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**Date:** Thursday, July 10, 2025 at 4:25 PM  
**To:** [REDACTED]  
**Cc:** Barney Gimbel <Barney.Gimbel@fgsglobal.com>  
**Subject:** Argentina Seeks Emergency Stay from Second Circuit in YPF Turnover Fight  
[REDACTED],

I hope you are doing well.

I wanted to make sure you saw the **attached** emergency motions that Argentina filed today with the U.S. Court of Appeals for the Second Circuit, seeking a stay of enforcement of the district court's unprecedented turnover order of YPF shares while the Republic seeks to overturn that order on appeal. Two motions were filed to cover the *Petersen Energia* and *Eton Park* matters.

As noted in the filings, this wrongful order would cause "irreparable harm" to Argentina's sovereignty if it is not stayed while it is appealed since it would require the Republic to transfer its controlling shares of its largest energy company to a U.S. bank for liquidation in violation of Argentine law.

To quote from the motions: *"To flip the script, this order is akin to a foreign trial court directing the U.S. Government to pack up the gold stored at Fort Knox and ship it abroad based on that court's erroneous interpretation of U.S. law."*

Please let me know if you have any questions.

Bests, Paul

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**From:** Barney Gimbel <Barney.Gimbel@fgsglobal.com>  
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Kind regards,  
-bg

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# 25-1689

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**In the United States Court of Appeals  
for the Second Circuit**

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ETON PARK CAPITAL MANAGEMENT, L.P., ETON PARK MASTER FUND,  
LTD., and ETON PARK FUND, L.P.,  
*Plaintiffs-Appellees,*

v.

ARGENTINE REPUBLIC,  
*Defendant-Appellant.*

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On Appeal from the United States District Court  
for the Southern District of New York  
(No. 1:16-cv-08569) (Hon. Loretta A. Preska)

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**EMERGENCY MOTION FOR STAY PENDING  
APPEAL AND IMMEDIATE ADMINISTRATIVE STAY**

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## INTRODUCTION

This emergency motion relates to the appeal of a record-setting \$16.1 billion judgment against the Argentine Republic, which is separately pending before this Court. That judgment rests on a series of fundamental errors about Argentine-law questions of first impression. *See Petersen Energía Inversora, S.A.U. v. Argentine Republic*, Nos. 23-7370, 23-7463, 23-7614; *Eton Park Capital Management, L.P. v. Argentine Republic*, Nos. 23-7376, 23-7471, 23-7667. But while its deeply flawed judgment awaits this Court’s review, the district court entered another unprecedented order: on June 30, 2025, it required the Republic to transfer sovereign property located in Argentina—its 51% of Class D shares in the biggest Argentine energy company, YPF S.A. (the YPF Shares)—to a New York bank by July 14, 2025, for turnover to plaintiffs. *See* Dkt. 742 (Turnover Order, attached as Exhibit A).<sup>1</sup> To state that more simply: the district court has required a sovereign nation to transfer its foreign-located majority stake in its largest energy company to a U.S. bank for further transfer to plaintiffs. To flip the script, this order is akin to a foreign trial court directing the U.S. Government to pack up the gold stored at Fort Knox and ship it abroad based on that court’s erroneous interpretation of U.S. law.

The district court’s Turnover Order violates fundamental principles of U.S. and international law and demands this Court’s immediate review. *First*, the district

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<sup>1</sup> Unless specified, all docket citations are to the *Petersen* district court docket.

court concluded—over the U.S. Government’s objection—that there is no execution immunity for foreign-located sovereign property. *Second*, the court held that execution of the Republic’s YPF Shares is permissible under Section 1610(a)(2) of the Foreign Sovereign Immunities Act (FSIA), even though the shares: (1) are located in Argentina; (2) have been used only in Argentina; and (3) were not “used for the commercial activity upon which the claim is based” under plaintiffs’ own liability theory, *see* Dkt. 437 at 50. *Third*, the court rejected foundational principles of international comity, directing the Republic to take action in Argentina that would violate Argentine law. The Republic is likely to succeed on its appeal of any one of those holdings, each of which would be a sea change in how the U.S. legal system interacts with the rest of the world.

