⁸ Those justifications mostly do cash out in the dictator context, but we may additionally worry about the high error costs of misjudging a foreign dictatorship and the possibility, even if unlikely, of foreign strife.³⁵⁹ The political branches have also shown willingness to intervene in this area by, for example, creating exceptions to the act of state doctrine or wielding the recognition power.³⁶⁰ Beyond these separation-of-powers and institutional competence points, at least five reasons render an antidictatorship standard unworkable.

First, there is no easy way for courts to determine whether a foreign government is a dictatorship. While the executive can count on an array of institutional information sources, the judiciary generally shies away from these ad hoc determinations. In the particular context of dictatorships, courts face a series of difficulties that are the source of vast disagreements in political science. An entire recent literature has struggled to categorize new authoritarian governments that nonetheless retain a patina of

³⁵⁶ See Maggie Gardner, *Parochial Procedure*, 69 STAN. L. REV. 941, 954–58 (2017).

³⁵⁷ See *supra* Part I.

³⁵⁸ See Sitaraman & Wuerth, *supra* note 56, at 1936–42.

³⁵⁹ See *id.* at 1910.

³⁶⁰ I thank Curtis Bradley for some of the specifics here.

democracy.³⁶¹ There is a veritable word soup of names for these regimes, including competitive authoritarian, hybrid regimes, semidemocracy, transitioning democracy, illiberal democracy, and soft authoritarianism.³⁶² The analysis may be unduly burdensome and unwieldy for parties and judges.

To be sure, in the foreign-judgment-enforcement context, courts have developed ways to judge due process in foreign judicial systems. Courts can count on expert reports, State Department guidance, and evidence on the totalitarian nature of a foreign regime or its abuse of judicial process. Return, for example, to *Osorio*, where the court drew directly on the work of the State Department and international NGOs, including Country Reports prepared by experts at the U.S. State Department, Freedom House, Global Integrity Scorecard, Transparency International, U.S. ambassadors, and credible Nicaraguan authorities.³⁶³ Clearly, courts have some ability and procedures to make these judgments.³⁶⁴

Despite the foreign-enforcement example, there is no easy way to generalize that kind of process to every case involving foreign dictators. One problem is that courts could frustrate uniformity in the process, with some district court judges calling a foreign sovereign a dictatorship and others disagreeing. Another potential problem is that, while courts are well suited to evaluate due process violations, they lack expertise in judging regime types. Therefore, the foreign-judgment-enforcement context, as *Sabbatino* recognized, may not be analogous to areas like the privilege of bringing suit, which is “a problem more sensitive politically.”³⁶⁵

Second, even if courts could distinguish among different types of government, it’s not even clear that the relevant category of analysis should be regime type or “dictatorships.” Some dictator cases are problematic because they fundamentally challenge basic human rights, democratic values, and sometimes involve abuse of legal process to promote autocracy. But focusing on dictators or dictatorships would be underinclusive. Democratic governments can also litigate problematic cases. That is why U.S. courts

³⁶¹ See, e.g., Steven Levitsky & Lucan A. Way, *The Rise of Competitive Authoritarianism*, 13 J. DEMOCRACY 51, 51–54 (2002).

³⁶² See *id.*

³⁶³ *Osorio*, 665 F. Supp. at 1348–49.

³⁶⁴ To be sure, the Eleventh Circuit refused to endorse the lower court’s analysis as to whether the tribunals of Nicaragua were impartial. See *Osorio v. Dow Chem. Co.*, 635 F.3d 1277, 1279 (11th Cir. 2011).

³⁶⁵ *Sabbatino*, 376 U.S. at 412.

have previously refused to enforce libel awards from the United Kingdom.³⁶⁶ Moreover, although rare, it is possible that some foreign dictatorships may respect fundamental rights more than weak democracies. For instance, Singapore's authoritarian government may respect certain rights more than Brazil's backsliding democracy. It would therefore be underinclusive to discriminate against foreign dictatorships by allowing similarly egregious acts performed by democracies in U.S. courts.

Third, proxies or other officials have filed some of the most egregious claims, hiding the potential involvement of a foreign regime. That has been true of claims by China, Venezuela, Russia, and Turkey. Although, as I argue below, courts can disentangle when proxies are litigating on behalf of foreign regimes, it would also be time consuming for courts to routinely scrutinize whether a foreign plaintiff is truly filing on their own behalf or as a proxy of a foreign government.

Fourth, discriminating against dictatorships for all claims would also be substantively overinclusive. Dictatorships can, and do, file legitimate claims. Suppose that Venezuela's authoritarian government enters into a series of contracts with a U.S. construction company that include choice-of-law and choice-of-forum clauses that point to U.S. courts. Suppose the company then refuses to perform under the contracts but nonetheless retains payment. Surely, U.S. courts should be available for such a claim, even if it is filed in the name of Venezuela's dictator. This is the type of claim where the United States retains an interest in disciplining domestic companies and enforcing the relevant contract laws. That is also true for the routine kinds of tort claims that involve foreign government officials in the United States (e.g., embassy officials that are involved in traffic accidents). Or suppose that a dictatorial regime—say an ally like Kuwait—brought bona fide claims against somebody who engaged in corruption and then fled to the United States.³⁶⁷ Discriminating against Kuwait just because it is governed by an authoritarian regime would be too blunt of an instrument. Again, it would be overinclusive for courts to categorically shut their doors to these types of claims.

Finally, foreign-policy judgments in this context are unusually complex. The United States is sometimes allied with foreign dictatorships and at odds with democracies. As mentioned above,

³⁶⁶ See *Bachchan v. India Abroad Publ'ns Inc.*, 585 N.Y.S.2d 661, 664 (N.Y. Sup. Ct. 1992).

³⁶⁷ I thank Allen Weiner for this example.

President Roosevelt's apocryphal quip about Somoza being "our son of a bitch" captures the difficulty of judging foreign dictators.³⁶⁸ Even among the political branches, there are disputes over sovereign immunity. Often, Congress is eager to make a symbolic show of support for U.S. victims by stripping foreign countries of immunity. The executive, by contrast, usually disagrees with statutes like JASTA—which was vetoed by President Barack Obama—and other congressional efforts to disrupt foreign relations.³⁶⁹

The most troubling cases discussed above—involving Turkey, Venezuela, and Russia—also raise these concerns. Maduro's Venezuela would clearly fall into the bucket of foreign dictatorships that we need not host in our courts. As if to make this an easy question, the DOJ recently indicted Maduro.³⁷⁰ But Turkey is in a different category. Although helmed by a foreign dictator, Turkey is also a NATO ally. And Russia is likely our largest geopolitical rival, but it may take greater offense to judicial rejection. It would be difficult to impose these foreign policy calculations on district court judges.

All these problems make one conclusion clear: whatever rule we wish to create to avoid aiding foreign dictatorships runs the danger of being over- or underinclusive. We should therefore look for different ways to target these cases, perhaps focusing on the type of claim or the relevant doctrine at issue (e.g., act of state) rather than type of litigant. We need not judge foreign dictatorships qua dictatorships. We should instead judge foreign dictatorships when they perform acts that violate U.S. public policy and commitments to liberal democracy.

B. A Possible Model: The Political Offense Exception

One alternative to an antidictatorship standard would be a regime-neutral approach that focuses on political abuse, similar to the political-offense exception to extradition.³⁷¹ Most countries,

³⁶⁸ See, e.g., *Ope Shipping, Ltd. v. Allstate Ins.*, 521 F. Supp. 342, 350 (S.D.N.Y. 1981), *aff'd in part and rev'd in part*, 687 F.2d 639 (2d Cir. 1982).

³⁶⁹ See Bravin, *supra* note 20; Helen Kim, *The Errand Boy's Revenge: Helms-Burton and the Supreme Court's Response to Congress's Abrogation of the Act of State Doctrine*, 48 EMORY L.J. 305, 305 (1999). I thank Curtis Bradley for this insight.

³⁷⁰ See Aruna Viswanatha, José de Córdoba & Ian Talley, *U.S. Charges Venezuelan President Nicolás Maduro with Drug Trafficking*, WALL ST. J. (Mar. 26, 2020), <https://www.wsj.com/articles/u-s-indicts-venezuelan-president-nicolas-maduro-on-allegations-of-drug-trafficking-11585236443>

³⁷¹ See CHRISTINE VAN DEN WIJNGAERT, *THE POLITICAL OFFENCE EXCEPTION TO EXTRADITION* 100–02 (1980); Ginsburg, *supra* note 7, at 253.

including the United States, participate in an array of bilateral extradition treaties that allow sovereigns to “demand and obtain extradition of an accused criminal.”³⁷² But the “political offense exception” allows courts to refuse extradition on the grounds that the foreign sovereign has charged the defendant with offenses “of a political character.”³⁷³

Some commentators have argued that the political offense exception “can be traced to the rise of democratic governments” and was “designed to protect the right to rebel against tyrannical governments.”³⁷⁴ For example, Professor Thomas Carbonneau argued that “[b]y invoking the political offense exception when confronted with extradition requests from despotic governments, democratic States could proffer protection to political dissenters and thus indirectly promote democratic tendencies.”³⁷⁵ Drawing from this history, some courts have defined the test as looking at whether the defendants’ acts “were blows struck in the cause of freedom against a repressive totalitarian regime.”³⁷⁶ The Seventh Circuit recently noted that a detainee’s acts were “exercises in democratic freedom.”³⁷⁷

Despite these origins, the Ninth Circuit has applied the exception in a regime-neutral fashion because it did not “believe it appropriate to make qualitative judgments regarding a foreign government or a struggle designed to alter that government.”³⁷⁸ Following this approach, courts consider whether a foreign government has charged a defendant with a crime that is “political in nature.”³⁷⁹ This inquiry, in turn, examines whether there was a “violent political disturbance or uprising” in the country and whether the defendant’s role was “incidental” to the uprising.³⁸⁰ Thus, courts usually do not discriminate by regime types, only by “political” acts.³⁸¹

³⁷² *Quinn v. Robinson*, 783 F.2d 776, 782 (9th Cir. 1986).

³⁷³ *Id.* at 781.

³⁷⁴ *Id.* at 803–04.

³⁷⁵ Thomas E. Carbonneau, *The Political Offense Exception to Extradition and Transnational Terrorists: Old Doctrine Reformulated and New Norms Created*, 1 ASSOC. STUDENT INT’L L. SOC’YS INT’L L.J. 1, 43 (1977).

³⁷⁶ *In re Gonzalez*, 217 F. Supp. 717, 721 n.9 (S.D.N.Y. 1963).

³⁷⁷ *Venckiene v. United States*, 929 F.3d 843, 855 (7th Cir. 2019). However, the court ultimately did not apply the political-offense exception.

