

IN THE SUPREME COURT OF THE UNITED STATES

ALLAN DOUGLAS WILSON --- PETITIONER

VS.

UNITED STATES DEPARTMENT OF STATE AND

UNITED STATES EMBASSY PHILIPPINES --- RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 28 U.S.C. § 1782, which authorizes federal district courts to order a "person" to provide testimony or produce documents "for use in a proceeding in a foreign or international tribunal," allows courts to order federal agencies to preserve and produce evidence through their representatives, or whether the federal government is categorically excluded from the statute's reach despite the absence of any textual distinction between the entity receiving a court order and the individuals who would

ultimately provide testimony or evidence, thereby depriving American citizens of their constitutional right to due process when seeking evidence for use in foreign proceedings.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

RELATED CASES

- Wilson v. United States Department of State and United States Embassy Philippines, No. 1:23-cv-00216-CJN, U.S. District Court for the District of Columbia. Judgment entered September 5, 2024.

- Wilson v. United States Department of State and United States Embassy Philippines, No. 24-5204, U.S. Court of Appeals for the District of Columbia Circuit. Judgment entered December 23, 2024.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was December 23, 2024.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1782(a) provides in relevant part:

"The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation."

1 U.S.C. § 1 provides in relevant part:

"In determining the meaning of any Act of Congress, unless the context indicates otherwise... the words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."

5 U.S.C. § 552(a)(3)(A) (Freedom of Information Act) provides in relevant part:

"[E]ach agency, upon any request for records... shall make the records promptly available to any person."

U.S. Const. amend. V provides in relevant part:

"No person shall... be deprived of life, liberty, or property, without due process of law..."

STATEMENT OF THE CASE

This case concerns the interpretation of 28 U.S.C. § 1782, which authorizes federal district courts to order persons within their districts to provide testimony or produce documents "for use in a proceeding in a foreign or international tribunal." At issue is whether the federal government and its agencies constitute "persons" under this statute, and thus whether evidence in possession of federal agencies can be ordered preserved or produced under § 1782 through testimony or document production by agency representatives. The case fundamentally implicates Petitioner's Fifth Amendment due process rights as an American citizen seeking to vindicate his legal interests in an international forum.

Petitioner Allan Douglas Wilson sought to preserve evidence held by federal agencies, specifically including evidence potentially held by the Central Intelligence Agency (CIA), for use in an international proceeding in Canada. Petitioner filed a motion under 28 U.S.C. § 1782 in the United States District Court for the District of Columbia requesting the court to order the CIA to preserve records subject to a Privacy Act request that Petitioner had submitted earlier in 2024 for evidence in a related foreign proceeding.

As noted in the District Court's order dated September 5, 2024, Wilson's motion was filed as part of an ongoing case against the Department of State and the United States Embassy Philippines, although the CIA was not a named party in that case. The District Court characterized this approach as "procedurally unusual," observing that "motions under § 1782 are typically brought as standalone suits, sometimes ex parte and sometimes against the party targeted by the discovery request."

Critically, Petitioner intended to use the § 1782 order in conjunction with a planned Freedom of Information Act (FOIA) request to the CIA. The preservation order was necessary to prevent the potential destruction of evidence that could be vital to Petitioner's proceedings in Canada, as well as to ensure that any subsequent FOIA request would yield complete records. Without the preservation order, Petitioner faced the substantial risk that relevant evidence would be destroyed or become otherwise unavailable during the pendency of the FOIA process.

The District Court denied Petitioner's motion, relying on the D.C. Circuit's precedent in *Al Fayed v. CIA*, 229 F.3d 272 (D.C. Cir. 2000), which held that the federal government is excluded from the definition of a "person" subject to discovery under § 1782.

Specifically, the court stated: "in another case involving the CIA, the Court of Appeals held that § 1782 does not grant courts the power to issue a subpoena to a federal agency because the CIA is not a 'person' within the meaning of § 1782."