The stakes could not be higher for Argentina. If the Turnover Order is not stayed while on appeal, the Republic will suffer irreparable harm to its sovereignty, and be forced to choose between changing its own domestic laws, violating those laws, or disregarding a U.S. court’s order. Additionally, compliance with the Turnover Order—even if possible—would result in the irrevocable loss of a controlling stake in Argentina’s largest energy company. At bottom, the Turnover Order would result in a U.S. court reversing a lawful foreign expropriation, “a decidedly sovereign—rather than commercial—activity” carried out in the “national

public interest.” *Petersen Energía Inversora S.A.U. v. Argentine Republic*, 895 F.3d 194, 202, 205 (2d Cir. 2018).

Plaintiffs and their litigation funder, on the other hand, will suffer no harm in waiting for this Court’s decisions in the Republic’s appeal of the \$16.1 billion judgment and its appeal of the Turnover Order. The Republic and its YPF Shares are not going anywhere, as Argentine law prohibits their transfer without supermajority approval of the Argentine Congress. The Republic is also prepared to brief its appeal of the Turnover Order on an expedited basis.

Finally, the public interest is served by maintaining the status quo. Immediate enforcement of the Turnover Order would adversely affect numerous non-parties and destabilize YPF and the Argentine economy, all before this Court can consider this unprecedented order and the judgment underlying it.

The Turnover Order sets a July 14 deadline for the Republic to transfer the YPF Shares, and the district court has not yet taken action on the Republic’s stay request. This Court should therefore order an immediate administrative stay to allow it to consider this motion, and should stay the Turnover Order while the Republic appeals it. The Republic respectfully requests that this Court rule on the administrative stay by 10:00 a.m. on Monday, July 14, so that the Republic can seek relief from the Supreme Court, if necessary.

## BACKGROUND

1. On September 15, 2023, the district court entered a combined \$16.1 billion judgment in two actions against the Republic, based on its alleged violation of YPF’s corporate bylaws. That judgment is currently on appeal. *See* Dkt. 504. As the Republic has explained in that appeal,<sup>2</sup> the district court made numerous errors of Argentine and U.S. law. For instance, it refused to dismiss these claims—under Argentine law, against the Republic, concerning the alleged violation of the bylaws of an Argentine corporation after an expropriation in Argentina—under *forum non conveniens* or international comity. The court also repeatedly misconstrued Argentine public and private law, including by (i) recognizing the first-ever contract action for damages for “breach” of corporate bylaws; (ii) disregarding the bylaws’ exclusive penalty provision; and (iii) overriding Argentina’s comprehensive system for third-party claims arising from an expropriation. In addition, the court grossly inflated damages by relying on a currency-conversion rule that New York abrogated decades ago. Briefing on that appeal concluded on September 6, 2024, and this Court has not set an oral argument date.

2. Plaintiffs’ attempts to execute on this extraordinary judgment have been equally extraordinary. While the Republic’s appeal is pending, plaintiffs filed

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<sup>2</sup> *See Petersen Energía Inversora, S.A.U. v. Argentine Republic*, No. 23-7370 (2d Cir. filed Sept. 6, 2024), Dkt. 228 at 29-81.

a motion in the district court seeking an order requiring the Republic (1) to transfer its YPF Shares *held in Argentina* into a global custody account at Bank of New York Mellon (BNYM) in New York, and (2) to instruct BNYM to transfer ownership interests in those shares to plaintiffs or their designees. *See* Dkt. 555. The Republic opposed plaintiffs’ motion because the FSIA, principles of international comity, the act-of-state doctrine, federal common law, and New York law all prohibit reaching into a foreign nation to grab its property for turnover in the United States. The United States filed a Statement of Interest supporting the Republic, “reiterat[ing] its long-standing position that foreign sovereign property located abroad is not subject to execution in U.S. courts.” Dkt. 679 (U.S. Statement) at 1.

