

Case No. 09-20084

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

SPECTRUM STORES INC; MAJOR OIL COMPANY INC;
WC RICE OIL COMPANY; FAST BREAK FOODS LLC,

Plaintiffs – Appellants,

v.

CITGO PETROLEUM CORPORATION; SAUDI ARABIAN OIL COMPANY,
doing business as Saudi Aramco; SAUDI PETROLEUM INTERNATIONAL
INC.; ARAMCO SERVICES COMPANY; SAUDI REFINING INC; MOTIVA
ENTERPRISES LLC; PETROLEOS DE VENEZUELA SA; PDV AMERICA
INC; PDV MIDWEST REFINING LLC; PDV HOLDING INC; OPEN JOINT
STOCK COMPANY, “Oil Company Lukoil”, also known as Lukoil Holdings, also
known as Lukoil OAO, also known as OAO Lukoil; LUKOIL AMERICAS
CORPORATION; GETTY PETROLEUM MARKETING; LUKOIL
INTERNATIONAL TRADING AND SUPPLY COMPANY; LUKOIL PAN
AMERICAS LLC,

Defendants – Appellees.

**On Appeal from the United States District Court
for the Southern District of Texas (No. 06-3569)**

**REPLY BRIEF OF PLAINTIFFS-APPELLANTS SPECTRUM STORES
INC., MAJOR OIL COMPANY INC., AND W.C. RICE OIL COMPANY**

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SPECTRUM STORES INC; MAJOR OIL COMPANY INC;
WC RICE OIL COMPANY INC

Plaintiffs – Appellants

v.

CITGO PETROLEUM CORPORATION

Defendant- Appellee

FAST BREAK FOODS LLC, on behalf of itself and all others similarly
situated

Plaintiff – Appellant

v.

SAUDI ARABIAN OIL COMPANY, doing business as Saudi Aramco; SAUDI
PETROLEUM INTERNATIONAL INC; ARAMCO SERVICES COMPANY;
SAUDI REFINING INC; MOTIVA ENTERPRISES LLC; PETROLEOS DE
VENEZUELA SA; PDV AMERICA INC; CITGO PETROLEUM
CORPORATION; PDV MIDWEST REFINING LLC; PDV HOLDING INC

Defendants – Appellees

GREEN OIL CO, On behalf of itself and all others similarly
situated

Plaintiff – Appellant

v.

SAUDI ARABIAN OIL COMPANY, doing business as Saudi Aramco;
SAUDI PETROLEUM INTERNATIONAL INC; ARAMCO SERVICES
COMPANY; SAUDI REFINING INC; MOTIVA ENTERPRISES LLC;
PETROLEOS DE VENEZUELA SA; PDV AMERICA INC; CITGO
PETROLEUM CORPORATION; PDV HOLDING INC; PDV MIDWEST
REFINING LLC; OPEN JOINT STOCK COMPANY, “Oil Company Lukoil” also
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Lukoil; LUKOIL AMERICAS CORPORATION; GETTY PETROLEUM
MARKETING INC; LUKOIL PAN AMERICAS LLC

Defendants – Appellees

COUNTRYWIDE PETROLEUM CO; FAST BREAK FOODS, LLC

Plaintiffs – Appellants

v.

PETROLEOS DE VENEZUELA SA; PDV AMERICA INC; CITGO
PETROLEUM CORPORATION; PDV HOLDING INC; PDV MIDWEST
REFINING LLC

Defendants – Appellees

FAST BREAK FOODS LLC

Plaintiff – Appellant

v.

CENTRAL OHIO ENERGY INC, on behalf of itself and all others similarly
situated; FAST BREAK FOODS LLC

Plaintiffs – Appellants

v.

SAUDI ARABIAN OIL COMPANY, doing business as Saudi Aramco;
SAUDI PETROLEUM INTERNATIONAL INC; ARAMCO SERVICES
COMPANY; SAUDI REFINING INC; MOTIVA ENTERPRISES LLC;
PETROLEOS DE VENEZUELA SA; PDV AMERICA INC; CITGO
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REFINING LLC; OPEN JOINT STOCK COMPANY, “OIL Company Lukoil”,
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INTERNATIONAL TRADING AND SUPPLY COMPANY; LUKOIL PAN
AMERICAS LLC,

Defendants – Appellees.

**On Appeal from the United States District Court
for the Southern District of Texas (No. 06-3569)**

**CERTIFICATE OF INTERESTED PERSONS OF PLAINTIFFS-
APPELLANTS SPECTRUM STORES, INC., MAJOR OIL CO., INC. AND
W.C. RICE OIL CO.**

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case (No. 09-20086). These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1) Citgo Petroleum Corp. (“CITGO”) and its parents: Petróleos de Venezuela,

S.A. (“PdVSA”) wholly owns PDV Holding, Inc., which wholly owns PDV American, Inc., which wholly owns CITGO.

- 2) Spectrum Stores, Inc.
- 3) Major Oil Co., Inc.
- 4) W.C. Rice Oil Co., Inc., and its parents: AEC Holdings LLC wholly owns W.C. Rice Oil Co., Inc.; AP Holdings owns 20% of AEC Holdings LLC; Allied Resources, Inc., owns 70% of AEC Holdings LLC; and Bart Rice owns 10% of AEC Holdings LLC; Allied Resources, Inc., is wholly owned by Insight Equity. None of these corporations is publicly traded.
- 5) All other legal and natural persons that have purchased gasoline or other petroleum-based products directly from CITGO during the four years prior to the filing of this action.
- 6) All officers and directors of the parties.
- 7) Counsel for all parties involved in this case, namely, the following law firms: Cooper & Kirk PLLC; Susman Godfrey; Cunningham Bounds Crowder Brown & Breedlove; Leiff, Cabraser, Heimann & Bernstein; Fulbright & Jaworski LLP; Eimer, Stahl, Klevorn & Solberg; Bracewell & Giuliani.
- 8) Any person identified in the certificate of interested persons filed by the plaintiffs-appellants in the companion consolidated case (No. 09-20084).

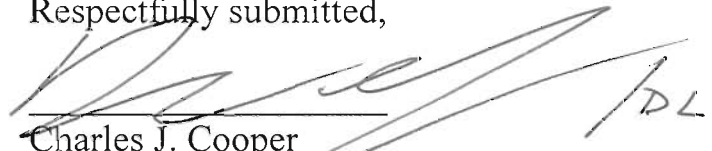
Other than as stated above, none of the Plaintiffs-Appellants in this case has a parent corporation, nor does any publicly traded corporation own 10 percent or more of the stock of any of the Plaintiffs-Appellants in this case.