Petitioner appealed to the United States Court of Appeals for the District of Columbia Circuit. On December 23, 2024, the Court of Appeals granted the government's motion

for summary affirmance, stating that "the district court correctly denied appellant's motion under 28 U.S.C. § 1782 to preserve evidence. See *Al Fayed v. CIA*, 229 F.3d 272, 274-77 (D.C. Cir. 2000) (concluding that the federal government is excluded from the definition of a 'person' subject to discovery under § 1782)." The Court determined that "the merits of the parties' positions are so clear as to warrant summary action."

The denial of Petitioner's motion to preserve evidence has potentially allowed for the destruction of evidence that could have been vital for his Canadian proceedings. This poses serious concerns regarding both the integrity of the international judicial process and fundamental principles of due process, particularly given that Petitioner, as an American citizen, has a constitutional right to access evidence necessary for the fair adjudication of his legal claims, regardless of whether those claims are being adjudicated in a domestic or foreign forum.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari because the D.C. Circuit's interpretation of 28 U.S.C. § 1782—that federal agencies are categorically exempt from its reach—represents a stark divergence from the statute's spirit and intention, conflicts with its text and purpose, and converts a tool meant to facilitate international judicial cooperation into an instrument of state secrecy. Most critically, this interpretation violates American citizens' constitutional due process rights when seeking evidence for proceedings abroad. The question presented is important, recurring, and ripe for this Court's review,

particularly given the implied prejudice in denying evidence preservation where that evidence may be subject to imminent destruction.

I. The D.C. Circuit's Ruling in *Al Fayed* Fundamentally Betrays the Spirit and Purpose of § 1782, Especially in the Context of Evidence Preservation

The D.C. Circuit's decision in *Al Fayed* represents a stark divergence from the core purpose of § 1782—to provide broad assistance to foreign tribunals and litigants in obtaining evidence located within the United States. By categorically excluding federal agencies from the statute's reach, the D.C. Circuit has transformed § 1782 from an instrument of international cooperation and transparency into a shield protecting government agencies from accountability in international proceedings.

This result undermines the statute's fundamental purpose in three critical ways:

1. It creates an asymmetrical system where the United States expects cooperation from foreign governments in providing evidence for U.S. proceedings while simultaneously exempting its own agencies from reciprocal obligations;
2. It places the interests of government secrecy above the interests of citizens seeking access to justice in international forums;
3. It arbitrarily limits the statute's reach based on distinctions not found in the statutory text.

The *Al Fayed* decision effectively creates a two-tiered system of justice: private entities and individuals can be ordered to provide evidence for use in foreign proceedings, while

government agencies—often the sole possessors of crucial evidence—remain insulated from such orders regardless of the importance of the evidence they hold.

In the specific context of evidence preservation, this problem is particularly acute.

When Petitioner sought an order requiring the CIA to preserve evidence that could later be requested through FOIA, the D.C. Circuit's interpretation prevented the court from issuing this minimally intrusive order. The result is that important evidence may now be destroyed with impunity—evidence that might have been vital to Petitioner's proceedings in Canada.

II. The D.C. Circuit's Interpretation Ignores the Distinction Between an Entity Receiving a Court Order and the Individuals Who Provide Testimony or Evidence

The D.C. Circuit in *Al Fayed* fundamentally erred by failing to recognize the distinction between the entity receiving a court order and the individuals who ultimately provide testimony or produce documents. Section 1782 states that a district court "may order him to give his testimony or statement or to produce a document or other thing." The statute does not differentiate between the "person" who receives the order and the individual who gives testimony.

When a court issues an order to a corporation under § 1782, it is understood that the corporation itself cannot literally testify—rather, a representative of the corporation provides testimony or produces documents on behalf of the entity. The same logic should apply to federal agencies:

1. A court can order a federal agency to provide testimony or documents;
2. The agency, through its representatives or officials, complies with that order;
3. Nothing in the text of § 1782 precludes this common-sense reading.

The D.C. Circuit's interpretation creates an artificial barrier to discovery that is not supported by the statutory text and serves only to insulate government agencies from transparency and accountability in international proceedings.