On June 30, 2025, without oral argument, the district court granted plaintiffs’ motion. The court ordered the Republic to “(i) transfer its Class D shares of YPF to a global custody account at BNYM in New York within 14 days” and “(ii) instruct BNYM to initiate a transfer of the Republic’s ownership interests in its Class D shares of YPF to Plaintiffs” the following day. Turnover Order 33. The court simultaneously entered a nearly identical order in a separate action against the Republic. *See Bainbridge Fund Ltd. v. The Republic of Argentina*, No. 16-cv-8605 (LAP), Dkt. 189. And plaintiffs in 15 other actions quickly filed “me too” motions thereafter. *See Attestor Master Value Fund LP v. The Republic of Argentina*, No. 14-cv-5849 (LAP), Dkt. 197.

3. On July 1, 2025, the day after the district court’s Turnover Order, the Republic moved the district court for a stay pending appeal. After letter briefing, which concluded on July 8, the district court has not ruled on the Republic’s motion. The Republic noticed its appeal on July 10, 2025.

### **ARGUMENT**

This Court should stay the district court’s Turnover Order pending appeal. A stay turns on four factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted). These factors are evaluated on a “sliding scale”—“more of one excuses less of the other.” *Thapa v. Gonzales*, 460 F.3d 323, 334 (2d Cir. 2006) (citation omitted). The “first two factors . . . are the most critical.” *Nken*, 556 U.S. at 434.

Each of the four factors favors the Republic—indeed, overwhelmingly so.

*First*, the Republic’s appeal raises substantial legal questions on which the Republic is likely to succeed. No other U.S. district court has ever issued an order like this one, which casts aside federal-common-law principles barring the execution of a foreign sovereign’s extraterritorial assets, dramatically expands the scope of the FSIA Section 1610(a)’s “used for a commercial activity in the United States”

exception, and directs a foreign sovereign to change its own laws to comply with the U.S. court's order.

*Second*, absent a stay, the Republic will be irreparably injured. Plaintiffs have stated that they intend to sell the Republic's majority stake in YPF, Argentina's largest energy company, which has operated under the Republic's majority ownership for over a decade. A change in control of YPF would be impossible to unwind and, in the interim, could cause immense uncertainty and destabilize the company and the Argentine economy.

*Third*, plaintiffs will not be injured by the issuance of a stay because Argentine law prohibits the Republic from transferring the YPF Shares without a two-thirds vote of the Argentine Congress.

*Fourth*, the public interest supports a stay because the turnover of the YPF Shares would substantially harm not just the Republic but also YPF; its minority shareholders, commercial partners, and 23,000 employees; the hydrocarbon-producing Argentine Provinces; the people of Argentina; and the United States's global reputation.

## **I. THE REPUBLIC IS LIKELY TO PREVAIL ON THE MERITS.**

On at least three independent grounds, the Republic is likely to prevail on the merits, including that (1) federal common law bars execution on sovereign property outside the United States; (2) turnover here would be barred by the FSIA regardless;

and (3) the Turnover Order violates principles of international comity. At the very least, the Republic has demonstrated a “substantial possibility” of success on these serious legal issues. *Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002) (citation omitted).

**A. Federal Common Law Bars Execution on Foreign-Sovereign Property Outside the United States.**

Before the FSIA’s enactment, “property of foreign states was absolutely immune from execution”—whether within or outside the United States—as a matter of federal common law. *Walters v. Indus. & Com. Bank of China*, 651 F.3d 280, 289 (2d Cir. 2011) (citation omitted). In 1976, Congress passed the FSIA, in part, “to codify the restrictive theory of sovereign immunity.” *Samantar v. Yousuf*, 560 U.S. 305, 319 (2010). The FSIA provides that “the property *in the United States* of a foreign state” is “immune from attachment arrest and execution except as provided in sections 1610 and 1611.” 28 U.S.C. § 1609 (emphasis added). Sections 1610 and 1611, in turn, specify when foreign-sovereign property located in the United States is available for execution. *See* 28 U.S.C. §§ 1610, 1611.