³⁷⁸ *Robinson*, 783 F.2d at 804.

³⁷⁹ *Venckiene*, 929 F.3d at 855.

³⁸⁰ *Id.* at 854 (quoting *Ordinola v. Hackman*, 478 F.3d 588, 597 (4th Cir. 2007)).

³⁸¹ *See id.* at 855–56.

The political-offense exception counsels, then, that U.S. courts can retain a doctrine of neutral applicability that nonetheless examines whether foreign governments are attempting to abuse our legal processes for political reasons. That could be a model for reforms in the dictator context, which I explore in greater detail below.

* * *

In sum, even if U.S. courts are not obligated to follow an equal-treatment principle for foreign dictatorships, there is probably no easy way for courts to administer a categorical antidictatorship standard. Instead, it may be more feasible to focus on either the types of claims dictators bring or the comity doctrines. Given these preliminary conclusions, efforts to weaken foreign dictatorships face some problems. Below, I attempt to account for and resolve these problems.

IV. ANTIDICTATORSHIP PROPOSALS: ANTI-SLAPP AND OTHERS

In this Part, I provide an array of suggestions and changes to U.S. law that may allow courts to refuse the benefit of international comity to most foreign dictators in an administrable way. The goal here is to stay faithful to the requirements of U.S. law but also to the principle that the judiciary should jealously guard its jurisdiction and prevent dictators from taking advantage of U.S. courts. What I provide here is somewhat preliminary and focused on practical solutions. In the long run, courts can still explore reforms to these cases that draw on the fact that there is no equal-treatment principle, perhaps as an antidictatorship principle that serves as a gap-filler in close cases.

In short, drawing on Part II's argument that there is no obligation of equal treatment, I propose the following changes to the relevant comity doctrines so that they can no longer benefit foreign dictatorships. To resolve the dictators-as-plaintiffs problem (1) Congress should subject the privilege of bringing suit to the robust procedural protections of a federal anti-SLAPP statute so that defendants can quickly dismiss oppressive *political* claims. To resolve the dictators-as-defendants problems, courts should (2) reconsider or eliminate the act of state doctrine, (3) limit the scope of foreign official immunity, and (4) interpret the FSIA exceptions as broadly as they are written, allowing more claims against foreign dictators.

A. A Legislative Solution: Anti-SLAPP for Sovereign Plaintiffs and Their Proxies

The fundamental problem with the privilege of bringing suit is that foreign dictators and their proxies can access our courts to harass opponents: Cuba can enforce expropriations; Panamanian and Venezuelan dictators can sue democratic challengers and newspapers; the Chinese Communist Party, Erdoğan, and Putin can file claims against dissidents; and Iran can pursue a variety of objectives in our courts. These claims are often illegitimate because they use judicial methods and manufactured claims to exercise sovereign control beyond national borders, engage in harassment, and pursue purely political aims.³⁸² But current tools, like Rule 11 sanctions or abuse-of-process counterclaims, are insufficient to fend off such claims—their standards are too high, they often come at too late a stage in a litigation, they force defendants to incur substantial legal costs, and they do not sufficiently penalize plaintiffs.³⁸³ Because these tools are part of the judicial arsenal, they also lack the congressional and executive imprimatur necessary for a situation in which foreign sovereigns are involved. If it is unfeasible to deny foreign dictators access to court, how can we limit these claims?

It turns out that state governments have developed strategies to address similar claims in the free speech context: anti-SLAPP statutes. In the 1990s, a few scholars and legislators noticed a worrying trend of lawsuits against private individuals for speaking out politically.³⁸⁴ In the most worrisome cases, large organizations seemed to be suing individuals for exercising their freedom of speech in contexts like “testifying against real estate

³⁸² This is analogous to what used to be known as “lawfare.”

³⁸³ See *Ateş v. Gülen*, No. 15-cv-2354, at *4 (M.D. Pa. June 29, 2016) (order denying a motion for Rule 11 sanctions); *Xinba Constr. Grp. Co. v. Jin Xu*, No. ESX-L-2889-18, 2019 WL 5459816, at *4 (N.J. Super. Ct. Law Div. Sept. 20, 2019) (dismissing an abuse-of-process counterclaim). Although state anti-SLAPP statutes already cover defamation claims, courts have previously refused to apply them in federal court. See, e.g., *Abbas v. Foreign Pol’y Grp., LLC*, 783 F.3d 1328, 1331–32 (D.C. Cir. 2015); *Fridman v. Bean LLC*, No. 17-2041, 2019 WL 231751, at *2–3 (D.D.C. Jan. 14, 2019).

It bears noting that companies sometimes file RICO claims to block alleged fraudulent claims. See Nora Freeman Engstrom, *Retaliatory RICO and the Puzzle of Fraudulent Claiming*, 115 MICH. L. REV. 639, 666–68 (2017).

³⁸⁴ See Penelope Canan & George W. Pring, *Strategic Lawsuits Against Public Participation*, 35 SOC. PROBS. 506, 508 (1988); Penelope Canan & George W. Pring, *Studying Strategic Lawsuits Against Public Participation: Mixing Quantitative and Qualitative Approaches*, 22 LAW & SOC’Y REV. 385, 387 (1988). See generally George W. Pring, *Intimidation Suits Against Citizens: A Risk for Public Policy Advocates*, 7 NAT’L L.J. 16 (1985).

development at a zoning hearing, complaining to a school board about unfit teachers, or demonstrating peacefully for or against government actions.”³⁸⁵ These strategic lawsuits against public participation (so-called SLAPP claims) are fundamentally about intimidating and imposing costs on defendants. Superficially, the claims vary in their substance, dressed up as defamation, business torts, or civil rights suits.³⁸⁶ But the proliferation of SLAPP claims presents a significant challenge to the First Amendment and political speech. This is true even if plaintiffs lose most cases because they impose significant litigation costs on defendants. As Professor George Pring noted, “SLAPPs send a clear message: that there is a ‘price’ for speaking out politically. The price is a multimillion-dollar lawsuit and the expenses, lost resources, and emotional stress such litigation brings.”³⁸⁷

The potential for SLAPP-related chilling effects forced state legislatures into action. States like California, Washington, Oregon, Texas, and Nevada quickly enacted anti-SLAPP statutes to provide a “quick and inexpensive” way for defendants to move to dismiss claims before protracted litigation sets in.³⁸⁸ Most of the statutes allow defendants to demonstrate that they are being sued for “exercis[ing] . . . constitutional rights,” usually freedom of speech, political participation, or petitioning.³⁸⁹ If defendants meet this standard, they trigger an array of procedural protections and shift the burden to plaintiffs to prove that they will prevail on the merits.³⁹⁰ The statutes expedite judicial considerations of anti-SLAPP motions (usually within thirty or sixty days), stay all discovery, provide “attorney’s fees,” allow for immediate appeals, and even provide for penalties for filing the claims as well as “any additional relief ‘to deter repetition of the conduct and comparable conduct.’”³⁹¹ And these statutes are widely used,

³⁸⁵ Laura Long, *SLAPPING Around the First Amendment: An Analysis of Oklahoma’s Anti-SLAPP Statute and Its Implications on the Right to Petition*, 60 OKLA. L. REV. 419, 419 (2007) (citations omitted).

³⁸⁶ *Id.* at 420.

³⁸⁷ George W. Pring, *SLAPPs: Strategic Lawsuits Against Public Participation*, 7 PACE ENV’T L. REV. 3, 6 (1989).

³⁸⁸ Jerome I. Braun, *California’s Anti-SLAPP Remedy After Eleven Years*, 34 MCGEORGE L. REV. 731, 735, 760 (2003) (quoting *Simmons v. Allstate Ins.*, 92 Cal. App. 4th 1068, 1073–74 (2001)). Thirty states now have some form of anti-SLAPP statute. See *State Anti-SLAPP Laws*, PUB. PARTICIPATION PROJECT (2017), <https://perma.cc/V7LH-BV6C>.

³⁸⁹ Braun, *supra* note 388, at 732 n.9.

³⁹⁰ See Tom Wyrwich, *A Cure for a “Public Concern”: Washington’s New Anti-SLAPP Law*, 86 WASH. L. REV. 663, 674 (2011).

³⁹¹ *Id.* at 674 (quoting WASH. REV. CODE § 4.24.525(6)(a) (2011)).

including in at least 300 to 450 filings per year in the state of California alone.³⁹²

Congress could enact a Foreign Sovereign Anti-SLAPP Statute.³⁹³ This statute would mirror state anti-SLAPP statutes and would allow defendants to demonstrate that a foreign government or its proxy has sued them for political purposes or for exercising rights protected by the U.S. Constitution, either at home or abroad. If defendants can prove this, the burden would shift to plaintiffs to demonstrate they will prevail on the merits, that they are not attempting to abuse the legal process, and, in the case of individuals, that they are not a proxy for a foreign dictatorship. In the meantime, anti-SLAPP procedural protections would kick in.

The statute must address two main definitional problems: (1) what counts as a “political” lawsuit and (2) what counts as a proxy of a foreign government. On the first question, the statute can draw from current anti-SLAPP standards, the political exception to extradition, and the immigration law standards for political asylum. As discussed above, courts in the extradition context consider whether a foreign government has charged a defendant with a crime that is “political in nature.”³⁹⁴ “Pure” political offenses involve crimes “like treason, sedition, and espionage, acts ‘directed against the state but which contain[] none of the elements of ordinary crime.’”³⁹⁵ “Relative” political offenses involve common crimes that are “so connected with a political act that the entire offense is regarded as political.”³⁹⁶ This latter offense, in turn, depends on the existence of a “political disturbance” and an offense that was incidental to it.³⁹⁷ This standard is still overly narrow and hinges on violent uprisings.

An even better model is the political-asylum standard, where an applicant “must demonstrate that he faces persecution ‘on

³⁹² See Thomas R. Burke, *The Annual Roundup of California Anti-SLAPP Appellate Decisions*, DAVIS WRIGHT TREMAINE LLP (Feb. 28, 2020), <https://perma.cc/K8MR-6M53>.

³⁹³ Such a statute would, in effect, be the civil equivalent to the political exception to extradition discussed above. See *supra* note 371. A few groups, including the American Bar Association, have proposed a federal anti-SLAPP for all claims. See, e.g., AMERICAN BAR ASSOCIATION RESOLUTION 115, at 4 (Aug. 6–7, 2012).

³⁹⁴ *Venckiene v. United States*, 929 F.3d 843, 855 (7th Cir. 2019).

³⁹⁵ *Id.* at 854 (alteration in original) (quoting *Eain v. Wilkes*, 641 F.2d 504, 512 (7th Cir. 1981)).

³⁹⁶ *Id.* at 854 (quoting *Eain* 641 F.2d at 512).