III. Section 1782 Functions as an International Counterpart to FOIA, with Agencies Similarly Required to Respond Through Representatives

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, provides a useful parallel that demonstrates the flawed reasoning in *Al Fayed*. Under FOIA, federal agencies are required to make records "promptly available to any person" upon request. When responding to FOIA requests, agencies necessarily act through their representatives—officials who search for, review, and produce responsive documents.

Like § 1782, FOIA does not explicitly define federal agencies as "persons" who can be ordered to produce documents. Instead, FOIA creates a mechanism through which individuals can request documents, and agencies comply with these requests through designated representatives.

The parallel is clear:

1. Both FOIA and § 1782 establish mechanisms for obtaining information from government agencies;
2. Both statutes necessarily contemplate that agencies will respond through their representatives;
3. Both statutes serve important public interests in transparency and access to information.

Section 1782 can be understood as extending this document production framework to the international context, allowing foreign tribunals and litigants to access evidence that might otherwise be unavailable. Just as FOIA does not require that federal agencies themselves be defined as "persons" in order to respond to information requests through their representatives, § 1782 should not be constrained by an artificially narrow reading of the term "person."

The D.C. Circuit's interpretation in *Al Fayed* creates an inconsistent legal framework where federal agencies must comply with transparency obligations under FOIA domestically but can evade similar obligations in the international context under § 1782. This inconsistency serves no legitimate purpose and only benefits government agencies seeking to avoid scrutiny of their actions in international proceedings.

In the specific case of Petitioner, the denial of the § 1782 motion to preserve evidence threatens to undermine the effectiveness of the FOIA process itself. Petitioner sought to ensure that evidence would remain available for a subsequent FOIA request.

Without the preservation order, the CIA retains the ability to destroy potentially

relevant evidence before it can be requested through FOIA—effectively circumventing both statutory schemes through a technical reading of § 1782 that serves no legitimate purpose.

IV. The Textual Analysis in *Al Fayed* Is Fundamentally Flawed

The *Al Fayed* decision relies on a rigid and mechanical application of the Dictionary Act, 1 U.S.C. § 1, without properly considering the context of § 1782. The Dictionary Act itself states that its definitions apply "unless the context indicates otherwise." The context of § 1782—a statute designed to provide broad discovery assistance for international proceedings—strongly indicates that federal agencies should be included.

Moreover, even if the term "person" in § 1782 excludes federal agencies themselves, nothing in the statute precludes a court from:

1. Ordering an agency to designate an appropriate official to provide testimony;
2. Ordering the preservation of documents in agency possession; or
3. Ordering the production of agency records through agency representatives.

The D.C. Circuit's interpretation creates a false dichotomy between the agency and its representatives, when in reality both corporate and government entities can only act through human agents. This technical parsing of language serves to frustrate the statute's purpose while providing cover for government secrecy, directly contradicting the intended reasoning for § 1782 to encourage openness and cooperation.

V. The D.C. Circuit's Interpretation Transforms § 1782 Into an Instrument of State Secrecy Rather Than Citizen Empowerment

The interpretation adopted by the D.C. Circuit leads to absurd results that Congress could not have intended:

1. Under the D.C. Circuit's reading, state and local government agencies can be subject to § 1782 orders, but federal agencies cannot—despite the fact that all government entities operate through representatives.
2. The interpretation creates a situation where evidence in possession of federal agencies is categorically shielded from discovery in international proceedings, regardless of its importance or unavailability from other sources.
3. It undermines international comity by preventing U.S. courts from ordering evidence preservation by federal agencies, while the United States expects similar cooperation from foreign governments.
4. It creates an inconsistency where federal agencies must respond to domestic FOIA requests through their representatives but are somehow categorically exempt from producing similar information for international proceedings under § 1782.
5. It transforms § 1782 from a tool intended to serve justice and transparency into an instrument protecting government agencies from accountability in international forums.