In enacting the FSIA against the backdrop of an established sovereign-immunity regime, Congress only “partially lower[ed] the barrier of immunity from execution.” H.R. Rep. No. 94-1487, at 27 (1976). Congress did not mention foreign-sovereign property outside the United States—thus preserving the longstanding common-law immunity from execution of such property. *See United States v. Texas*,

507 U.S. 529, 534 (1993) (“In order to abrogate a common-law principle, the statute must ‘speak directly’ to the question addressed by the common law.”) (citation omitted). Indeed, the Supreme Court has made clear that the FSIA does not occupy the field of foreign sovereign immunity: “[e]ven if a suit is not governed by the [FSIA], it may still be barred by foreign sovereign immunity under the common law.” *Samantar*, 560 U.S. at 324.

Thus, federal courts have long agreed that the FSIA’s abrogation of execution immunity for some foreign sovereign property *in* the United States does not vitiate execution immunity for all foreign sovereign property *outside* the United States. As the Fifth Circuit has explained, Congress “did not intend to reverse completely the historical and international antipathy to executing against a foreign state’s property.” *Conn. Bank of Com. v. Republic of Congo*, 309 F.3d 240, 252 (5th Cir. 2002).

The overwhelming weight of authority in this Circuit and elsewhere holds that a foreign sovereign’s extraterritorial property remains absolutely immune from execution as a matter of U.S. law. *See, e.g., EM Ltd. v. Republic of Argentina*, 695 F.3d 201, 208 (2d Cir. 2012) (“district court sitting in Manhattan does not have the power to attach Argentinian property in foreign countries”); *Walters*, 651 F.3d at 297 (China’s assets “*outside* of the United States” are “categorically immune from execution under the FSIA”); *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1130 (9th Cir. 2010) (property not “in the United States” was “immune from

execution”); *Autotech Techs. LP v. Integral Research & Dev. Corp.*, 499 F.3d 737, 750 (7th Cir. 2007) (“The FSIA did not purport to authorize execution against a foreign sovereign’s property . . . wherever . . . located around the world.”); *see also* U.S. Statement 5.

In rejecting this longstanding consensus, the district court relied on its own earlier decision in *Bainbridge Fund Ltd. v. Republic of Argentina*, 690 F. Supp. 3d 411 (S.D.N.Y. 2023), which in turn rested almost exclusively on this Court’s now-vacated decision in *Peterson v. Islamic Republic of Iran*, 876 F.3d 63 (2d Cir. 2017), *judgment vacated sub nom. Clearstream Banking S.A. v. Peterson*, 140 S. Ct. 813 (2020). In *Peterson*, this Court held that a New York court could “recall to New York extraterritorial assets owned by a foreign sovereign.” *Peterson*, 876 F.3d at 92. The *Peterson* panel pointed to the Supreme Court’s decision in *Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134 (2014), which supposedly “abrogated decades of pre-existing sovereign immunity common law” and held that the FSIA solely governs sovereign immunity. *Peterson*, 876 F.3d at 69, 89. Before the Supreme Court, the U.S. Government filed a brief explaining that this Court had overread the Supreme Court’s *NML* decision. U.S. Br. 13-15, *Clearstream Banking S.A. v. Peterson*, 17-1529 & 17-1534 (U.S. Dec. 9, 2019). After an intervening statutory amendment, the Supreme Court vacated this Court’s decision and remanded.

Now that *Peterson* has been vacated, the district court erred by continuing to rely on *Peterson*'s misreading of *NML*. As *NML*'s opening sentence makes clear, the question there was about whether the FSIA "limits the scope of discovery available to a judgment creditor in a federal postjudgment execution proceeding against a foreign sovereign," not whether a foreign sovereign's extraterritorial assets are immune from execution. *NML*, 573 U.S. at 136; *see id.* at 140 (describing the "single, narrow question" before the Court). The Supreme Court did not quietly wipe away centuries of execution law. As to execution, *NML* recognized that U.S. "courts generally lack authority in the first place to execute against property in other countries," which occurs "under the relevant jurisdiction's law." 573 U.S. at 144; *see Rubin v. Islamic Republic of Iran*, 830 F.3d 470, 475 (7th Cir. 2016) (citing *NML* in explaining that, to be "even potentially subject to attachment and execution," property must be "within the territorial jurisdiction of the district court").