August 12, 2009

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INTRODUCTION

CITGO asserts that the Spectrum Plaintiffs (“Spectrum”) seek to “invalidate” foreign sovereigns’ oil production decisions within their boundaries. Br. for Appellees CITGO Petroleum Corp. *et al.* (“CITGO Br.”) 4, 15-17, 20, 48. This distortion is the predicate for CITGO’s argument that adjudicating Spectrum’s claims will “impermissibly intrude upon the authority of the Executive Branch to craft U.S. foreign policy and protect the national security of the United States.” CITGO Br. 17, 19.

CITGO’s stratagem is ironic. Spectrum merely seeks to hold an American company operating in the United States liable for becoming a member (Count I) or an instrumentality (Count III) of a global price-fixing conspiracy whose purpose and effect is to harm Americans. Surely, the political branches want the courts to resolve such claims. Br. of Pls.’-Appellants Spectrum Stores *et al.* (“Spectrum Br.”) 52-53. Federal statutes create a right of action and an applicable standard of conduct, provide for the requested relief, and deny immunity. Spectrum 49-50. CITGO would thus have the Court, drawing on remarks by individual former Government officials, substitute its own perception of current American foreign policy and of this suit’s policy implications for the political branches’ authoritative policy determinations embodied in applicable statutes. *That* is something the courts are “neither authorized” – under the act of state or political question doctrine

– “nor equipped to” do. CITGO Br. 17.

Besides ignoring many of Spectrum’s arguments, CITGO elides the critical differences between Spectrum’s claims and the claim in *International Association of Machinists & Aerospace Workers v. OPEC* (“IAM I”), 477 F.Supp. 553 (C.D. Cal. 1979), *aff’d*, 649 F.2d 1354 (9th Cir. 1981) (“IAM II”). To avoid confusion, Spectrum reiterates the nature of its claims. Count I alleges that CITGO, as a principal, conspired unlawfully with foreign sovereigns and private oil companies to fix oil prices globally. Count III claims that CITGO, as Venezuela’s instrument for furthering that conspiracy in America, is liable for its parent’s participation in the conspiracy. Spectrum seeks relief only against CITGO. Even if CITGO is liable, Venezuela and the sovereign cartel members will still be free, pursuant to the act of state doctrine, to extract as little crude oil from their territory as they want – and even to coordinate their production levels – notwithstanding the antitrust laws. The only consequence of Count I will be that CITGO, like any other American company, will be precluded from participating in the global oil conspiracy. The only consequence of Count III will be that foreign sovereigns will not be able to facilitate their price-fixing conspiracy through wholly owned American subsidiaries, such as CITGO, within the United States. Whatever protection a sovereign cartel member might have when acting abroad, it loses that protection the moment it steps into the United States, whether in its own shoes or in those of a wholly owned American

subsidiary, to facilitate and implement a scheme that is unlawful under our laws. Spectrum Br. 5-7, 47-48.¹

ARGUMENT

I. STANDARD OF REVIEW

“[D]ismissals for lack of a justiciable question,” including under the political question doctrine, “are properly treated as dismissals for failure to state a claim.” *Hanson v. Town of Flower Mound*, 679 F.2d 497, 503 n.8 (5th Cir. 1982) (citing *Baker v. Carr*, 369 U.S. 186, 198-204, 208-09 (1962)); *Powell v. McCormack*, 395 U.S. 486, 512-13 (1969); *cf.* CITGO Br. 35-36, 53-54.

II. THE ACT OF STATE DOCTRINE DOES NOT BAR THIS SUIT

A. The Sovereign Conspirators Acted Extraterritorially

CITGO claims that “[n]o authority supports [the] position” that the act of state doctrine applies only if the relevant foreign sovereign’s act occurred within its borders. CITGO Br. 24. CITGO evidently does not count the nine decisions cited by Spectrum – four from the Supreme Court and two from this Court – showing how clear and strict is the doctrine’s territorial limitation. Spectrum Br. 9-11. For example, the Supreme Court most recently said that the doctrine applies

¹ Spectrum’s concession “below that Count II ... is barred by *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984),” CITGO Br. 7 n.5, was conditioned on CITGO’s admission that “it is a single economic unit with its owners.” ROA 4378. Because CITGO has since equivocated, ROA 217-18, 5054 n.23, Spectrum has withdrawn its concession but does not address Count II here because the relevant analyses are the same as for Count I. Spectrum Br. 6-7.

only if “the relief sought ... would ... require[] a court ... to declare invalid the official act of a foreign sovereign performed *within its own territory*” and that the same had been true of “every [other] case in which [the Court had] held the act of state doctrine applicable.” *W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp.*, 493 U.S. 400, 405 (1990) (emphasis added). CITGO tries to explain away phrases like “committed within its own territory” as “simply shorthand for describing legitimate exercises of governmental power,” CITGO Br. 24, by which it seems to mean “sovereign” acts. But as this *Kirkpatrick* passage illustrates, the Supreme Court uses phrases like “performed within its own territory” for a purpose, not a synonym for “official acts.” The doctrine shields a foreign government’s act from judicial scrutiny only if the act *both* occurs within the foreign government’s territory *and* is an official, sovereign act, as evidenced by the many decisions refusing to “give effect to foreign government confiscations without compensation of property located in the United States.” *Alfred Dunhill of London, Inc. v. Republic of China*, 425 U.S. 682, 686-87 (1976); Spectrum Br. 9-10, 15-16. CITGO’s refusal to credit the fundamental and obvious difference between “legitimacy” and “extraterritoriality” for purposes of the act of state doctrine is pervasive.

CITGO tries to use *Banco Nacional De Cuba v. Sabbatino*, 376 U.S. 398 (1964), to chip away at the territorial limitation, arguing that the “doctrine, and [the

phrase ‘committed within its own territory’] in particular, are applied flexibly and consistent with its underlying purposes.” CITGO Br. 25. *Kirkpatrick*, however, rejected any notion that the doctrine could bar a claim though its requirements were not strictly satisfied:

The act of state doctrine is *not some vague doctrine* of abstention but a principle of decision ... [according to which] the act *within its own boundaries* of one sovereign State ... becomes ... a rule of decision for the courts of this country. ... [And] underlying policies [do *not*] justify[] expansion of the act of state doctrine.