This Court has consistently emphasized that government transparency serves democratic values and citizen interests. As noted in *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976), the basic purpose of FOIA is "to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold

the governors accountable to the governed." The same principles should inform the interpretation of § 1782, which extends these values to the international context relating to the right of access to justice.

By categorically excluding federal agencies from § 1782's reach, the D.C. Circuit has privileged government secrecy over citizen interests and international cooperation, contradicting the statute's fundamental purpose.

VI. The Proper Focus Should Be on the Agency Representatives Who Provide Testimony or Documents

The text of § 1782 focuses on the provision of testimony or documents—actions that can only be performed by individuals, not by abstract entities. When a court orders an agency to produce evidence under § 1782, it is ultimately ordering human representatives to take specific actions:

1. To testify about matters within their knowledge;
2. To search for and produce documents within agency custody or control;
3. To preserve evidence that might otherwise be destroyed.

These actions are fundamentally the same whether performed by representatives of private corporations or representatives of government agencies. Nothing in § 1782 suggests that Congress intended to distinguish between these categories of representatives.

This approach mirrors how FOIA operates in practice. When a FOIA request is made to a federal agency, the agency designates employees to search for and produce responsive records. Similarly, under § 1782, an agency would designate appropriate representatives to provide testimony or produce documents. The *Al Fayed* decision artificially separates these concepts without textual support, creating a wall of government secrecy that serves state interests at the expense of citizen access to justice.

This Court's approach in *Sachs v. Republic of Austria*, 577 U.S. 27 (2015), though addressing a different statute, is instructive. There, this Court focused on the "gravamen" or essence of the action rather than formal distinctions. Similarly here, the essence of a § 1782 order is to compel testimony or document production by individuals who have access to relevant information—whether they access that information as corporate employees or government officials.

VII. The Legislative History Supports a Broader Reading of § 1782 as Serving Citizen Interests Rather Than State Secrecy

The legislative history of § 1782 demonstrates Congress's intent to provide broad discovery assistance for international proceedings. When Congress amended § 1782 in 1964, it did so to "improve the procedures for rendering assistance to foreign and international tribunals and litigants in obtaining evidence in the United States." Nothing in the legislative history suggests that Congress intended to shield federal agencies from the statute's reach or to create a tool that privileges government secrecy over citizen access to justice.

In fact, the 1964 amendments to § 1782 coincided historically with the development of FOIA (enacted in 1966), suggesting a broader movement toward government transparency and access to information. Both statutes reflect Congress's recognition that:

1. Government agencies possess valuable information that should be accessible under appropriate circumstances;
2. Such information should be available through standardized procedures rather than ad hoc determinations;
3. Access to government-held information serves important public interests and empowers citizens.

Just as FOIA created a mechanism for domestic access to federal agency records, § 1782 can be understood as creating a parallel mechanism for international proceedings to access similar information. The D.C. Circuit's interpretation in *Al Fayed* rejects this model without textual or historical justification, converting a statute intended to serve citizen interests into one that protects government secrecy.

This Court has repeatedly emphasized that statutes promoting government transparency should be construed to favor disclosure over secrecy. As stated in *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978), "the basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." The

same principles should guide the interpretation of § 1782, which serves similar values in the international context.

VIII. The Denial of Evidence Preservation Orders Violates American Citizens' Constitutional Due Process Rights

The categorical exclusion of federal agencies from § 1782 raises profound constitutional due process concerns, particularly in the context of evidence preservation. When American citizens like Petitioner are denied access to evidence necessary for vindicating their rights in foreign proceedings, they suffer a violation of their Fifth Amendment due process rights.

This Court has consistently held that due process requires "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Furthermore, in *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970), this Court recognized that due process requires "an effective opportunity to defend by confronting any adverse witnesses and by presenting [one's] own arguments and evidence orally." When potentially relevant evidence is destroyed because courts lack the authority to order its preservation, American citizens are effectively denied these fundamental constitutional protections.