To be sure, the Supreme Court also noted that the briefing in *NML* did not support the distinct proposition that "extraterritorial assets enjoyed absolute execution immunity in United States courts"—an observation that the *Peterson* panel emphasized. 573 U.S. at 144; *see Peterson*, 876 F.3d at 90. But that execution question was not before the Court. And the Supreme Court plainly does not view *NML* as having resolved that question, given that it called for the views of the Solicitor General in *Peterson*. *See* U.S. Br. 1, *Clearstream Banking S.A. v. Peterson*,

17-1529 & 17-1534 (U.S. Dec. 9, 2019). Moreover, since *NML*, the Supreme Court has further confirmed that the FSIA does not solely occupy the field of foreign sovereign immunity. *See Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 280 (2023).

The U.S. Government reiterated these principles in the district court. As it explained in supporting the Republic, “common law sovereign immunity principles that predate the FSIA continue to preclude execution by judgment creditors against foreign sovereign property outside the United States.” U.S. Statement 5. “Accordingly, to the extent New York’s turnover statute, CPLR 5225, can be construed as applying to a foreign sovereign’s property outside of the United States, such execution is barred by federal common law.” *Id.*<sup>3</sup>

**B. The FSIA Independently Bars Turnover Here.**

Even if a foreign sovereign’s non-U.S. assets were subject to execution, the FSIA permits execution only in narrow circumstances not present here. The district court erred in holding that the Republic’s YPF Shares fell into the exception enumerated in FSIA Section 1610(a)(2), Turnover Order 16-23, for a foreign state’s

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<sup>3</sup> On appeal, the Republic also intends to argue that New York’s statute should be construed to preclude execution on non-U.S. sovereign property, which would violate both traditional common-law principles and international law. *See pp. 16-18, infra*. New York generally construes its laws not to abrogate common-law immunity principles without a “clear and specific” statement to that effect. *Ezrasons, Inc. v. Rudd*, 2025 WL 1436000, at \*4 (N.Y. May 20, 2025).

property (1) “in the United States,” (2) “used for a commercial activity in the United States,” and (3) “used for the commercial activity upon which the claim is based.” 28 U.S.C. § 1610(a)(2). The Turnover Order fails each of those requirements.

*First*, the Republic’s YPF Shares are not and cannot be “in the United States.” 28 U.S.C. § 1610(a). As the district court recognized, the Republic’s YPF Shares, like all YPF shares, are book-entry shares maintained only in Argentina with Caja de Valores. S.A., a privately owned securities depository in Argentina. Turnover Order 6, 27 (even after “[t]ransferring the Shares to a global custody account at BNYM in New York,” “the Shares would remain in the register maintained by [Caja de Valores] in Argentina”). Because this first element of Section 1610(a) cannot be satisfied, the court should have ended its analysis.

Circumventing this statutory requirement, the district court concluded that it could order Argentina to deliver the YPF Shares into the United States under C.P.L.R. Section 5225. Turnover Order 23-27. As the U.S. Government explained, the court’s interpretation “renders the FSIA’s clear statutory prerequisite that foreign sovereign property be located in the United States a nullity.” U.S. Statement 8. Section 1610(a) covers only the execution or attachment of “[t]he property in the United States of a foreign state,” not property that a district court could simultaneously order to be brought here and then deemed exempt from immunity. *See* U.S. Statement 8-9 (“Every [non-vacated] decision of a court of appeals that has

addressed the issue . . . has treated the presence of foreign sovereign property in the United States as a prerequisite to execution in U.S. courts.”).