493 U.S. at 406, 409; Spectrum Br. 12 n.1, 28 n.6, 36, 44. The only role the Court left for flexibility and underlying policies is “in deciding whether, despite the doctrine’s technical availability, it should nonetheless *not* be invoked.” 493 U.S. at 409 (emphasis added); *see* Spectrum Br. 36-37. In fact, it was in that context – whether to adjudicate a claim despite the doctrine’s technical availability – that *Sabbatino* suggested the doctrine should not be “inflexible.” 376 U.S. at 428; *Kirkpatrick*, 493 U.S. at 409. Neither Ninth Circuit decision cited by CITGO purported to apply the doctrine to “acts outside the territory of the sovereign.” CITGO Br. 26 n.12. In *IAM II*, the court did not consider whether the relevant acts were performed extraterritorially. *See* 649 F.2d at 1358-62. And *In re Philippine National Bank*, the court determined that the sovereign act – a Philippine Supreme Court order that the Philippine National Bank was to transfer funds to the Republic of the Philippines – was intraterritorial. 397 F.3d 768, 770, 773 (2005). The

court's ensuing suggestion, in *dictum*, that the doctrine could be applied "flexibly" in light of its "underlying considerations," *id.* at 773, contradicted *Kirkpatrick* and therefore was wrong.

As Spectrum showed, at most only CITGO's co-conspirators' act of agreeing to fix prices is being challenged as illegal here. Spectrum Br. 12-13, 34. And citing *Airline Pilots Assoc. v. TACA International Airlines* and other decisions, Spectrum showed that the sovereign members' act of entering into the global oil conspiracy was inherently and inescapably extraterritorial because it was not "able to come to complete fruition within [their respective] dominion[s]." 748 F.2d 965, 967, 969-71 (5th Cir. 1984) (quotation marks omitted); Spectrum Br. 9-11. CITGO tries to characterize *Airline Pilots* as a typical expropriation case, CITGO Br. 25 n.10, but it is irrelevant whether the agreement is deemed "property" or a contract; either way, as *Airline Pilots* shows, multilateral agreements covering matters that transcend a single sovereign's borders are *by definition* extraterritorial.²

CITGO strains to avoid the significance – and inherent extraterritoriality – of the sovereign conspirators' act of entering into the conspiracy. Instead, like the

² The authorities Lukoil cites for the proposition that "the proper analysis turns on whether the object of the relevant act is within the jurisdiction of the sovereign, [and here] the crude oil production decisions ... apply to resources within the jurisdiction of each country," Br. for Defs.-Appellees Lukoil Americas Corp. *et al.* ("Lukoil Br.") 23-24, are consistent with and indeed confirm Spectrum's analysis. Spectrum Br. 11-13.

trial court, CITGO focuses on the member nations' "production decisions concerning crude oil over which it exercises dominion." CITGO Br. 25. Quoting *IAM I*, CITGO argues that a "sovereign nation's production decisions ... do not lose their sovereign character merely because governmental representatives met or consulted with officials of other governments in another country." CITGO Br. 25. CITGO confuses the territorial limitation with the distinct issue of whether the conduct is "sovereign" rather than "commercial" (an issue addressed below). Moreover, CITGO cannot eat its cake and have it, too; if it is appropriate to account for the location of *some* acts implementing the global oil conspiracy, such as domestic production activity, then it is necessary to account for the location of *all* such acts.

Such an accounting reveals a conspiracy unbounded by the sovereign members' territories. Spectrum Br. 13-15. CITGO dismisses this accounting on various grounds, none of which has merit. First, CITGO contends that "no factual allegation links a foreign sovereign's interest in [extraterritorial] oil fields to crude oil production policies." CITGO Br. 26. But the only reasonable inference to draw from the extensive allegations of a global oil price-fixing conspiracy is that the more supply the cartel members control and bring within their conspiracy, the more effective their conspiracy becomes.

Second, according to CITGO, "[d]ecisions by national oil companies to

develop their resources or to invest in downstream assets [such as refineries or distribution facilities] are not unlawful under the Sherman Act.” CITGO Br. 26.

Even if true, that is irrelevant because “acts which are in themselves legal lose that character when they become constituent elements of an unlawful scheme.”

Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690, 707 (1962);

Spectrum Br. 33-34. And as Spectrum has explained, the sovereign conspirators’ acquisition of downstream refineries and distribution facilities eliminates the threat posed by independent buyers. Spectrum Br. 4-6, 13.

Third, according to CITGO, the fact that the conspiracy’s avowed purpose and demonstrable effect is extraterritorial – increasing the price of oil and RPPs globally, including in the United States, Spectrum Br. 5, 14 – “does not in any way alter the sovereign nature of the conduct.” CITGO Br. 27-28. CITGO again confuses the issues of whether the acts are “sovereign” with whether they are extraterritorial. Moreover, “[a]cts of foreign governments purporting to have extraterritorial effect ... by definition[] fall[] outside the scope of the act of state doctrine.” *Allied Bank v. Banco Credito Agricola*, 757 F.2d 516, 522 (2d Cir. 1985); Spectrum Br. 10-11. CITGO again offers *Philippine National* as a counter-example, but the extraterritorial effects of the Philippine government’s act were incidental: the Singapore-based accounts of the Philippine bank subject to the court order were merely weigh stations for the funds, which were already *en route* to the

Philippines. 397 F.3d at 774.

And fourth, CITGO says that a “legitimate exercise[] of governmental power ... do[es] not lose [its] sovereign character merely because governmental representatives met or consulted with officials of other governments in another country.” CITGO Br. 25. Again, CITGO confuses legitimacy and extraterritoriality. CITGO adds that if the extraterritorial location of the sovereign members’ negotiations (*e.g.*, Vienna) were determinative, then “all manner of foreign sovereign conduct taking place on a neutral country’s soil” “would [be] subject to [judicial] review.” CITGO Br. 26. But as explained before, the negotiations’ location is just one of many facts illustrating the conspiracy’s extraterritorial nature. Spectrum Br. 14 n.2.

CITGO’s concern about agreements negotiated “on a neutral country’s soil” is noteworthy for what it fails to acknowledge – what CITGO never acknowledges: the cartel’s members, and Venezuela in particular, have penetrated the United States in various ways. They have targeted American consumers. To further their anticompetitive aims, they have conspired with an American company, CITGO (Count I), and a sovereign member of the cartel, Venezuela, has acquired an American refiner, CITGO, to further its anticompetitive purposes within the United States (Count III). Spectrum Br. 15-16. Even if the act of state doctrine were not narrowly confined to acts occurring wholly within a foreign sovereign’s territory,

the doctrine surely would not shield acts and instrumentalities of foreign sovereigns that target the United States or breach its borders. *See, e.g., Dunhill*, 425 U.S. at 686-87 (“[T]he United States courts will not give effect to foreign government confiscations without compensation of property located in the United States.”); Spectrum Br. 15-17.