³⁹⁷ *Id.* at 854–56.

account of . . . political opinion.”³⁹⁸ Applicants satisfy this by showing that a foreign government harmed them for holding a political opinion, including by participating in “act[s] against the government” or protests.³⁹⁹ And applicants only have to show that holding a political opinion was “one central reason” for the mistreatment or persecution.⁴⁰⁰ There are thousands of asylum decisions expounding on this standard, showing that courts are comfortable defining the existence of political acts and subsequent persecution.⁴⁰¹

These doctrines and case law provide a good starting point for a Foreign Sovereign Anti-SLAPP Statute. A pure political lawsuit in the United States would result when the defendant is simultaneously sued civilly in U.S. courts and prosecuted abroad for alleged crimes directed against the foreign state. But the statute should go much further. In dictatorships, political dissidents can oppose the ruling regime through public acts that are closer to the political asylum standard of persecution based on a political opinion. Therefore, relative political lawsuits in the United States would result when there is evidence that the defendant opposed a foreign regime through a legitimate public act—an exercise of free speech under the U.S. Constitution, including petitions, peaceful protests, commercial decisions, or statements to local and foreign press—and was thereafter sued in U.S. courts. Crucially, just like in the asylum context, a defendant would only need to show that a political opinion was “at least one central reason” for the civil lawsuit in the United States.⁴⁰² This standard would resolve the problem of proxy plaintiffs filing facially legitimate complaints that are also partially motivated by political persecution abroad.⁴⁰³

The statute should also explicitly address the problem of proxies suing to promote the interests of foreign governments. The statute here can draw on analogous inquiries that courts conduct when they pierce the veil of corporate structures, determine

³⁹⁸ *Kumar v. Sessions*, 755 F. App’x 610, 611 (9th Cir. 2018) (quoting 8 U.S.C. § 1101(a)(42)(A)).

³⁹⁹ *Zhiqiang Hu v. Holder*, 652 F.3d 1011, 1017 (9th Cir. 2011), *abrogated by* *Garland v. Ming Dai*, 141 S. Ct. 1669 (2021).

⁴⁰⁰ *Zhiqiang Hu*, 652 F.3d at 1017.

⁴⁰¹ Judith L. Wood & Federica Dell’Orto, *The Right to Asylum*, 43 L.A. LAW. 18, 20 (Mar. 2020) (discussing the political nature of asylum decisions).

⁴⁰² *Zhiqiang Hu*, 652 F.3d at 1017.

⁴⁰³ See generally *Changsha Metro Grp. Co. v. Peng Xueng*, No. E072596, 2020 WL 2537521 (Cal. Ct. App. May 19, 2020).

the real party in interest in a federal case, or scrutinize whether a legal party is merely an agent for someone else.⁴⁰⁴ Defendants would first have the burden to show that a foreign individual is merely a proxy of a foreign government. The statute should err on the side of a broad definition because even if it were overinclusive, it would merely be raising the standards on innocent foreign plaintiffs to file lawsuits in U.S. courts. So there should be a presumption that state-owned entities and government officials (current or former) are proxies of a foreign government, even if they claim to be suing in their individual capacity. Same, too, for foreign oligarchs closely linked to autocratic regimes. For entities that appear independent, courts should focus on whether a foreign country is the primary beneficiary of the lawsuit or exercises ultimate control over the plaintiff, lawyers, or the legal claim. If met, the burden would shift to plaintiffs to prove otherwise by presenting evidence that they are not a proxy for a foreign government.

Congress should legislate a few other important additions to the statute to adapt it to the foreign sovereign context. First, the statute should explicitly disable the benefits provided by comity doctrines like act of state. Without such a provision, foreign dictatorships could still enforce their objectives in U.S. court. Second, the statute should explicitly apply to extraterritorial conduct in order to comport with recent case law.⁴⁰⁵ Third, Congress should explore the possibility that if a foreign sovereign is found to have abused access to U.S. courts to pursue political dissidents, that regime might lose the privilege of bringing suit for a specified period of time.

A Foreign Sovereign Anti-SLAPP Statute would prevent many of the most egregious cases discussed above. It would have stopped Castro's case against the sugar company in *Sabbatino*, China's array of cases against corruption suspects, Turkey's claim against Gülen, Russia and Venezuela's many claims against dissidents, and Noriega's claims. Such a statute would be a boon for democracy around the world.

But even if Congress does not adopt such a statute, courts could still take smaller steps to move towards such an approach. In the face of political lawsuits by foreign authoritarian governments or proxies, U.S. courts could use existing tools—from

⁴⁰⁴ See, e.g., 6A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1554 (3d ed. 2002) (describing how to raise an objection to plaintiff's status as the real party in interest).

⁴⁰⁵ See, e.g., *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 117 (2013).

inherent authority, FNC motions, malicious-prosecution claims, and abuse-of-process claims all the way to international comity abstention—to avoid these cases.⁴⁰⁶ Courts should focus on the problem of abuse of process and analogize to the political exception to extradition and political asylum.

B. Weaken the Act of State Doctrine

It is time to reconsider the act of state doctrine. Although scholars have unsuccessfully advocated for an end to this doctrine, the foreign dictatorship cases this Article presents offer a new, compelling reason to weaken it: the doctrine unduly enables foreign dictatorships to enjoy asymmetrical benefits.⁴⁰⁷ The doctrine operates as a choice-of-law rule, refusing to question foreign-government acts done within their own territory to avoid the danger of “inadvertently caus[ing] foreign policy tensions or crises by offending other nations.”⁴⁰⁸ But there is no evidence that judging foreign acts of state would cause international tensions, and, even if there were some evidence, those costs should be weighed against the benefits of a weaker rule. Judging acts of state may promote U.S. interests like “protecting American citizens from discrimination or preventing the loss of endangered species or some other kind of serious environmental harm.”⁴⁰⁹ A blanket rule probably does not get such a calculus right.

That is why the act of state doctrine has been under attack for decades. In 1976, the State Department “strongly intimated that the doctrine should be abolished.”⁴¹⁰ Courts and Congress have carved out a list of exceptions, including when acts are in violation of international law, when the president makes a suggestion of waiver, and when an expropriation seems to apply extraterritorially.⁴¹¹ But these exceptions only emphasize problems with the main doctrine. For example, courts have construed the Hickenlooper Amendment narrowly, allowing the act of state doctrine to apply in cases that seem to contradict congressional intent.⁴¹² Or take, for instance, the *Bernstein* exception, which

⁴⁰⁶ See generally Maggie Gardner, *Abstention at the Border*, 105 VA. L. REV. 63 (2019) (examining and critiquing “international comity abstention”).

⁴⁰⁷ See Harrison, *supra* note 23, at 564.

⁴⁰⁸ Posner & Sunstein, *supra* note 56, at 1184.

⁴⁰⁹ *Id.* at 1185.

⁴¹⁰ Michael J. Bazylar, *Abolishing the Act of State Doctrine*, 134 U. PA. L. REV. 325, 343 (1986).

⁴¹¹ 22 U.S.C. § 2370(e)(2).

⁴¹² See Kim, *supra* note 369, at 318.

provides that the president can ask the court to waive the doctrine for any reason.⁴¹³ But, as Justice William Douglas highlighted, this exception itself renders the court “a mere errand boy for the Executive Branch which may choose to pick some people’s chestnuts from the fire, but not others’.”⁴¹⁴ In its most recent decision, *W. S. Kirkpatrick & Co. v. Environmental Tectonics Corp.*,⁴¹⁵ the Supreme Court attacked the foundations of the doctrine, significantly narrowing the power of lower courts to examine the foreign-policy consequences of judging an act of state.⁴¹⁶ Act of state is thus already weaker than it used to be.

Scholars have highlighted a mountain of problems with the doctrine and have suggested that the Supreme Court may wish to weaken or eliminate it entirely.⁴¹⁷ Decades ago, Professor Michael Bazylar proposed to abolish the doctrine for a variety of reasons, including its unclear foundations, confusing applicability, misuse by courts trying to evade difficult cases, and abdication of the judicial power.⁴¹⁸ Moreover, the doctrine may be responsible for weakening important federal laws like “[t]he federal antitrust and securities laws, the Foreign Sovereign Immunities Act, and the Foreign Corrupt Practices Act.”⁴¹⁹ Professor Jack Goldsmith claimed that *Kirkpatrick* and other decisions show that the Supreme Court wants to severely limit—or eliminate—the act of state doctrine or even the federal common law of foreign relations.⁴²⁰ Professor Zach Clopton has argued that act of state should be pared back in the name of separation of powers because courts should not be making this kind of judgment.⁴²¹ Other scholars have instead argued about the proper grounding of act of state, either under the Constitution or as common law.⁴²²

Here is an additional reason to weaken the act of state doctrine: it unduly benefits foreign dictatorships. Even on a theoretical basis, there is reason to doubt act of state’s current

⁴¹³ See *Bernstein*, 210 F.2d at 376.

⁴¹⁴ *First Nat’l City Bank*, 406 U.S. at 773 (Douglas, J., concurring).

⁴¹⁵ 493 U.S. 400 (1990).

⁴¹⁶ See *id.* at 406.

⁴¹⁷ See Clopton, *supra* note 299, at 45. But see generally Andrew D. Patterson, *The Act of State Doctrine Is Alive and Well: Why Critics of the Doctrine Are Wrong*, 15 U.C. DAVIS J. INT’L L. & POL’Y 111 (2008).

⁴¹⁸ See Bazylar, *supra* note 410, at 343, 365–84.

⁴¹⁹ *Id.* at 329.

⁴²⁰ See Goldsmith, *supra* note 38, at 1704.

⁴²¹ See Clopton, *supra* note 299, at 45.

⁴²² See generally Anthony J. Bellia, Jr. & Bradford R. Clark, *The Law of Nations as Constitutional Law*, 98 VA. L. REV. 729 (2012); Wuerth, *supra* note 235.

formulation. By asking whether an adjudication is likely to impact or threaten relations with a foreign state, act of state already privileges countries that are fickle in their foreign affairs. And it is certainly true that, in its early years, act of state shielded Cuban expropriation orders, Libyan antitrust violations, oil disputes with Middle Eastern monarchies, and other cases involving authoritarian governments.⁴²³ To be sure, courts could cite act of state as an additional defense in cases that are decided on other grounds. Nonetheless, the doctrine seems to provide additional help in dictator cases.