The constitutional right to due process does not cease to apply merely because the ultimate forum for adjudication lies outside the United States. As this Court has recognized, due process is a fundamental right that attaches to American citizens by

virtue of their citizenship, not by virtue of the forum in which they seek to vindicate their rights. See *Greene v. McElroy*, 360 U.S. 474, 496 (1959) (noting that due process protections apply "where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings").

In *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972), this Court emphasized that due process includes "the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation)." When evidence in the possession of federal agencies is destroyed because those agencies are categorically exempt from § 1782 orders, American citizens are denied this fundamental aspect of due process.

The D.C. Circuit's interpretation effectively creates a situation where:

1. American citizens have a constitutional right to due process, including access to evidence necessary for the fair adjudication of their claims;
2. The government possesses evidence that could be vital to these citizens' claims in foreign proceedings;
3. Courts are powerless to prevent the government from destroying this evidence, thereby depriving citizens of their due process rights;
4. This deprivation occurs solely because of a technical reading of the term "person" in § 1782, despite the absence of any textual or practical justification for this result.

In the context of government records, this Court and lower courts have recognized the importance of preservation. In *Armstrong v. Executive Office of the President*, 1 F.3d

1274 (D.C. Cir. 1993), the D.C. Circuit itself recognized that the Federal Records Act, 44 U.S.C. § 3301 et seq., creates a right to ensure that federal agencies do not destroy records that should be preserved. The categorical exclusion of federal agencies from § 1782 effectively creates a gap in this protection for evidence relevant to international proceedings involving American citizens.

In *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435-36 (1982), this Court recognized that "the State may not finally destroy a property interest without first giving the putative owner an opportunity to present his claim of entitlement." Similarly, the government should not be permitted to destroy evidence which could include personal information that could be vital to an American citizen's claim in a foreign proceeding without first allowing that citizen the opportunity to preserve and access that evidence.

In Petitioner's case, the denial of the motion to preserve evidence has potentially allowed for the destruction of evidence that could have been vital for his Canadian proceedings. This not only undermines the fairness of those proceedings but also constitutes a direct violation of his constitutional right to due process. The government's ability to destroy evidence with impunity creates a fundamentally unfair system where citizens' rights are subordinated to government convenience and secrecy.

IX. This Case Presents an Ideal Vehicle to Resolve This Important Question

This case presents a clean legal question about the interpretation of § 1782 and its intersection with constitutional due process rights. The D.C. Circuit's summary

affirmance was based solely on the legal conclusion that federal agencies are not "persons" under § 1782. There are no procedural obstacles or fact-specific considerations that would prevent this Court from reaching the merits.

The question is recurring and important. In our increasingly globalized world, international litigation frequently involves evidence held by U.S. government agencies. The categorical exclusion of federal agencies from § 1782's reach impedes numerous international proceedings and investigations, serving state interests in secrecy at the expense of American citizens' constitutional rights to due process, transparency, and accountability.

The interconnection between § 1782, FOIA, and constitutional due process rights in this case makes it particularly suitable for review. Petitioner sought to preserve evidence specifically for potential use in conjunction with a subsequent FOIA request, in service of his constitutional right to due process in a foreign proceeding. This multi-layered statutory and constitutional context highlights the inconsistency in treating federal agencies as capable of responding through representatives under FOIA but not under § 1782, as well as the serious constitutional implications of this inconsistency.

X. The Court Should Clarify That § 1782 Permits Orders Directed at Federal Agencies to Be Fulfilled Through Their Representatives, Similar to FOIA Requests, to Safeguard Citizens' Constitutional Rights

This Court should clarify that § 1782 permits courts to order federal agencies to preserve and produce evidence through their representatives, just as agencies respond to FOIA requests through designated officials. This interpretation is consistent with:

1. The text of § 1782, which makes no distinction between the entity receiving an order and the individuals who provide testimony or documents;
2. The purpose of § 1782 to provide comprehensive assistance to foreign proceedings;
3. Common practice for both corporate and government entities, which can only act through human representatives;
4. International comity interests, which are served by mutual cooperation in evidence production;
5. This Court's precedent in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004), which emphasized the broad scope and purpose of § 1782;
6. The parallel structure of FOIA, which requires agencies to produce documents through their representatives without explicitly defining agencies as "persons";
7. Democratic values of transparency and accountability, which are served by allowing citizens to access government-held information in both domestic and international contexts;
8. Constitutional due process principles, which require meaningful opportunities to obtain and present relevant evidence.