B. The Sovereign Conspirators’ Conduct Is Commercial

CITGO urges the Court not to “create” a commercial activity “exception” to the act of state doctrine, *see* CITGO Br. 28-30, but, as Spectrum has explained, the pertinent question is whether this Court should “extend[]” the doctrine’s protection of “public and governmental acts” to reach “private and commercial acts.” *Dunhill*, 425 U.S. at 694-706; Spectrum Br. 17-20. CITGO has provided no justification for such an extension.

Trying to dodge *Walter Fuller Aircraft Sales, Inc. v. Republic of Philippines*, 965 F.2d 1375 (5th Cir. 1992) – in which this Court clearly implied that the doctrine does not cover commercial activity – CITGO suggests that *Walter Fuller* did not resolve whether to extend the doctrine’s protection to commercial activity because “the case required no adjudication of the validity of any public act.” CITGO Br. 29 n.15. CITGO misses the reason why no “public act” was at issue: the Court had already determined that the act at issue was “commercial.” 965 F.2d at 1386, 1388; *see also* Spectrum Br. 20-21; *Compania de Gas de Nuevo Laredo v.*

Entex, 686 F.2d 322, 327 (5th Cir. 1982) (distinguishing other decision on ground that it “fit[] well within the ‘purely commercial’ exception to the act of state doctrine articulated in *Dunhill*”).³

Even if the issue were not resolved by *Walter Fuller* as a matter of Circuit law, it would be resolved by the compelling reasons against extending the doctrine to commercial activity articulated by the *Dunhill* plurality, 425 U.S. at 694-706, and by Congress in enacting the Foreign Sovereign Immunities Act (“FSIA”) – reasons that CITGO ignores. Spectrum Br. 17-19. Much like the Ninth Circuit in *IAM II*, CITGO says that Congress could not “have intended the FSIA’s commercial activity exception to apply with equal force to the act of state doctrine” because the “FSIA in no way affects application of the act of state doctrine.” CITGO Br. 30 (quotation marks omitted). But, the FSIA did not affect the act of state doctrine because, as Spectrum has shown, the courts had already been refusing to extend the doctrine to commercial acts – a refusal Congress fully supported, lest “sovereign immunity [be permitted] to reenter through the back

³ Spectrum cited *Prewitt Enters., Inc. v. OPEC*, No. 00-0865, 2001 U.S. Dist. LEXIS 4141 (N.D. Ala. 2001), and *Empresa Cubana Exportadora v. Lamborn*, 652 F.2d 231, 238 (2d Cir. 1981), not to “support [its] purported exception,” CITGO Br. 29, but for the distinct proposition that the sovereign members’ conduct is commercial, and although *Empresa* applied the doctrine to Cuba’s seizure of assets, it “contrast[ed]” that seizure with a government-owned corporation’s “commercial dealings ... as Cuba’s sugar merchant to the world,” 652 F.2d at 238. Spectrum Br. 22, 25.

door.” ROA 4630; Spectrum Br. 18-19, 39 & n.10.⁴ The circuit courts that have extended the act of state doctrine to commercial activities, *see* CITGO Br. 29, similarly misunderstood (or ignored) the FSIA’s legislative history and thereby undermined Congress’s restrictive approach to sovereign immunity.⁵ Spectrum Br. 39 & n.10. This Court should follow the clear signals of the Supreme Court, Congress, and prior Fifth Circuit decisions rather than these poorly reasoned, out-of-Circuit decisions. *See also Hunt v. Mobil Oil Corp.*, 550 F.2d 68, 72-73, 79 (2d Cir. 1977) (embracing *Dunhill*’s distinction between commercial and sovereign acts under the act of state doctrine).

Spectrum showed at length that the sovereign conspirators’ act of agreeing to fix oil prices in a global marketplace is commercial because such an anticompetitive act can be and typically is performed by private companies – indeed, Lukoil and CITGO are co-conspirators. Spectrum Br. 21-27. Rather than confront these facts, CITGO, invoking *IAM I*, asserts that the “governmental nature of a foreign state’s oil policy does not morph into commercial activity just because it is developed in consultation with other nations.” CITGO Br. 25, 28. But the

⁴ Neither *Republic of Austria v. Altmann*, 541 U.S. 677, 700-01 (2004), nor *Callejo v. Bancomer*, 764 F.2d 1101, 1113 n.12 (5th Cir. 1985), addressed the relationship between the FSIA’s commercial activity exception and the act of state doctrine’s scope. *Cf.* CITGO Br. 30.

⁵ The court in *Kalamazoo Spice Extraction Co. v. Provisional Military Gov’t* was “doubtful” only that the *Dunhill* plurality opinion had “precedential value.” 729 F.2d 422, 425 n.3, 426 n.5 (1984).

member nations did not just “consult” with each other; they *agreed* to coordinate their crude oil production in order to fix oil prices globally. Further, Spectrum has demonstrated why *IAMI*'s analysis – which the Ninth Circuit did not embrace – was wrong, and CITGO responds with silence. Spectrum Br. 39-40.

CITGO's real strategy, however, is not to show that the act of agreeing to fix prices is governmental rather than commercial, but to shift the focus to the sovereign members' individual domestic production activities. But, again, it is their act of agreeing to fix prices that is illegal under the antitrust laws, and therefore it is that act which must be assessed. Spectrum Br. 12-13, 34. In any event, CITGO's tactic fails on its own terms. CITGO observes that the “laws of OPEC's Member Countries ... reserve control over natural resource exploitation ... to the State.” CITGO Br. 3-4. It does not follow, however, that all “[n]atural resource decisions of foreign sovereigns ... are governmental in nature, not commercial.” CITGO Br. 28. As Spectrum has explained, such control is a predicate of any act that the sovereign takes, commercial or governmental. Spectrum Br. 24. And Spectrum has shown that the manner in which the member nations have carried on their domestic production activities – locating, extracting, refining, and selling oil into a global marketplace at profit-maximizing prices, just as private oil companies do – clearly renders those acts commercial. Spectrum Br.