As discussed above, in twenty-five recent cases, act of state protected regimes in China, Russia, Kazakhstan, Venezuela, Cuba, and Burma from liability in U.S. court. By definition, act of state forces the dismissal of a case that would have otherwise been proper under U.S. law.⁴²⁴ In doing so, it unnecessarily shields foreign dictators from liability. It is quite possible that the situation is even worse than my survey of cases suggests, because act of state may deter the filing of claims to begin with. Therefore, it is hard to know how many cases against foreign dictators would have been filed in U.S. court. It may be time for courts or Congress to reconsider the act of state doctrine. Even if courts are wary of abolishing it, the judiciary could, at the very least, recognize a counterclaim exception to act of state.⁴²⁵

C. Limit the Scope of Foreign-Official Immunity

While international law imposes obligations in the context of foreign-official immunity, U.S. courts have some room to limit it. As a reminder, foreign-official immunity is governed by federal common law (which can be informed by customary international law). There are two relevant immunities: (1) status-based immunity provides absolute immunity for heads of state and diplomats while in office and (2) conduct-based immunity covers foreign officials (and ex-dictators) for acts performed in an official capacity. While suits against sitting dictators will usually fall under the impregnable head-of-state immunity, there is room for suits against other government officials and former heads of state that have neither status- nor conduct-based immunity.

⁴²³ See Bazzyler, *supra* note 410, at 346, 350–53, 392–94. Cuba benefited even after the Hickenlooper Amendment (which itself has been severely limited).

⁴²⁴ See Harrison, *supra* note 23, at 517, 542–44, 551–52, 554–56.

⁴²⁵ I thank Curtis Bradley for this last suggestion.

Specifically, some courts have recognized instances in which immunity does not attach: acts not performed in an official capacity and acts in violation of jus cogens norms of international law.⁴²⁶ First, *Samantar* and its progeny have held that foreign officials cannot benefit from immunity for acts done in their private capacity. This holding could potentially make space for suits against former dictators. But that could happen only if acts that we traditionally attribute to the state—e.g., torture and human rights violations—could be reconceptualized as acts that promote an individual dictator’s rule. Relatedly, the Fourth Circuit held, in *Yousuf v. Samantar*,⁴²⁷ that “under international and domestic law, officials from other countries are not entitled to foreign official immunity for *jus cogens* violations, even if the acts were performed in the defendant’s official capacity.”⁴²⁸ Foreign officials engage in jus cogens violations through acts like “torture, genocide, indiscriminate executions and prolonged arbitrary imprisonment.”⁴²⁹ These acts are, “by definition[,] . . . not officially authorized by the Sovereign” and, therefore, do not give rise to conduct-based immunity.⁴³⁰ On remand from the Supreme Court, the Fourth Circuit found that a Sudanese official was not immune from suit in U.S. court.⁴³¹ Importantly, the Fourth Circuit drew directly from a British decision that had denied immunity to former Chilean dictator Augusto Pinochet for “directing widespread torture.”⁴³² Courts therefore have flexibility to determine when foreign officials violate jus cogens and subsequently lose official immunity. But this analysis looks at acts, not regime types.

Another wrinkle in this context is the role of executive suggestions of immunity. Courts have uniformly held that executive suggestions of head-of-state immunity are dispositive.⁴³³

⁴²⁶ For a discussion of the circuit split on this issue, see *supra* note 236.

⁴²⁶ See *Yousuf v. Samantar*, 699 F.3d 763, 775 (4th Cir. 2012).

⁴²⁷ 699 F.3d 763, 775 (4th Cir. 2012).

⁴²⁷ See *Yousuf v. Samantar*, 699 F.3d 763, 775 (4th Cir. 2012).

⁴²⁸ *Id.* at 777.

⁴²⁹ *Id.* at 775.

⁴³⁰ *Id.* at 776.

⁴³¹ *Id.* at 777.

⁴³² *Samantar*, 699 F.3d at 776 (citing *R. v. Bartle, ex parte Pinochet* (1999) 2 WLR (HL) 827 (appeal taken from Eng.)). For another example of how a foreign court has dealt with dictator cases, see generally Salvatore Zappalà, *Do Heads of State in Office Enjoy Immunity from Jurisdiction for International Crimes? The Ghaddafi Case Before the French Cour de Cassation*, 12 EUR. J. INT’L L. 595 (2002).

⁴³³ See, e.g., *Plaintiffs A, B, C, D, E, F v. Jiang Zemin*, 282 F. Supp. 2d 875, 879, 881 (N.D. Ill. 2003), *aff’d sub nom. Wei Ye v. Jiang Zemin*, 383 F.3d 620 (7th Cir. 2004).

However, there is some disagreement both over cases where the executive does not suggest immunity and over the application of conduct-based immunity. Some courts have refused to extend immunity when the executive does not intervene, holding that the common law of foreign relations determines this question.⁴³⁴ That is why in *Kadic v. Karadžić*,⁴³⁵ the Second Circuit refused to extend sovereign immunity to the Bosnian-Serb leader Karadžić.⁴³⁶ Similarly, courts have held that conduct-based immunity is governed by the common law and that even executive suggestions of immunity in this context are not determinative but merely persuasive.⁴³⁷

Working within these confines, courts can perhaps loosen up claims against foreign dictators. As the Fourth Circuit noted in *Samantar*, there is an “increasing trend in international law to abrogate foreign official immunity for individuals who commit acts, otherwise attributable to the State, that violate *jus cogens* norms—*i.e.*, they commit international crimes or human rights violations.”⁴³⁸ Not only should courts embrace this trend, they can even advance the scope of these claims by expanding the number of acts that violate *jus cogens* norms. In other words, U.S. courts could push the development of international law norms.⁴³⁹

D. Interpret the FSIA Exceptions Broadly

The hardest aspect of claims against foreign dictators is that—other than the state-sponsored terrorism exception—the FSIA does not draw distinctions among regimes. As a general matter, there is no compelling reason to broadly weaken the FSIA, and there is a risk that doing so would unleash frivolous claims against foreign countries. But the FSIA does provide a series of exemptions, including for waivers, contractual or tortious activity, acts connected with terrorism, expropriation, and violations of international law. It may be possible for courts to apply a plain-text reading of these exceptions that would actually expand them, allowing more claims against foreign autocrats. Moreover,

⁴³⁴ Yelin, *supra* note 235, at 995–96 (collecting cases).

⁴³⁵ 70 F.3d 232 (2d Cir. 1995).

⁴³⁶ *See id.* at 236, 247.

⁴³⁷ *See Samantar*, 699 F.3d at 773.

⁴³⁸ *Id.* at 776.

⁴³⁹ *See* Buxbaum, *supra* note 11, at 699–702; Ingrid Wuerth, *International Law in the Post-human Rights Era*, 96 TEX. L. REV. 279, 329–30, 337 (2017) (discussing how states’ compliance with international norms can reinforce those norms).

expanding exceptions is not unprecedented—courts have previously extended the expropriations exception.⁴⁴⁰ One fix, for instance, would be to eliminate doctrines that limit FSIA exceptions like the “entire tort” doctrine, which recently made a case against Russia more difficult.⁴⁴¹ Another straightforward change would be for Congress to amend the statute to add a cyberattack exception.⁴⁴² One limiting principle would be that further loosening of sovereign immunity rules may well violate customary international law.⁴⁴³

One potential avenue is to expand the implicit waiver and counterclaims exceptions. The FSIA provides in § 1605(a)(1) that a “foreign state shall not be immune . . . in any case . . . in which the foreign state has waived its immunity either explicitly or by implication.”⁴⁴⁴ In the face of this broad language, however, courts have been “reluctant to find implied waivers, requiring strong evidence of the foreign state’s intent.”⁴⁴⁵ It appears that courts have found implied waivers only when “(1) a foreign state has agreed to arbitration in another country, (2) a foreign state has agreed that a contract is governed by the law of another foreign country, or (3) a foreign state has filed a responsive pleading in a case without raising the defense of sovereign immunity.”⁴⁴⁶ But there is no reason why courts cannot return to a more common-sense reading of the phrase “by implication” that would include other types of waiver.

Moreover, the counterclaim exception in § 1607(b) also removes immunity with respect to any counterclaim “arising out of the transaction or occurrence that is the subject matter of the claim.”⁴⁴⁷ Again, the phrase “transaction and occurrence” is broad and subject to courts’ interpretations, especially because the exception hinges on how courts read “subject matter.”

Combining the counterclaim and waiver exceptions, courts may be able to find that foreign dictators waive immunity for any claims related to cases in which they are plaintiffs. We could refer

⁴⁴⁰ See RESTATEMENT (FOURTH) OF FOREIGN RELATIONS LAW § 455, reporters’ n.6, at 368–70 (AM. L. INST. 2018). But the Supreme Court has limited this effort. See *Federal Republic of Germany v. Philipp*, 141 S. Ct. 703, 712–13, 715 (2021).

⁴⁴¹ See Wuerth, *supra* note 67.

⁴⁴² See Kleiner & Wolosky, *supra* note 28.

⁴⁴³ I thank Curtis Bradley for this point.

⁴⁴⁴ 28 U.S.C. § 1605.

⁴⁴⁵ Stewart, *supra* note 167, at 42.

⁴⁴⁶ *Id.* at 42–43.

⁴⁴⁷ 28 U.S.C. § 1607(b).

to this as “subject-matter waiver.” For example, if Cuba sues U.S. companies to enforce expropriations stemming from a particular executive order, courts may read that action as implicitly waiving immunity for any claims against Cuba arising out of the same executive order. This would operate as a waiver of all claims arising out of the same subject matter and would draw from both the implicit waiver and counterclaims exceptions. Similarly, if Venezuelan officials sue the *Wall Street Journal* in U.S. court, courts may read that as waiving sovereign immunity for cases arising out of journalistic activities in Venezuela. Such an approach would end the strange asymmetry that I discussed above. To be sure, these subject-matter waivers may also be difficult to administer. For example, counterclaim waiver is typically specific to any claims by the defendants. Here, however, it would allow third parties to file separate claims. Although problems could arise, this option is worth further exploration.

Another potential avenue is to explore existing limits to the expropriation exception to the FSIA. Section 1605(a)(3) provides an exception to FSIA immunity in any case “in which rights in property taken in violation of international law are in issue.”⁴⁴⁸ The Supreme Court recently interpreted this exception narrowly.⁴⁴⁹ But more than one dictatorship has avoided this exception by arguing that it does not “reach takings by a foreign government of its own nationals’ property.”⁴⁵⁰ Just like the act of state doctrine, this court-created exception to the exception makes no sense and disproportionately advantages dictatorships. If those cases do not belong in U.S. court, they can be dismissed on grounds other than sovereign immunity.⁴⁵¹ Congress could amend the FSIA to reverse *Federal Republic of Germany v. Philipp*⁴⁵² or, more broadly, to add a human rights exception.

⁴⁴⁸ 28 U.S.C. § 1605(a)(3).

⁴⁴⁹ See *Philipp*, 141 S. Ct. at 712–13, 715.