By recognizing § 1782 as an international counterpart to FOIA—with both statutes creating mechanisms for obtaining information from government entities through their representatives—this Court would establish a coherent framework that honors the text, purpose, and practical implementation of both statutes, while ensuring that § 1782

serves its intended purpose as a tool for international cooperation and citizen empowerment rather than government secrecy. Most importantly, this interpretation would safeguard American citizens' constitutional right to due process when involved in foreign proceedings, ensuring that their government cannot arbitrarily deprive them of access to evidence necessary for the fair adjudication of their claims.

CONCLUSION

The D.C. Circuit's decision in *Al Fayed* has transformed § 1782 from a statute designed to facilitate international judicial cooperation and citizen access to evidence into an instrument of state secrecy that shields federal agencies from accountability in international forums. This interpretation represents a stark divergence from the statute's spirit and intention, creating artificial barriers to discovery that serve government interests at the expense of American citizens' constitutional rights to due process, transparency, and international comity.

The denial of Petitioner's motion to preserve evidence specifically raises serious constitutional concerns about the integrity of the legal system. By allowing potentially crucial evidence to be destroyed rather than preserved for use in foreign proceedings, the D.C. Circuit's interpretation violates the Fifth Amendment due process rights of American citizens seeking evidence for use abroad, portraying the legal system as operating primarily to serve state interests rather than to fulfill its constitutional mandates.

By granting certiorari and clarifying that § 1782 allows courts to order federal agencies to provide evidence through their representatives—just as those same agencies must respond to FOIA requests domestically—this Court can restore § 1782 to its intended purpose as a tool for transparency, cooperation, and justice, while simultaneously safeguarding the constitutional rights of American citizens involved in international proceedings.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



Allan Douglas Wilson

Date: March 8th, 2025

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-5204

September Term, 2024

1:23-cv-00216-CJN

Filed On: December 23, 2024

Allan Douglas Wilson,

Appellant

v.

United States Department of State and
United States Embassy Philippines,

Appellees

BEFORE: Katsas, Childs, and Garcia, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance and the opposition thereto, it is

ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). The district court correctly concluded that appellant's claim for injunctive relief was moot. See Chafin v. Chafin, 568 U.S. 165, 172 (2013). The district court also properly dismissed appellant's claim for damages. An action under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq., must be brought against the United States, not the allegedly offending agency; and an action under Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971), may not be brought against a federal agency. See FDIC v. Meyer, 510 U.S. 471, 476, 486 (1994). Appellant does not have a cause of action under 42 U.S.C. § 1983, which does not reach the actions of the federal government. See District of Columbia v. Carter, 409 U.S. 418, 424 (1973). And no private right of action exists under 18 U.S.C. § 242. See Keyter v. Bush, No. 04-5324, 2005 WL 375623, at *1 (D.C. Cir. Feb. 16, 2005). Finally, the district court correctly denied appellant's motion under 28 U.S.C. § 1782 to preserve evidence. See Al Fayed v. CIA, 229 F.3d 272, 274-77 (D.C. Cir. 2000) (concluding that the federal government is excluded from the definition of a "person" subject to discovery under § 1782).

Appendix 'A'

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-5204

September Term, 2024

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALLAN DOUGLAS WILSON,

Plaintiff,

v.

U.S. DEPARTMENT OF STATE, *et al.*,

Defendants.

Civil Action No. 1:23-cv-0216 (CJN)

ORDER

Allan Wilson alleges that he was targeted by surveillance for over two decades and that the radio waves used in that surveillance caused him physical harm. Apparently believing that he would be exempt from surveillance if the Government were to recognize him as a citizen of the United States, in 2022 Wilson sought a U.S. passport at the U.S. Embassy in the Philippines. The Government initially denied his request, and Wilson brought this lawsuit against the Department of State and the Embassy for injunctive relief and damages. The Government then issued Wilson a passport, and Defendants moved to dismiss. Wilson responded with a motion for summary judgment.