24-26.⁶

Moreover, CITGO offers no answer to Spectrum's plainly correct point that the nature of CITGO's conduct – governmental or commercial – cannot be determined solely by reference to a single isolated act implementing the price-fixing agreement – such as a cartel member's domestic production decision – but rather must be determined by reference to *all* those acts – including the sovereign members' acquisitions of oil fields, refineries, and distribution facilities around the world, export of oil into a global marketplace at profit-maximizing prices, and collection of key market data. When thus considered as a whole, the oil conspiracy is undoubtedly commercial. Spectrum Br. 26-27.⁷

C. Count I Does Not Require Invalidation of a Sovereign's Act

Desperately trying to make this case look like *IAM*, CITGO insists that Spectrum “directly challenge[s] the crude oil output decisions of foreign

⁶ Lukoil and Aramco collect decisions that purportedly establish that government conduct relating to natural resources is necessarily sovereign rather than commercial in nature. Lukoil Br. 10-11; Br. of Appellees Saudi Petroleum Int'l *et al.* (“Aramco Br.”) 21, 36. But the relevant act for act-of-state purposes in each of those cases was, unlike here, a decision regarding licensing or export controls for a company (or a treaty relating to such decisions) or the expropriation of property.

⁷ Some *amici* claim their conduct is not commercial because of the importance of oil revenue for their citizens' general welfare. *See, e.g.*, Br. of *Amicus Curiae* United Arab Emirates (“UAE Br.”) 5-6. But whether a foreign sovereign's act is commercial rather than governmental is determined by its nature rather than purpose. Spectrum Br. 21-22.

sovereigns.” CITGO Br. 17, 19-20. As reiterated above, however, CITGO mischaracterizes Spectrum’s claims. True, Count III would require the Court to declare that Venezuela’s participation in the conspiracy violates the antitrust laws, and to the extent that it has penetrated the sovereign territory of the United States through a wholly owned American subsidiary, to remedy that violation. Venezuela would still be free to participate in the cartel but could not facilitate its anticompetitive scheme through wholly owned American subsidiaries, such as CITGO. But Count I does not require the Court to declare illegal *any* act by a foreign sovereign; it would invalidate only CITGO’s conduct. Consequently, regardless of whether the foreign sovereigns’ conduct was extraterritorial or commercial, the act of state doctrine does not apply to Count I. Spectrum Br. 27-36.

CITGO’s argument that “plaintiffs do not avoid the act of state doctrine simply by failing to name sovereign nations as defendants,” CITGO Br. 21-22, merely knocks down a straw man. Spectrum has never claimed that the defendant’s identity alone determines whether the doctrine applies, but it must be accounted for when evaluating whether “the outcome of the case turns upon ... the effect of official action by a foreign sovereign.” *Kirkpatrick*, 493 U.S. at 406.

CITGO cries that the complaint is “littered with averments” about foreign sovereigns’ price-fixing activities. CITGO Br. 4-6, 20. True. But as Spectrum has

explained, “[r]egardless of what the court’s factual findings may suggest as to the legality of the [sovereign conspirators’ conduct], its legality is simply not a question to be decided [under Count I], and there is thus no occasion to apply the rule of decision that the act of state doctrine requires.” *Kirkpatrick*, 493 U.S. at 406; *Spectrum* 27-32.⁸

CITGO persists in claiming that, even under Count I, the Court must declare a foreign sovereign’s act illegal. It asserts conclusorily that “the complaint[] ... allege[s] *one* price-fixing conspiracy in which both defendants and foreign sovereigns allegedly participate.” CITGO Br. 22. But *Spectrum* has shown that, under the antitrust laws, a court may declare illegal a conspirator’s act of agreeing without declaring illegal a co-conspirator’s reciprocal act of agreeing. *Spectrum* Br. 30-31; *see also* IV WHARTON’S CRIMINAL LAW, § 683 (2008) (“The fact that a person lacks capacity to commit the target offense does not prevent conspiracy from being committed”).⁹ Instead, echoing the trial court, CITGO says that

⁸ *Kirkpatrick* repudiates the suggestion in *Occidental Petroleum Corp. v. Buttes Gas & Oil Co.*, 331 F.Supp. 92, 110 (C.D. Cal. 1971), *aff’d*, 461 F.2d 1261 (9th Cir. 1972), and *Hunt*, 550 F.2d at 77, that the doctrine bars a claim if it would require the court to “examine[] the *motivation* of the” sovereign. *Spectrum* Br. 27-29; *cf.* CITGO Br. 23 n.9, 40 n.18.

⁹ Lukoil states that this Court held in *Entex* that “the conspiracy claim was barred by the act of state doctrine.” Lukoil Br. 21. *Entex* involved a civil conspiracy, which is not itself unlawful but rather a means by which to hold one vicarious liable for another’s wrong. *Insurance Co. v. Morris*, 981 S.W.2d 667, 675 (Tex. 1998). Thus, *Entex* held that the conspiracy claim was barred because it “would require a determination of the legality of the Mexican government’s action

Spectrum “only seek[s] to hold ... CITGO ... responsible for ‘facilitating’ the supposed crude oil production cartel.” CITGO Br. 6, 16, 21. CITGO then suggests that because the “‘facilitating’ acts ... are patently lawful acts,” the only way CITGO could have violated the antitrust laws would be if it “facilitated” conduct that is illegal under the antitrust laws, but that cannot be determined here because, under the act of state doctrine, the sovereign conspirators’ conduct must be “deem[ed] valid.” CITGO Br. 16, 21, 24 (quotation marks omitted). CITGO, however, confronts *none* of Spectrum’s reasons for why this analysis is wrong: Count I alleges that CITGO itself *conspired* with the member nations and is therefore liable as a principal, not vicariously as an aider¹⁰; that CITGO’s facilitating acts might be legal standing alone does not insulate them from the antitrust laws when they are constituent elements of an unlawful scheme; and it is irrelevant under the antitrust laws whether CITGO is capable by itself of accomplishing the conspiracy’s objective, namely, fixing oil prices. Spectrum Br. 32-34.

Spectrum’s opening brief observed that if the act of state doctrine barred

in appointing an ‘intervenor to take over CGNL’s operations in Nuevo Laredo.’” 686 F.2d at 326. In contrast, Spectrum charges CITGO with *antitrust* conspiracy, which is unlawful in itself. Consequently, CITGO’s liability does not depend upon the illegality of any other person’s conduct.

¹⁰ Under Count I, CITGO’s material assistance of the conspiracy – “facilitation,” in CITGO’s parlance – is evidence of CITGO’s agreement. Spectrum Br. 33.