⁴⁵⁰ Stewart, *supra* note 167, at 56 (first citing *Beg v. Islamic Republic of Pakistan*, 353 F.3d 1323 (11th Cir. 2003); then citing *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 711 (9th Cir. 1992); and then citing *de Sanchez v. Banco Central de Nicar.*, 770 F.2d 1385 (5th Cir. 1985)).

⁴⁵¹ See also *Philipp v. Federal Republic of Germany*, 248 F. Supp. 3d 59, 67–69 (D.D.C. 2017), *aff’d and remanded*, 894 F.3d 406 (D.C. Cir. 2018), *vacated and remanded*, 141 S. Ct. 703 (2021).

⁴⁵² 141 S. Ct. 703 (2021).

* * *

These four potential solutions present only a preliminary sketch aimed at a general suggestion: Congress and courts can both make small corrections to current comity doctrines to prevent foreign dictators from taking advantage of our courts.

CONCLUSION

Foreign dictators (or monarchs) have been litigants in our courts since the beginning of the republic. But there is no need to grant them comity or the current level of access to court. Foreign dictators have no right to benefit from comity doctrines that were designed in a different time and place. Doctrines like act of state, the privilege of bringing suit, or official immunity can adapt to a modern world that is under threat from democratic regression. U.S. courts and Congress should take up the baton and, in a careful and targeted way, recalibrate comity in these cases.

APPENDIX A: COLLECTED CASES INVOLVING DICTATORIAL
REGIMES SINCE 1945

Case	Sovereign	Dictator	Relevant Representative	Defendant or Plaintiff	Type	W/L
Al-Suyid v. Hifter, 20-cv-00170 (E.D. Va. 2020)	Libya	Hifter	Dictator	Defendant	Tort	TBD
Usayan v. Republic of Turkey, 2020 WL 588134 (D.D.C. 2020)	Turkey	Erdogan	Sovereign	Defendant	Tort	L
Kurd v. Republic of Turkey, 2020 WL 587982 (D.D.C. 2020)	Turkey	Erdogan	Sovereign	Defendant	Tort	L
United States v. Türkiye Halk Bankasi A.S., 2019 WL 6618026 (S.D.N.Y. 2019)	Turkey	Erdogan	SOE	Defendant	Criminal Prosecution	L
Bakalian v. Cent. Bank of Republic of Turk., 932 F.3d 1229 (9th Cir. 2019)	Turkey	Erdogan	SOE	Defendant	Tort	W
Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela, 2019 WL 3403888 (3d Cir. 2019)	Venezuela	Maduro	Sovereign	Defendant	Judgment Enforcement	L
OI Eur. Grp. B.V. v. Bolivarian Republic of Venezuela, 2019 WL 2185040 (D.D.C. 2019)	Venezuela	Maduro	Sovereign	Defendant	Judgment Enforcement	L
Dressler-Rand Co. v. Petroleos de Venezuela, 2019 WL 3242585 (S.D.N.Y. 2019)	Venezuela	Maduro	SOE	Defendant	Contract	W

Menendez v. Saks & Co., 485 F.2d 1355 (2d Cir. 1973)	Cuba	Castro	Sovereign	Plaintiff	Expropriation Dispute	W
Huntington Ingalls Inc. v. Ministry of Def. of Bolivarian Republic of Venezuela, 2019 WL 2476629 (D.D.C. 2019)	Venezuela	Maduro	State Agency	Defendant	Judgment Enforcement	W
Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964)	Cuba	Castro	SOE	Plaintiff	Expropriation Dispute	W
Frazier v. Putin, 2018 WL 9918135 (S.D.N.Y. 2018)	Russia	Putin	Dictator	Defendant	Tort	W
Rubin v. Islamic Republic of Iran, 138 S. Ct. 816 (2018)	Iran	Khamenei	Sovereign	Defendant	Tort	W
DeVengoechea v. Bolivarian Republic of Venezuela, 889 F.3d 1213 (11th Cir. 2018)	Venezuela	Maduro	Sovereign	Defendant	Contract	L
Tidewater Inv. SRL v. Bolivarian Republic of Venezuela, 2018 WL 6605633 (D.D.C. 2018)	Venezuela	Maduro	Sovereign	Defendant	Judgment Enforcement	L
Comparelli v. Republica Bolivariana De Venezuela, 891 F.3d 1311 (11th Cir. 2018)	Venezuela	Maduro	Sovereign	Defendant	Tort	L
Rusoro Mining Ltd. v. Bolivarian	Venezuela	Maduro	Sovereign	Defendant	Judgment Enforcement	L

Republic of Venezuela, 300 F. Supp. 3d 137 (D.D.C. 2018)						
Alfred Dunhill of London, Inc. v. Republic of Cuba, 96 S. Ct. 1854 (1976)	Cuba	Castro	Sovereign	Plaintiff	Expropriation Dispute	L
Fed. Treasury Enter. Sojuzplodoim-port v. Spirits Int'l B.V., 809 F.3d 737 (2d Cir. 2014)	Russia	Putin	SOE	Plaintiff	Expropriation Dispute	W
U.S. v. Prevezon Holdings, Ltd., 251 F. Supp. 3d 684 (S.D.N.Y. 2017)	Russia	Putin	SOE	Defendant	Criminal Prosecution	W
Helmerich & Payne Int'l Drilling Co. v. Bolivarian Republic of Venezuela, 137 S. Ct. 1312 (2017)	Venezuela	Maduro	Sovereign	Defendant	Tort	W
Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela, 863 F.3d 96 (2d Cir. 2017)	Venezuela	Maduro	Sovereign	Defendant	Judgment Enforcement	W
Wendell v. Bolivarian Republic of Venezuela, 2017 WL 5198375 (D. Mass. 2017)	Venezuela	Maduro	Sovereign	Defendant	Tort	W
Ateş v. Gülen, 2016 WL 3568190 (M.D. Pa. 2016)	Turkey	Erdoğan	Proxy	Plaintiff	Proxy Claim	L
Villoldo v. Castro-Ruz, 821 F.3d 196	Cuba	Castro	Dictator	Defendant	Tort	W

(1st Cir. 2016)						
Olegovna v. Putin, 2016 WL 3093893 (E.D.N.Y. 2016)	Russia	Putin	Dictator	Defendant	Tort	W
Jimenez v. U.S. Dist. Ct. for S. Dist. of Fla., Mia. Div., 84 S. Ct. 14 (1963)	Venezuela	Jiménez	Dictator	Plaintiff	Other	L
Flota Maritima Browning de Cuba, Sociadad Anonima v. Snobl, 363 F.2d 733 (4th Cir. 1966)	Cuba	Castro	SOE	Plaintiff	Other	L
Deposit Ins. Agency v. Leontiev, 2018 WL 3536083 (S.D.N.Y. 2018)	Russia	Putin	SOE	Plaintiff	Dispute over Foreign Judgment/Proceeding	W
Gold Rsrv. Inc. v. Bolivarian Republic of Venezuela, 146 F. Supp. 3d 112 (D.D.C. 2015)	Venezuela	Maduro	Sovereign	Defendant	Judgment Enforcement	L
Mezerhane v. Republica Bolivariana de Venezuela, 785 F.3d 545 (11th Cir. 2015)	Venezuela	Maduro	Sovereign	Defendant	ATS/TPVA	W
<i>In re Application of 000 Prom-neftstroy for an Ord. to Conduct Discovery for Use in a Foreign Proc.</i> , 134 F. Supp. 3d 789 (S.D.N.Y. 2015)	Russia	Putin	SOE	Plaintiff	Dispute over Foreign Judgment/Proceeding	W

Hausler v. JP Morgan Chase Bank, 770 F.3d 207 (2d Cir. 2014)	Cuba	Castro	Sovereign	Defendant	Judgment Enforcement	W
Fraser v. Rodriguez-Espinoza, 2014 WL 4783095 (N.D. Ill. 2014)	Venezuela	Maduro	State Official	Defendant	Tort	W
Davoyan v. Republic of Turkey, 116 F. Supp. 3d 1084 (C.D. Cal. 2013)	Turkey	Erdoğan	Sovereign	Defendant	Tort	W
Peterson v. Islamic Republic of Iran, 2012 WL 4485764 (S.D. Tex. 2012)	Iran	Khamenei	Sovereign	Defendant	Tort	W
<i>In re</i> Poymanov, 571 B.R. 24 (Bankr. S.D.N.Y. 2017)	Russia	Putin	State Official	Plaintiff	Dispute over Foreign Judgment/Proceeding	W
Certain Underwriters at Lloyd's London v. Great Socialist People's Libyan Arab Jamahiriya, 811 F. Supp. 2d 53 (D.D.C. 2011)	Syria	Bashar Al-Assad	Sovereign	Defendant	Tort	L
Clay v. Socialist People's Libyan Arab Jamahiraya, 614 F. Supp. 2d 21 (D.D.C. 2009)	Libya	Gaddafi	Sovereign	Defendant	Tort	W
Hausler v. Republic of Cuba, 2008 WL 11407183 (S.D. Fla. 2008)	Cuba	Castro	Sovereign	Defendant	Tort	W

Weininger v. Castro-Ruz, 462 F. Supp. 2d 457 (S.D.N.Y. 2006)	Cuba	Castro	Dictator	Defendant	Tort	L
Wahba v. Nat'l Bank of Egypt, 457 F. Supp. 2d 721 (E.D. Tex. 2006)	Egypt	Mubarak	SOE	Defendant	Tort	W
Sberbank of Russia v. Traisman, 2015 WL 9812581 (D. Conn. 2015)	Russia	Putin	SOE	Plaintiff	Dispute over Foreign Judgment/ Proceeding	W
Merrill Lynch, Pierce, Fenner & Smith v. Enc Corp., 464 F.3d 885 (9th Cir. 2005)	Philippines	Marcos	Dictator	Defendant	Interpleader	L
Collett v. Socialist People's Libyan Arab Jamahiraya, 362 F. Supp. 2d 230 (D.D.C. 2005)	Libya	Gaddafi	Sovereign	Defendant	ATS/TPVA	W
McCarthy <i>ex rel.</i> Est. of Anderson v. Republic of Cuba, 354 F. Supp. 2d 1347 (S.D. Fla. 2005)	Republic of Cuba	Castro	Sovereign	Defendant	Tort	L
Merrill Lynch, Pierce, Fenner & Smith v. Arelma Inc., 2004 WL 5326929 (D. Haw. 2004)	Philippines	Marcos	Dictator	Defendant	Interpleader	L
Base Metal Trading LTD v. Russian Aluminum, 98 Fed. Appx. 47 (2d Cir. 2004)	Russia	Putin	SOE	Defendant	Tort	W