Wilson is proceeding pro se, and so the Court holds his complaint “to less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The Court nonetheless grants Defendants’ motion to dismiss because Wilson cannot show that he is entitled to any of the relief he seeks.

First, Wilson requests an injunction ordering the State Department to issue him a U.S. passport, believing that being declared a U.S. citizen will give him constitutional protections against surveillance. Whether or not this is generally a cognizable claim, it is no longer one here;

the State Department already issued Wilson the passport he seeks, so his request for an injunction is moot. *See* ECF 28-1 at 3. And to the extent Wilson instead asks us to order the State Department to give him an “admission of negligence or wrongdoing” and to “acknowledge the existence of a mistake,” ECF 28 at 4, those are not legally cognizable interests under Article III. *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (“No matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute ‘is no longer embedded in any actual controversy about the plaintiffs’ particular legal rights.” (quoting *Alvarez v. Smith*, 558 U.S. 87, 93 (2009))).

Second, Wilson also seeks legal fees of \$402 and punitive damages of \$2,377,500, alleging that the State Department’s initial denial of his passport violated his constitutional rights. He repudiates any claim based on the Foreign Intelligence Surveillance Act, *see* ECF 28 at 5, and instead points to four possible sources of a remedy for his claim: (1) 42 U.S.C. § 1983; (2) 18 U.S.C. § 242; (3) the damages remedy created in *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971); and (4) the Federal Tort Claims Act (FTCA).

Putting aside issues of sovereign immunity, none of those sources gives Wilson a cause of action to sue for damages. 42 U.S.C. § 1983 provides remedies against states, not the federal government. *See District of Columbia v. Carter*, 409 U.S. 418, 424 (1973). 18 U.S.C. § 242 creates criminal penalties for illegally depriving a person’s constitutional rights, but courts typically do not “infer a private right of action from a criminal prohibition alone.” *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 190 (1994). The *Bivens* remedy is available only for actions against individual officers, *see F.D.I.C. v. Meyer*, 510 U.S. 471, 486 (1994), whereas Wilson has sued only the State Department and the U.S. Embassy in the Philippines. And Wilson cannot bring an FTCA claim because he has not sued the United States

directly, *see Goddard v. D.C. Redevelopment Land Agency*, 287 F.2d 343, 345 (D.C. Cir. 1961), and because his claimed injuries occurred outside of the United States, *see Sosa v. Alvarez-Machain*, 542 U.S. 692, 712 (2004).

Last, Wilson recently filed a separate motion seeking an order pursuant to 28 U.S.C. § 1782, which allows district courts to order a “person” to “give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal.” Wilson asks us to order the Central Intelligence Agency (CIA) to preserve any records about a Privacy Act request that he made to the CIA earlier this year, arguing that the records may be useful in separate proceedings involving him in Canada. This request is procedurally unusual; motions under § 1782 are typically brought as standalone suits, sometimes *ex parte* and sometimes against the party targeted by the discovery request. The CIA, meanwhile, is neither a party to this case nor involved in the actions for which Wilson brings this case. Regardless, in another case involving the CIA, the Court of Appeals held that § 1782 does not grant courts the power to issue a subpoena to a federal agency because the CIA is not a “person” within the meaning of § 1782. *See Al Fayed v. C.I.A.*, 229 F.3d 272, 274–77 (D.C. Cir. 2000).

Accordingly, it is **ORDERED** that the complaint is **DISMISSED** without prejudice. It is further **ORDERED** that Plaintiff’s motion for partial summary judgment and motion for an order to preserve evidence are **DENIED**.

This is a final appealable order.

The Clerk is directed to terminate the case.

DATE: September 5, 2024



CARL J. NICHOLS
United States District Judge