Count I, then ExxonMobil could formally join the conspiracy and suppress its oil production without violating the antitrust laws. Spectrum Br. 31. CITGO dismisses this concern as “hypothetical and hyperbolic.” CITGO Br. 23-24. Hardly; not only did the FTC think it worth addressing, but Lukoil, one of the largest private oil companies in the world, has joined the conspiracy. In fact, even if Count I required the Court to declare CITGO’s co-conspirators’ conduct illegal, the doctrine still would not bar Count I because there would be a price-fixing agreement between at least two private companies, namely, CITGO and Lukoil. Spectrum Br. 34-35. CITGO objects that Spectrum has not “plausibly alleg[ed] a conspiracy among only private actors to fix the price of RPPs.” CITGO Br. 23. But Spectrum *has* alleged an agreement among CITGO, Lukoil, and other private companies to fix the price of *crude oil*, and *that* agreement justifies holding CITGO liable without running afoul of the act of state doctrine.¹¹

¹¹ *Amicus* Chamber of Commerce’s concern about the “enormous practical harms and risks to American business from allowing these suits to proceed” is unfounded. Br. of the Chamber of Commerce of the United States of America (“Chamber Br.”) 21. Count I should not discourage foreign sovereigns from investing in the U.S., and Count III would discourage foreign sovereigns only from acquiring American subsidiaries to further in the United States anticompetitive conspiracies in which the sovereigns participate. *Cf.* Chamber Br. 22-24. Nor need foreign sovereigns and American oil companies fear forming procompetitive joint ventures, or merely sharing information or holding joint meetings. Spectrum adduces CITGO’s practice of sharing information as but one indication among many – including that CITGO and OPEC have had common high-ranking officials and that CITGO officials prepared OPEC’s Long-Term Strategy – of an agreement between CITGO and foreign sovereigns to suppress the supply of oil globally.

Finally, even if Count I required the Court to declare the sovereign conspirators' conduct illegal, the act of state doctrine would not bar the claim because, as Spectrum has explained, the Court need not *invalidate* their conduct. Spectrum 35-36. Notwithstanding CITGO's bald assertions that Spectrum seeks "to invalidate the sovereign power of nations to control their own resources," CITGO Br. 15, Count I would not, as reiterated elsewhere, require the Court to "undo or disregard" the "legal effect" of any foreign sovereign's act. *Kirkpatrick*, 493 U.S. at 405, 407.

D. Applying the Doctrine Would Not Serve Its Underlying Policies

Opportunistically admitting that the act of state doctrine is "not some vague doctrine of abstention," CITGO argues that "[i]f the doctrine applies, it should be applied." CITGO Br. 31 (quoting *Kirkpatrick*, 493 U.S. at 406). But the doctrine's underlying policies "should be considered in deciding whether, despite the doctrine's technical availability, it should nonetheless *not* be invoked." *Kirkpatrick*, 493 U.S. at 409 (emphasis added); Spectrum Br. 36-37. Ignoring Spectrum's arguments, Spectrum Br. 37-38, CITGO repeats the meritless points it

Spectrum Br. 5-6; *cf.* Chamber Br. 24-26. Like any lawsuit, this lawsuit's success may spur "copycat lawsuits," Chamber Br. 25, but those lawsuits will succeed only if American corporations become a member or wholly owned instrumentality of a price-fixing cartel.

makes in the context of its political question defense, CITGO Br. 31-32.¹²

E. *IAM* Is Neither Controlling Nor Instructive

CITGO's attempt to show that "there is no difference between [Spectrum's claims] and *IAM*" fails. CITGO Br. 35. CITGO claims that *IAM II* applied the act of state doctrine even though "some activities [were] outside each nation's borders." CITGO Br. 33. The Ninth Circuit, however, overlooked the inherently extraterritorial character of the global oil conspiracy. *See* 649 F.2d at 1358-62. And as Spectrum has explained, it certainly did not account for the subsequent expansion of the conspiracy beyond the sovereign members' borders and even into the United States, as the conspiracy welcomed private companies from non-member countries, such as Lukoil and CITGO, and acquired oil fields, refineries, and distribution facilities around the world to further its anticompetitive aim. Spectrum Br. 40-41. CITGO insists still that "[p]roduction decisions are made today by foreign sovereigns exercising core governmental authority." CITGO Br. 34. Of course, as explained above, the act of agreeing to coordinate production, not those production decisions, is the relevant unlawful act. Moreover, the post-*IAM II*

¹² For those same reasons, *amicus* UAE's suggestion that the Court affirm on the alternative ground of international comity, UAE Br. 9 n.3, is meritless. *See also* ROA 3988-92; Pls.' Opp'n to Served Defs.' Mot. to Dismiss and Mem. in Supp., No. 06-3569, Doc. No. 128 ("Joint Pls.' Opp."), at 42-45. Moreover, this "fleeting" request by an *amicus* without "analysis or authority" is insufficient to justify consideration. *Price v. Digital Equipment Corp.*, 846 F.2d 1026, 1028 (5th Cir. 1988).

developments in the composition of the conspiracy render it extraterritorial and commercial in a way it had not been.

Ignoring everything Spectrum said about the nature of the requested relief, Spectrum Br. 5-6, 30, 35-37, 41, 46-48, CITGO claims the requested relief is “virtually indistinguishable” from that sought in *IAM* because Spectrum would “impose damages on CITGO for Venezuela’s role as an ‘active member[] of the OPEC conspiracy.’” CITGO Br. 34-35. But unlike the injunctive relief sought against OPEC and its members in *IAM*, such monetary relief against CITGO would not “force foreign sovereigns to alter their chosen means of developing their own natural resources,” CITGO Br. 34, because the money would come out of *CITGO*’s pocket. The sovereign members could continue to coordinate their crude oil production as they wish, provided they did not press American assets into service of their anticompetitive scheme.

CITGO either ignores completely the remaining distinctions Spectrum drew between its claims and *IAM* or offers responses to those distinctions that Spectrum has already rebutted. *See* Spectrum Br. 38-41.

III. THE POLITICAL QUESTION DOCTRINE DOES NOT BAR THIS SUIT

“[T]he first *Baker* formulation is primarily concerned with direct challenges to actions taken by a coordinate branch of the federal government.” *Lane v. Halliburton*, 529 F.3d 548, 560 (5th Cir. 2008). “First, [CITGO] must demonstrate

that the claims against it will require reexamination of a decision by the [political branches]. Then, it must demonstrate that the [Government] decision at issue is ... insulated from judicial review.” *Id.* CITGO contends that this case “raise[s] sensitive foreign policy considerations that are constitutionally committed to the political branches.” CITGO Br. 45. According to CITGO, “The United States government has never pursued antitrust sanctions against any oil producing sovereign It has instead consistently opted for cooperation and constructive diplomacy with oil producing nations as reflected in numerous public policy statements made by members of the Executive Branch over decades,” which are collected in CITGO’s Chronology. CITGO Br. 38-39, 41-45.