Weinstein v. Islamic Republic of Iran, 2004 WL 90043 (E.D.N.Y. 2004)	Iran	Khamenei	Sovereign	Defendant	Tort	W
Kilburn v. Socialist People's Libyan Arab Jamahiraya, 376 F.3d 1123 (D.C. Cir. 2004)	Libya	Gaddafi	Sovereign	Defendant	Tort	L
Price v. Socialist People's Libyan Arab Jamahiraya, 389 F.3d 192 (D.C. Cir. 2004)	Libya	Gaddafi	Sovereign	Defendant	Tort	L
Pugh v. Socialist People's Libyan Arab Jamahiraya, 290 F. Supp. 2d 54 (D.D.C. 2003)	Libya	Gaddafi	Sovereign	Defendant	Tort	L
<i>In re</i> Republic of the Philippines, 309 F.3d 1143 (9th Cir. 2002)	Philippines	Marcos	Sovereign	Defendant	Interpleader	W
Price v. Socialist People's Libyan Arab Jamahiraya, 389 F.3d 192 (D.C. Cir. 2004)	Libya	Gaddafi	Sovereign	Defendant	ATS/TPVA	W
Kalasho v. Iraqi Gov't, 2001 WL 34056852 (W.D. Mich. 2001)	Iraq	Hussein	Sovereign	Defendant	Tort	W
McKesson Corp. v. Islamic Republic of Iran, 2000	Iran	Khamenei	Sovereign	Defendant	Tort	L

WL 1300166 (D.D.C. 2000)						
Flatow v. Islamic Republic of Iran, 67 F. Supp. 2d 535 (D. Md. 1999)	Iran	Khamenei	Sovereign	Defendant	Judgment Enforcement	W
Alejandro v. Telefonica Larga Dis- tancia, 183 F.3d 1277 (11th Cir. 1999)	Cuba	Castro	SOE	Defendant	Judgment Enforcement	W
Sison v. Est. of Marcos, 165 F.3d 36 (9th Cir. 1998)	Philippines	Marcos	Dictator	Defendant	Judgment Enforcement	L
Rein v. Socialist People's Libyan Arab Jamahiraya, 162 F.3d 748 (2d Cir. 1998)	Libya	Gaddafi	Sovereign	Defendant	Tort	L
Hilao v. Est. of Marcos, 103 F.3d 762 (9th Cir. 1996)	Philippines	Marcos	Dictator	Defendant	Judgment Enforcement	L
Bank Melli Iran v. Pahlavi, 58 F.3d 1406 (9th Cir. 1995)	Iran	Mohamed Reza Shah	Dictator (Family)	Defendant	Judgment Enforcement	W
Smith v. Socialist People's Libyan Arab Jamahiraya, 886 F.Supp. 306 (E.D.N.Y. 1995)	Libya	Gaddafi	Sovereign	Defendant	Tort	W
Nat'l Bank of Kuwait, S.A.K. v. Rafidain Bank, 1994 WL 376037 (S.D.N.Y. 1994)	Iraq	Hussein	SOE	Defendant	Contract	Both
Brewer v. Socialist People's	Iraq	Hussein	Sovereign	Defendant	Tort	W

Republic of Iraq, 990 F.2d 1377 (D.C. Cir. 1993)						
Banco de America v. Isabel Urcuyo de Somoza, 1992 WL 23441 (11th Cir. 1992)	Nicaragua	Somoza	Dictator (Family)	Defendant	Other	L
Consarc Corp. v. Iraqi Ministry of Indus. & Mins., 1991 WL 534917 (D.D.C. 1991)	Iraq	Hussein	Sovereign	Defendant	Tort/ Contract	L
Republic of the Philippines v. Marcos, 818 F.2d 1473 (9th Cir. 1989)	Philippines	Marcos	Dictator	Defendant	Tort	W
Reinsurance Co. of Am. v. Administratia Asigurarilor de Stat (Admin. of State Ins.), 122 F.R.D. 517 (N.D. Ill. 1988)	Romania	Ceaușescu	SOE	Defendant	Other	W
Nat'l City Bank of N.Y. v. Republic of China, 348 U.S. 356 (1954)	China	Kai-shek	Sovereign	Plaintiff	Dispute Over Sovereign Funds	L
Islamic Republic of Iran v. Boeing, 477 F.Supp. 142 (D.D.C. 1979)	Iran	Khomenei	Sovereign	Plaintiff	Other	L
F. Palicio y Compania, S. A. v. Brush, 256 F. Supp. 481 (S.D.N.Y. 1966)	Cuba	Castro	Proxy	Plaintiff	Expropria- tion Dispute	W
Gadsby & Hannah v. Socialist	Romania	Ceaușescu	Sovereign	Defendant	Contract	W

Republic of Romania, 698 F. Supp. 483 (S.D.N.Y. 1988)						
Crimson Semiconductor, Inc. v. Electronum, 629 F. Supp. 903 (S.D.N.Y. 1986)	Romania	Ceaușescu	SOE	Defendant	Contract	L
Republic of Philippines v. Marcos, 806 F.2d 344 (2d Cir. 1986)	Philippines	Marcos	Dictator	Defendant	Tort	L
Lary v. Republic of Cuba, 643 F. Supp. 194 (S.D.N.Y. 1986)	Cuba	Castro	Sovereign	Defendant	Contract	W
Est. of Domingo v. Marcos, 1983 WL 482332 (W.D. Wash. 1983)	Philippines	Marcos	Dictator	Defendant	Tort	W
S & S Mach. Co. v. Masinexportimport, 706 F.2d 411 (2d Cir. 1983)	Romania	Ceaușescu	SOE	Defendant	Tort	W
Empresa Cubana Exportadora De Azucar y Sus Derivados v. Lamborn & Co., 652 F.2d 231 (2d Cir. 1981)	Cuba	Castro	SOE	Defendant	Contract	W
Ramos v. Diaz, 179 F. Supp. 459 (S.D. Fla. 1959)	Cuba	Castro	State Official	Plaintiff	Dispute over Foreign Judgment/Proceeding	L
E. Eur. Domestic Int'l Sales Corp. v. Terra, 467 F. Supp. 383 (S.D.N.Y. 1979)	Romania	Ceaușescu	SOE	Defendant	Tort	W

<i>In re Saddam Hussein</i> , 468 F. Supp. 2d 126 (D.D.C. 2006)	Iraq	Hussein	Dictator	Plaintiff	Dispute over Foreign Judgment/ Proceeding	L
<i>Am. Bell Int'l, Inc. v. Islamic Republic of Iran</i> , 474 F. Supp. 420 (S.D.N.Y. 1979)	Iran	Khomenei	Sovereign	Defendant	Tort	W
<i>Republic of Panama v. Republic Nat'l Bank of N.Y.</i> , 681 F. Supp. 1066 (S.D.N.Y. 1988)	Panama	Noriega	Sovereign	Plaintiff	Dispute over Sovereign Funds	W
<i>Rovin Sales Co. v. Socialist Republic of Romania</i> , 403 F. Supp. 1298 (N.D. Ill. 1975)	Romania	Ceaușescu	Sovereign	Defendant	Contract	L
<i>Aerotrade, Inc. v. Republic of Haiti</i> , 376 F. Supp. 1281 (S.D.N.Y. 1974)	Haiti	Francois Duvalier	Sovereign	Defendant	Tort/ Contract	W
<i>Aerotrade, Inc. v. Banque Nationale De La Republique D'Haiti</i> , 376 F. Supp. 1286 (S.D.N.Y. 1974)	Haiti	Francois Duvalier	SOE	Defendant	Tort/ Contract	W
<i>Republic of Panama v. Citizens & S. Int'l Bank</i> , 682 F. Supp. 1544 (S.D. Fla. 1988)	Panama	Torrijos	Sovereign	Plaintiff	Dispute over Sovereign Funds	W
<i>Heaney v. Gov't of Spain</i> , 445 F.2d 501 (2d Cir. 1971)	Kingdom of Spain	Franco	Sovereign	Defendant	Contract	W

Amkor Corp. v. Bank of Kor., 298 F. Supp. 143 (S.D.N.Y. 1969)	Korea	Park Chung-hee	SOE	Defendant	Contract	L
World Athletics Sports Corp. v. Pahlavi, 267 F. Supp. 160 (S.D.N.Y. 1966)	Iran	Mohamed Reza Shah	Dictator (Family)	Defendant	Judgment Enforcement	W
Republic of Panama v. Air Pan. Internacional, S.A., 745 F. Supp. 669 (S.D. Fla. 1988)	Panama	Noriega	Sovereign	Plaintiff	Dispute over Sovereign Funds	W
Republic of the Philippines v. Pfizer, 1981 WL 380666 (E.D. Pa. 1981)	Philippines	Marcos	Sovereign	Plaintiff	Other	L
Egiazaryan v. Zalmayev, 2011 WL 6097136 (S.D.N.Y. 2011)	Russia	Putin	Proxy	Plaintiff	Proxy Claim	L
Jiménez v. Palacios, 2019 WL 3526479 (Del. Ch. 2019)	Venezuela	Maduro	SOE	Plaintiff	Other	L
LaTele Television, C.A. v. Telemundo Commc'ns Grp., LLC, 2016 WL 6471201 (11th Cir. 2016)	Venezuela	Maduro	SOE	Plaintiff	Other	L
Rich v. Naviera Vacuba, S.A., 295 F.2d 24 (4th Cir. 1961)	Cuba	Castro	Sovereign	Defendant	Contract	W
Pons v. Republic of	Cuba	Castro	Sovereign	Defendant	Tort	W

Cuba, 294 F.2d 925 (D.C. Cir. 1961)						
Berlanti Constr. Co. v. Republic of Cuba, 190 F. Supp. 126 (S.D.N.Y. 1960)	Cuba	Castro	Sovereign	Defendant	Contract	W
Jimenez v. Aristiguieta, 314 F.2d 649 (5th Cir. 1963)	Venezuela	Jiménez	Dictator	Plaintiff	Other	L
Cabello-Rondon v. Dow Jones & Co., Inc., 2017 WL 3531551 (S.D.N.Y. 2017)	Venezuela	Maduro	State Official	Plaintiff	Proxy Claim	L
St. Paul Fire & Marine Ins. v. The Republica de Venezuela, 105 F. Supp. 272 (S.D.N.Y. 1952)	Venezuela	Jiménez	Sovereign	Defendant	Contract	L
Qatar v. First Abu Dhabi Bank PJSC, 2020 WL 206661 (S.D.N.Y. 2020)	Qatar	Tamim bin Hamad	Sovereign	Plaintiff	Other	L
Complaint, Huawei Techs. v. U.S. (E.D. Tex. Mar. 6, 2019) (No. 19-cv-159)	China	Xi	SOE	Plaintiff	Other	TBD
Kadic v. Karadzic, 70 F.3d 232 (2d Cir. 1995)	Bosnia	Karadzic	Dictator	Defendant	ATS/TPVA	L
<i>In re Ex Parte</i> Petition of Republic of Turk. for an Ord. Directing Discovery,	Turkey	Erdoğan	Sovereign	Plaintiff	Dispute over Foreign Judgment/ Proceeding	L