For several reasons, this case does not require reexamination of United States foreign policy. Few of the outdated statements collected in the Chronology addressed antitrust enforcement actions; as CITGO recognizes, those that did opposed only public enforcement actions seeking to compel foreign sovereigns to alter production levels. In a way that a private action could not, the United States’ mere decision to bring such a suit would threaten the alleged “delicate balance among nations over petroleum.” CITGO Br. 15. But Spectrum obviously does not ask the Court to reconsider the Executive’s decision to refrain from bringing an

antitrust action. Spectrum Br. 46-47.¹³

Moreover, CITGO's political-question analysis rests on the same mischaracterization of Spectrum's claims as its act-of-state analysis. CITGO Br. 36, 38. Because the Chronology's statements did not address the propriety of a Sherman Act suit against an American company furthering a price-fixing conspiracy targeting American consumers – a suit that would not compel foreign sovereigns to alter, or even refrain from coordinating, their production levels – Spectrum's claims simply do not require reexamination of the putative policy documented in the Chronology. Spectrum Br. 45, 47-49, 52-53. In fact,

¹³ Aramco offers the NOPEC Act, S. 879, 110th CONG. (2007); H.R. 2264, 110th CONG. (2007), as another example of political opposition to this suit. Aramco Br. 45-46. Whatever meaning this unenacted bill holds, it seems to favor adjudication here. The *current* President and Secretary of State voted for the bill while in the Senate – the Secretary even co-sponsored it. 153 CONG. REC. S. 7854, 7869-70 (2007) (NOPEC offered as S. AMDT. NO. 1519 to S. AMDT. NO. 1502 to H.R. 6, 110th Cong. (2007)); 154 CONG. REC. S. 3790, 3790 (2008). The prior Administration's discomfort with the bill arose from the concern that NOPEC called upon the Justice Department to bring an enforcement action directly against foreign sovereigns, and thus threatened the sovereign-to-sovereign confrontation addressed in the Chronology. Separately, Aramco says that NOPEC shows that a foreign sovereign "is not a person ... within the terms of the [Sherman] Act." Aramco Br. 49 n.54 (quotation marks omitted). By court order, this issue was excluded from the briefing on the motion that is the subject of this appeal. ROA 5375-76. Moreover, Spectrum refuted this argument in response to CITGO's superseded motion to dismiss. ROA 4428-32. And NOPEC "makes clear" – that is, confirms – "that foreign governments are 'persons' subject to suit under the antitrust laws." H.R. REP. NO. 110-160, at 3 (2007). In addition, the bill indicates that Congress believes *IAM* was wrongly decided because the OPEC conspiracy is "commercial activity" outside the reach of the act of state doctrine. *Id.* at 5; S. REP. NO. 110-68, at 3-4 (2007).

Spectrums' claims accord with the FTC's conclusion that it "would be illegal for U.S. companies to enter into an agreement with OPEC or any OPEC nation for the purposes of restricting output." ROA 4872; Spectrum Br. 49, 53.¹⁴

Nor do Spectrum's claims require resolution of a question insulated from judicial review. As Spectrum has shown, this case asks the Court merely to interpret and apply federal statutes to nonpolitical facts. Spectrum Br. 49-53. "If that were the standard," CITGO responds, "the political question doctrine would *never* be applied to preclude consideration of claims under any federal statute." CITGO Br. 39. CITGO scatters throughout its brief cases in which the court found a nonjusticiable political question even though the "claims [were brought] under [a] federal statute," CITGO Br. 39-40 & n.18, 47, or the "claims involv[ed] antitrust issues," CITGO Br. 40 n.18, or the FSIA may have applied, CITGO Br. 47, or there was "a statute granting a private right of action," CITGO Br. 48.

But Spectrum has never claimed that the political question doctrine is always inapplicable when a federal statute is at issue in the case. *See* Spectrum Br. 52 n.13. Spectrum's point is this: if a court can resolve a question merely by interpreting and applying a federal statute – which is "one of the Judiciary's characteristic roles [and] responsibilit[ies]," *Japan Whaling Ass'n v. American*

¹⁴ Though "independent," CITGO Br. 46, the FTC's view is significant because Congress and the President created and oversee it. *See FCC v. Fox TV Stations, Inc.*, 129 S.Ct. 1800, 1815 (2009) (plurality).

Cetacean Soc’y, 478 U.S. 221, 230 (1986) – then *that* question is not a nonjusticiable political question even if the question involves an issue constitutionally committed to the political branches. “Resolving whether and how [a federal statute] applies ... involves simply implementing policy determinations Congress [and the President] ha[ve] already made.” *EEOC v. Peabody W. Coal Co.*, 400 F.3d 774, 784 (9th Cir. 2005) (quotation marks omitted); *Spectrum Br.* 49-54. In such a case, the political question doctrine is inapplicable unless the case also presents *another* question – for example, the resolution of a sovereign border dispute – that is itself committed to the political branches *and* that cannot be resolved by applying a federal statute. *See Baker*, 369 U.S. at 217 (doctrine “is one of ‘political questions,’ not one of ‘political cases’”).

As *Spectrum* has explained, all the legal questions that must be resolved here – for example, whether price-fixing agreements are illegal, whether a foreign sovereign’s American subsidiary is immune, what relief is available – can be resolved by interpreting federal statutes, such as the Sherman Act and the FSIA, and applying them to the facts. And none of the relevant facts entails a “political” determination.