No. 19-20107 (3d Cir. 2020)						
Fridman v. Bean, 2019 WL 231751 (D.D.C. 2019)	Russia	Putin	Proxy	Plaintiff	Proxy Claim	W
Ope Shipping, Ltd. v. Allstate Ins., 521 F. Supp. 342 (S.D.N.Y. 1981)	Nicaragua	Somoza	SOE	Plaintiff	Other	L
Banco de Chile v. Lavanchy, 2008 WL 10716345 (S.D.N.Y. 2008)	Chile	Pinochet	SOE	Plaintiff	Other	W
Denegri v. Republic of Chile, 1992 WL 91914 (D.D.C. 1992)	Chile	Pinochet	Sovereign	Defendant	ATS/TPVA	W
Carpenter v. Republic of Chile, 610 F.3d 776 (2d Cir. 2010)	Chile	Pinochet	Sovereign	Defendant	ATS/TPVA	W

APPENDIX B: COLLECTED ACT OF STATE CASES AFTER
KIRKPATRICK

Case	Sovereign	Act of State Applied?	Holding
Royal Wulff Ventures LLC v. Primero Mining Corp., 938 F.3d 1085 (9th Cir. 2019)	Mexico	Yes	Holding that act of state doctrine barred investor action against Canadian mining company for fail- ure to disclose financial information to a Mexican tax authority
Mountain Cres SRL, LLC v. Anheuser-Busch InBev, 937 F.3d 1067 (7th Cir. 2019)	Canada	Yes	Holding that act of state doctrine barred antitrust claim rooted in com- petitors' agreements with the provin- cial government of Ontario, Canada
Micula v. Gov't of Rom., 404 F. Supp. 3d 265 (D.D.C. 2019)	Romania	No	Dismissing argument that act of state doctrine barred confirmation of arbitration award entered in favor of Swedish nationals against Romania
Arias Leiva v. Warden, 928 F.3d 1281 (11th Cir. 2019)	Colombia	No	Ruling that act of state doctrine did not bar extradition of former Colombian agriculture minister on embezzlement charges

Kashef v. BNP Paribas S.A., 925 F.3d 53 (2d Cir. 2019)	Sudan	No	Holding that act of state doctrine did not bar lawsuit by victims of alleged Sudanese atrocities against a French bank that allegedly circumvented U.S. sanctions on Sudan
PDVSA U.S. Litig. Tr. v. Lukoil Pan Ams. LLC, 372 F. Supp. 3d 1353 (S.D. Fla. 2019)	Venezuela	No	Dismissing action between Venezuelan state-owned energy company's U.S.-based litigation trust and Russian oil company for lack of standing, while acknowledging that Venezuelan court's conclusion that the trust agreement was unconstitutional would also justify dismissal under act of state doctrine
Sea Breeze Salt, Inc. v. Mitsubishi Corp., 899 F.3d 1064 (9th Cir. 2018)	Mexico	Yes	Barring an antitrust action against a partially state-owned Mexican salt production corporation, because its decision to deal exclusively with a Japanese corporation was an act of state
Von Saher v. Norton Simon Museum of Art at Pasadena, 897 F.3d 1141 (9th Cir. 2018)	Netherlands	Yes	Holding that act of state doctrine barred Dutch art dealer's heir's claim against art museum to recover paintings taken by Nazis in forced sale
Dist. Att'y of N.Y Cnty. v. Republic of the Philippines, 307 F. Supp. 3d 171 (S.D.N.Y. 2018)	Philippines	No	Refusing to apply act of state doctrine to dismiss an interpleader action involving property misappropriated by the wife of the former president of the Philippines
Nnaka v. Federal Republic of Nigeria, 238 F. Supp. 3d 17 (D.D.C. 2017)	Nigeria	Yes	Ruling that various actions of Nigerian Attorney General were acts of state for the purposes of an attorney's breach of contract and tort claims against Nigeria
Al-Tamimi v. Adelson, 264 F. Supp. 3d 69 (D.D.C. 2017)	Israel	No	Concluding that act of state doctrine did not bar Palestinian claims against parties that allegedly financed violent torts committed by Israeli soldiers and settlers (<i>Reversed on other grounds on appeal</i>)
Kuwait Pearls Catering Co., WLL v. Kellogg Brown & Root Servs., Inc., 853 F.3d 173 (5th Cir. 2017)	Iraq	No	Holding that act of state doctrine did not bar subcontractor's breach of contract claim against a general contractor, where general contractor asserted that subcontractor's work belonged to the Iraqi government
MMA Consultants 1, Inc. v. Republic of Peru, 245 F. Supp. 3d 486 (S.D.N.Y. 2017)	Peru	No	Ruling that act of state doctrine did not bar bondholders' breach of contract action against Peru
Geophysical Serv., Inc. v. TGS-NOPEC Geophysical Co., 850 F.3d 785 (5th Cir. 2017)	Canada	No	Holding that act of state doctrine does not "[forbid] a United States court from considering the applicability of copyright's first sale doctrine to foreign-made copies when the

			foreign copier was a government agency”
United States v. Sum of \$70,990,605, 234 F. Supp. 3d 212 (D.D.C. 2017)	Afghanistan	No	Refusing to apply act of state doctrine to bar <i>in rem</i> action seeking forfeiture of U.S.-based assets held by three foreign banks, including the Afghanistan International Bank
<i>In re Vitamin C Antitrust Litig.</i> , 837 F.3d 175 (2d Cir. 2016)	China	Yes	Ruling that act of state doctrine barred inquiry into Chinese government’s motives for regulating its domestic Vitamin C market. (<i>Reversed on other grounds by Animal Sci. Prods., Inc. v. Hebei Welcome Pharmaceuticals Co.</i> , 138 S. Ct. 1865 (2018))
Fed. Treasury Enter. Sojuzplodoimport v. Spirits Int’l B.V., 809 F.3d 737 (2d Cir. 2016)	Russia	Yes	Holding that act of state doctrine prevented district court from adjudicating validity of Russian Federation decree authorizing transfer of ownership rights in trademarks
Crystallex Int’l Corp. v. Petróleos de Venezuela, S.A., 213 F. Supp. 3d 683 (D. Del. 2016)	Venezuela	No	Holding that act of state doctrine did not bar Delaware Uniform Fraudulent Transfer Act (DUFTA) claims brought by Venezuelan creditor against state-owned Venezuelan company and its subsidiaries. (<i>Reversed on other grounds on appeal</i>)
Villoldo v. Castro Ruz, 821 F.3d 196 (1st Cir. 2016)	Cuba	No	Holding that the extraterritorial exception to act of state doctrine precluded attachment of U.S.-based securities accounts opened before Cuban government passed confiscatory law
Hourani v. Mirtchev, 796 F.3d 1 (D.C. Cir. 2015)	Kazakhstan	Yes	Holding that act of state doctrine barred a defamation action brought by Kazakh businessmen against U.S. consulting firm for statements appearing on the website of the Kazakh Embassy in the United States
Mezerhane v. Republica Bolivariana de Venezuela, 785 F.3d 545 (11th Cir. 2015)	Venezuela	Yes	Ruling that act of state doctrine barred Venezuelan citizen’s tort claims against the Venezuelan government for expropriation of property
Du Daobin v. Cisco Sys., Inc., 2 F. Supp. 3d 717 (D. Md 2014)	China	Yes	Holding that act of state doctrine barred Chinese dissidents’ action against computer hardware provider that allegedly supported China’s nationwide surveillance program
Jovic v. L-3 Servs., Inc., 69 F. Supp. 3d 750 (N.D. Ill. 2014)	Croatia	No	Holding that there was insufficient information to apply act of state doctrine to civil conspiracy claims brought by Serbian survivors of the Bosnian War against a U.S.-based private military contractor

Warfaa v. Ali, 33 F. Supp. 3d 653 (E.D. Va. 2014)	Somalia	No	Holding that act of state doctrine did not bar TVPA claims against Somali officials for acts that allegedly violated jus cogens norms
Kaplan v. Cent. Bank of Islamic Republic of Iran, 961 F. Supp. 2d 185 (D.D.C. 2013)	Israel	No	Holding that act of state doctrine did not bar actions against two banks under the terrorism exception of the FSIA
DRFP, LLC v. Republica Bolivariana de Venezuela, 945 F. Supp. 2d 890 (S.D. Ohio 2013)	Venezuela	No	Holding that the act of state doctrine did not bar state law claim against Venezuela for failure to pay two promissory notes
de Csepel v. Republic of Hungary, 714 F.3d 591 (D.D.C. 2013)	Hungary	No	Ruling that act of state doctrine did not bar breach of contract actions against Hungary to require return of expropriated artwork
U.S. v. One Gulfstream G-V Jet Aircraft, 941 F. Supp. 2d 1 (D.D.C. 2013)	Equatorial Guinea	No	Holding that act of state doctrine did not bar U.S. government's forfeiture action against jet plane owned by son of president of Equatorial Guinea
Republic of Iraq v. ABB AG, 920 F. Supp. 2d 517 (S.D.N.Y. 2013)	Iraq	No	Holding that act of state doctrine did not apply in action between Iraq and businesses that had provided services to Hussein regime
Konowaloff v. Metro. Museum of Art, 702 F.3d 140 (2d Cir. 2012)	Russia/ USSR	Yes	Ruling that U.S. recognition of the Soviet government barred action by Russian national to recover painting removed from private collection, placed in state-run Russian museum, and then sold to U.S.-based museum
Garcia v. Chapman, 911 F. Supp. 2d 1222 (S.D. Fla. 2012)	Cuba	No	Holding that act of state doctrine did not bar TPVA and ATS claims brought against the Cuban government, because alleged crimes violated jus cogens norms
McKesson Corp. v. Islamic Republic of Iran, 672 F.3d 1066 (D.D.C. 2012)	Iran	No	Ruling that act of state doctrine did not bar U.S. corporation's claim against Iran for expropriating the corporation's equity interest in Iranian dairy
<i>In re Fresh and Process Potatoes Antitrust Litig.</i> , 834 F. Supp. 2d 1141 (D. Idaho 2011)	Canada	Yes	Ruling that act of state doctrine barred potato purchasers' antitrust claims against Canadian potato growers' cooperative
Spectrum Stores, Inc. v. Citgo Petroleum Corp., 632 F.3d 938 (5th Cir. 2011)	OPEC	Yes	Holding that act of state doctrine barred U.S. gasoline retailers' claims against OPEC nations for their methods of distributing and pricing oil and petroleum products
Sarei v. Rio Tinto, PLC, 671 F.3d 736 (9th Cir. 2011)	Papua New Guinea	No	Holding that jus cogens norms are exempt from the act of the state doctrine

<i>In re</i> Potash Antitrust Litig., 686 F. Supp. 2d 816 (N.D. Ill. 2010)	Belarus	No	Refusing to apply act of state doctrine in antitrust litigation involving Belarusian potash
<i>In re</i> Refined Petroleum Prods., 649 F. Supp. 2d 572 (S.D. Tex. 2009)	Venezuela	Yes	Ruling that act of state doctrine barred antitrust suit against Venezuelan oil company for entering into an agreement with OPEC member nations
U.S. v. Portrait of Wally, 663 F. Supp. 2d 232 (S.D.N.Y. 2009)	Austria	No	Holding that act of state doctrine did not bar U.S. government's forfeiture proceedings involving a painting, which was taken from rightful owner in Austria by Nazis, acquired post-war by Austrian museum, and imported into United States by New York gallery
Provincial Gov't of Marinduque v. Placer Dome, Inc., 582 F.3d 1083 (9th Cir. 2009)	Philippines	No	Holding that act of state doctrine did not bar a Philippine province's claims against a gold mining company when those claims referenced alleged complicity of Philippine government
Lizarbe v. Rondon, 642 F. Supp. 2d 473 (D. Md. 2009)	Peru	No	Holding that act of state doctrine did not bar TPVA and ATS claims against Peruvian military officers
U.S. v. Lazarenko, 504 F. Supp. 2d 791 (N.D. Cal. 2007)	Antigua	No	Ruling that act of state doctrine did not bar criminal forfeiture action against funds held by Antiguan bank
Malewicz v. City of Amsterdam, 517 F. Supp. 2d 322 (D.D.C. 2007)	Netherlands	No	Ruling that act of state doctrine did not bar expropriation claim against public Amsterdam art museum
Glen v. Club Mediterranee, S.A., 450 F.3d 1251 (11th Cir. 2006)	Cuba	Yes	Ruling that act of state doctrine precluded jurisdiction over trespass and unjust enrichment claims brought by purported owners of property that had been confiscated by Cuban government
Gov't of Dom. Rep. v. AES Corp., 466 F. Supp. 2d 680 (E.D. Va. 2006)	Dominican Republic	No	Ruling that act of state doctrine did not apply to Dominican Republic's lawsuit against several U.S. companies for coal ash dumping
Norwood v. Raytheon Co., 455 F. Supp. 2d 597 (W.D. Tex. 2006)	Germany	No	Refusing to apply act of state doctrine to tort claims by members of German military against U.S. military contractors
Gross v. German Found. Indus. Initiative, 456 F.3d 363 (3d Cir. 2006)	Germany	No	Holding that act of state doctrine did not bar claims against German businesses that allegedly benefitted from wartime slave labor
Doe I v. State of Israel, 400 F. Supp. 2d 86 (D.D.C. 2005)	Israel	Yes	Applying act of state doctrine to preclude jurisdiction over Palestinian expropriation claims against government of Israel

<i>In re Philippine Nat'l Bank</i> , 397 F.3d 768 (9th Cir. 2005)	Philippines	Yes	Holding that act of state doctrine invalidated a district court contempt order against a Philippine bank that refused to transfer funds to the Philippine government despite an order from that country's highest court
<i>Mujica v. Occidental Petroleum Corp.</i> , 381 F. Supp. 2d 1164 (C.D. Cal. 2005)	Colombia	No	Ruling that act of state doctrine did not bar ATS/TVPA action against oil company and private security firm for involvement in bombing of village by Colombian military
<i>Cruz v. U.S.</i> , 387 F. Supp. 2d 1057 (N.D. Cal. 2005)	Mexico	No	Permitting action against Mexican government to recover funds held on behalf of Mexican nationals for work performed in United States during and after World War II
<i>Owens v. Republic of Sudan</i> , 374 F. Supp. 2d 1 (D.D.C. 2005)	Sudan	No	Ruling that act of state doctrine did not bar suit against Sudan brought under terrorism exception to FSIA
<i>Doe v. Qi</i> , 349 F. Supp. 2d 1258 (N.D. Cal. 2004)	China	Yes	Holding that act of state doctrine barred claims for human rights violations committed by Chinese government against Falun Gong practitioners
<i>Abu Ali v. Ashcroft</i> , 350 F. Supp. 2d 28 (D.D.C. 2004)	Saudi Arabia	No	Ruling that act of state doctrine did not bar adjudication of habeas petition brought by U.S. citizen challenging detention in Saudi prison, allegedly at the behest of the United States
<i>U.S. v. Giffen</i> , 326 F. Supp. 2d 497 (S.D.N.Y. 2004)	Kazakhstan	No	Refusing to apply act of state doctrine to bar prosecution of U.S. corporate executive for bribing Kazakh officials
<i>U.S. v. Labs of Virginia, Inc.</i> , 272 F. Supp. 2d 764 (N.D. Ill. 2003)	Indonesia	No	Declining to apply act of state doctrine to bar prosecution of defendants for importing macaque monkeys protected by Indonesian law, even though the monkeys were allegedly exported by bribing Indonesian officials
<i>World Wide Mins., Ltd. v. Republic of Kazakhstan</i> , 296 F.3d 1154 (D.C. Cir. 2002)	Kazakhstan	Yes	Applying act of state doctrine to bar breach of contract claim by Canadian corporation against Kazakhstan for failure to issue a uranium export permit
<i>Fogade v. ENB Revocable Tr.</i> , 263 F.3d 1274 (11th Cir. 2001)	Venezuela	No	Holding that Second Hickenlooper Amendment did not preclude applying act of state doctrine to Venezuela's receivership of a Venezuelan corporation
<i>Daliberti v. Republic of Iraq</i> , 97 F. Supp. 2d 38 (D.D.C. 2000)	Iraq	No	Ruling that act of state doctrine did not require dismissal of action brought by United States citizens against government of Iraq, seeking damages for acts of torture and hostage taking

Roe v. Unocal Corp., 70 F. Supp. 2d 1073 (C.D. Cal. 1999)	Burma	Yes	Holding that act of state doctrine precluded review of Burmese officer's order to his soldiers to dig drainage ditch for gas pipeline constructed by U.S. corporation
Riggs Nat'l Corp. & Subsidiaries v. C.I.R., 163 F.3d 1363 (D.C. Cir. 1999)	Brazil	Yes	Holding that act of state doctrine made binding a ruling by the Brazilian Minister of Finance on whether an U.S. bank was entitled to tax credits from the Brazilian government
Virtual Def. & Dev. Int'l, Inc. v. Republic of Moldova, 133 F. Supp. 2d 1 (D.D.C. 1999)	Moldova	No	Holding that act of state doctrine did not bar U.S. consulting firm's contract action seeking commission for allegedly brokering weapons sale between Moldova and U.S.
Credit Suisse v. U.S. Dist. Ct. for Cent. Dist. of Cal., 130 F.3d 1342 (9th Cir. 1997)	Switzerland	Yes	Holding that Swiss executive and cantonal orders freezing assets of family of deceased former head of state were sufficient to trigger act of state doctrine
Sampson v. Federal Republic of Germany, 975 F. Supp. 1108 (N.D. Ill. 1997)	Germany	Yes	Ruling that act of state doctrine barred claims by Holocaust survivor seeking additional reparations from Germany and Conference on Jewish Material Claims Against Germany
Nat'l Coal. Gov't of Union of Burma v. Unocal, Inc., 176 F.R.D. 329 (C.D. Cal. 1997)	Burma	No	Concluding that act of state doctrine did not bar tort claims brought by Burmese refugee and Burmese labor organization against U.S. oil company which had entered into joint venture with Burmese government
Hargrove v. Underwriters at Lloyd's, London, 937 F. Supp. 595 (S.D. Tex. 1996)	Colombia	Yes	Ruling that act of state doctrine barred claims by family against employer and insurer stemming from their failure to secure the release of employee held by Colombian guerrillas
First Am. Corp. v. Al-Nahyan, 948 F. Supp. 1107 (D.D.C. 1996)	United Arab Emirates	No	Holding that act of state doctrine did not immunize Emirati officials and their personal holding companies in action claiming officials had attempted to secretly take over banks
Pravin Banker Assocs., Ltd. v. Banco Popular del Peru, 895 F. Supp. 660 (S.D.N.Y. 1995)	Peru	No	Ruling that act of state doctrine did not apply to action by U.S. creditor challenging Peru's suspension of commercial bank debt
Shen v. Japan Airlines, 918 F. Supp. 686 (S.D.N.Y. 1994)	Japan	Yes	Ruling that act of state doctrine barred lawsuit by passengers against Japanese public airline for wrongful detention, torture, and deportation
Virgin Atl. Airways Ltd. v. British Airways PLC, 872 F. Supp. 52 (S.D.N.Y. 1994)	United Kingdom	No	Refusing to apply act of state doctrine to airline's action against formerly state-owned competitor for alleged anticompetitive conduct

Grupo Protexa, S.A. v. All Am. Marine Slip, 20 F.3d 1224 (3d Cir. 1994)	Mexico	No	Holding that act of state doctrine did not bar review of captain's order requiring removal of sunken vessel from offshore oil field within Mexico's Exclusive Economic Zone
U.S. v. Funmaker, 10 F.3d 1327 (7th Cir. 1993)	Winnebago Tribe	No	Declining to apply act of state doctrine to prosecution of tribal member who burned down tribe's bingo hall pursuant to orders from tribal officials
Eckert Int'l, Inc. v. Gov't of Sovereign Democratic Republic of Fiji, 834 F. Supp. 167 (E.D. Va. 1993)	Fiji	No	Holding that act of state doctrine did not bar action against Fiji for breach of contract for lobbying services
Optopics Lab'ys Corp. v. Savannah Bank of Nigeria, Ltd., 816 F. Supp. 898 (S.D.N.Y. 1993)	Nigeria	No	Holding that act of state doctrine did not bar U.S. corporation's action against a Nigerian bank, even though Nigeria's exchange control regulations allegedly prevented bank from paying corporation
<i>In re</i> Am. Cont'l Co./ Lincoln Sav. & Loan Sec. Litig., 794 F. Supp. 1424 (D. Ariz., 1993)	France	No	Ruling that act of state doctrine did not apply to fraud claims against bank that had been restructured under to French law
Walter Fuller Aircraft Sales, Inc. v. Republic of the Philippines, 965 F.2d 1375 (5th Cir., 1992)	Philippines	No	Holding that act of state doctrine did not bar breach of contract claim between U.S. corporation and Philippine Presidential Commission on Good Government (PCGG)