CITGO’s authorities are not to the contrary. There was *no* political question in *Occidental Petroleum Corp. v. Buttes Gas & Oil Co.*, 331 F.Supp. 92, 104 (C.D. Cal. 1971). In all the other decisions cited by CITGO, the claim was

nonjusticiable, even though federal statutes resolved some questions in the case, because the claim also required the court to decide a question involving an issue constitutionally committed to the political branches that could not be resolved by applying a federal statute.¹⁵

CITGO addresses only two authorities upon which Spectrum relies. *Japan Whaling*, CITGO says, “involved the U.S. Secretary of Commerce’s refusal to implement a statute that Congress enacted and said nothing about adjudicating the conduct of foreign sovereigns.” CITGO Br. 50. Indeed. Thus, *Japan Whaling* was far closer to raising a nonjusticiable political question than this case because the claim there directly challenged a high Executive official’s handling of a diplomatic situation. 478 U.S. at 226-230; Spectrum Br. 51, 56. And CITGO fails to note, CITGO Br. 50, that the Supreme Court’s reversal of *Simon v. Republic of*

¹⁵ See, e.g., *Schroder v. Bush*, 263 F.3d 1169, 1175 (10th Cir. 2001) (no federal statute covering “oversight of the Justice Department’s enforcement of antitrust laws”; “decision of whether or not to prosecute ... is a decision firmly committed by the constitution to the executive branch”); *Lin v. United States*, 561 F.3d 502, 503-04, 506 (D.C. Cir. 2009) (statute for issuing passport but no statute for resolving “antecedent question” of “[i]dentifying Taiwan’s sovereign”); *Schneider v. Kissinger*, 412 F.3d 190, 192, 196-97 (D.C. Cir. 2005) (jurisdiction under Federal Tort Claims Act but no statute for evaluating whether “it was proper for [National Security Adviser, at President’s direction,] to support covert actions” abroad); *Aktepe v. USA*, 105 F.3d 1400, 1402-04 (11th Cir. 1997) (jurisdiction under Public Vessels Act, cause of action under Death on the High Seas Act, but no statute for “determin[ing] whether the Navy conducted the missile firing drill in a negligent manner”); *Dickson v. Ford*, 521 F.2d 234, 236 (5th Cir. 1975) (federal statute noted by CITGO – Emergency Security Assistance Act – was *subject of constitutional challenge*).

Iraq, 529 F.3d 1187 (D.C. Cir. 2008), had nothing to do with the political question doctrine. *Republic of Iraq v. Beaty*, 129 S.Ct. 2183 (2009); see Spectrum Br. 51-52, 56.

CITGO's argument with respect to the other *Baker* markers is the same as with respect to the first: Spectrum in effect seeks an order controlling foreign sovereigns' production decisions, in contravention of the foreign policy documented in the Chronology. CITGO Br. 36, 38-39, 44, 47-49, 51-53. But again, that is not what Spectrum seeks, and the Chronology's policy statements did not address claims like Spectrum's. Moreover, the conclusion that the other *Baker* markers are absent follows ineluctably from the fact that the interpretation and application of federal statutes to nonpolitical factual issues resolves all the questions that must be decided here. Spectrum Br. 53-57. "[I]f the political branches" – not individual former members but the current Congress and President – "decide [that antitrust] suits against a foreign sovereign are contrary to the foreign policy of the Nation, then they may by law remove them from [the Court's] jurisdiction." *Simon*, 529 F.3d at 1197; Spectrum Br. 56-57.¹⁶

Finally, CITGO does not dispute that the fifth *Baker* test is inapposite because this case does not involve an emergency. Spectrum Br. 57.

¹⁶ CITGO's point that "there is no universal consensus on what market principles apply to a foreign nation's export of its natural resources," CITGO Br. 48 n.30, is irrelevant because Spectrum's claims arise under the federal antitrust laws.

IV. THE RECORD

CITGO's Chronology and its declarations from various former Government officials should be excluded as irrelevant: they only oppose litigation seeking to compel OPEC nations to alter their production levels. CITGO Br. 40-44, 53-57. Moreover, the Chronology's statements should be excluded because CITGO has selectively reprinted them without context. *Korematsu v. U.S.*, 584 F.Supp. 1406, 1415-1416 (C.D. Cal. 1984); *U.S. v. Judge*, 846 F.2d 274, 276-277 (5th Cir. 1988); *see also* Spectrum Br. 46 n.11. And the Chronology and the declarations should be excluded because Spectrum was denied an opportunity to take relevant discovery, despite prominently and repeatedly requesting that opportunity (a request not limited to eight declarants) and patently disagreeing with CITGO's characterization of U.S. policy vis-à-vis *Spectrum's* claims. Spectrum Br. 46 n.11; ROA 3971; Joint Pls.' Opp. 9 (same); *see Scheurer v. Rhodes*, 416 U.S. 232, 249-250 (1974); *Villar v. Crowley Maritime Corp.*, 990 F.2d 1489, 1501-03 (5th Cir. 1993); *cf.* CITGO Br. 40-41 & n.19, 54 & n.33.

CONCLUSION

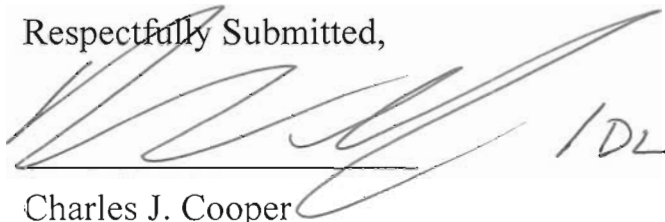
For the reasons stated here and previously, the Court should reverse the judgment and remand for further proceedings.

August 12, 2009

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Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'C. J. Cooper', with the initials 'IDL' written to the right of the signature.

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing document has been filed with the clerk of the court and served on the following by FedEx overnight delivery on this 12th day of August 2009.

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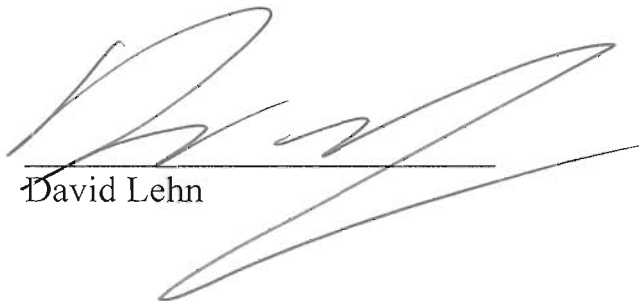
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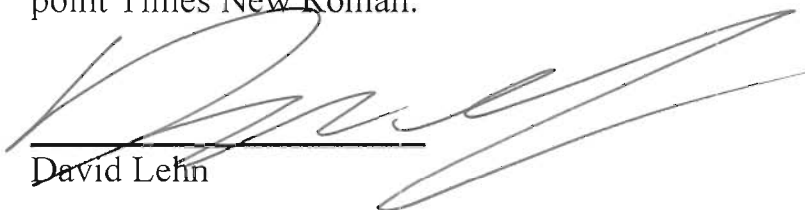


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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 6,996 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) and Fifth Circuit Rule 32.2.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and Fifth Circuit Rule 32.1 and with the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office 2003 in 14-point Times New Roman.



A handwritten signature in black ink, appearing to read 'David Lehn', is written over a horizontal line. The signature is fluid and cursive, extending to the right of the line.

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