*Second*, the Republic’s YPF Shares are not “used for a commercial activity in the United States.” 28 U.S.C. § 1610(a). As the district court found, the Republic “used” its YPF Shares to “vote[] to elect the Board and to approve initiatives generally proposed by the Board.” Turnover Order 19. But under Argentine law, all YPF shareholder meetings must—and do—take place *in Argentina*. See Dkt. 577 at 6. In other words, the commercial activity for which the Republic has used the YPF Shares—whether voting or any other shareholder activity—occurred exclusively in Argentina. Even if *YPF* subsequently conducted its own commercial activity in the United States, YPF is a separate entity whose actions cannot be attributed to the Republic. See *Rubin*, 830 F.3d at 480 (“foreign state[s] may lose execution immunity only by virtue of their own commercial use of their property in the United States”).

The district court nevertheless created a sweeping new rule for commercial activity: “a foreign sovereign’s use of its controlling shares to direct a company’s commercial activity in the United States satisfies” the FSIA’s commercial-activity-in-the-United States requirement, regardless of where the sovereign’s shareholder activities occur. Turnover Order 18. In support of its extraordinary rule, the court cited three cases. None applies. In *Crystallex International Corp. v. Bolivarian*

*Republic of Venezuela*, the Third Circuit concluded that Venezuela, through its alter-ego PDVSA, voted PDVSA's shares in a wholly owned *U.S. subsidiary*, and that voting the shares of a U.S. company constituted using those shares for commercial activity in the United States. 932 F.3d 126, 151-52 (3d Cir. 2019). Similarly, in *In re 650 Fifth Ave. & Related Properties*, the district court held that Iran used shares in a New York entity in New York. 2014 WL 1284494, at \*13, 17 (S.D.N.Y. Mar. 28, 2014), *vacated & remanded sub nom. Kirschenbaum v. 650 Fifth Ave. & Related Props.*, 830 F.3d 107 (2d Cir. 2016). And in *Foremost-McKesson, Inc. v. Islamic Republic of Iran*, the court assessed jurisdictional immunity based on *Iran's* conduct—not the activities of the corporation it allegedly controlled—in “a corporate dispute between majority and minority shareholders.” 905 F.2d 438, 450 (D.C. Cir. 1990). Each decision turned on U.S. commercial activities of the defendant, or its alter-ego. By contrast, the district court here held for the first time that the mere voting of shares in a non-U.S. corporation *outside* of the United States constitutes “use for a commercial activity in the United States.”

*Third*, the Republic's YPF Shares have never been used “for the commercial activity upon which the claim is based.” 28 U.S.C. § 1610(a)(2). In its liability decision, now on appeal, the district court held that the expropriated “shares were not the source of the tender offer obligation” underlying plaintiffs' claims, and thus that Argentina's General Expropriation Law did not preempt those claims. Dkt. 437

at 53; *see id.* at 50 (“[T]he tender offer obligation is not attached to the shares that the Republic acquired.”). In the Turnover Order, by contrast, the court held that the expropriated shares were used “to effectuate the breach of the tender offer obligation because [control of the shares] ensured that (1) the bylaws would never be enforced and (2) the Republic holds the Shares today.” Turnover Order 21. These inconsistent rulings confirm why this Court should first resolve the merits of the district court’s \$16.1 billion judgment.

**C. The Turnover Order Violates Longstanding Principles of International Comity.**

Even if it were otherwise permitted under the FSIA, the Turnover Order violates established principles of international comity. International comity is “the recognition which one nation allows within its territory to . . . another nation, having due regard to both international duty and convenience, and to the rights of its own citizens or of other persons who are under the protections of its laws.” *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa*, 482 U.S. 522, 543 n.27 (1987) (citation omitted). Under prescriptive comity, “it is well established that ‘a state may not require a person to do an act in another state that is prohibited by the law of that state.’” *Motorola Credit Corp. v. Uzan*, 388 F.3d 39, 60 (2d Cir. 2004) (quoting *Restatement (Third) of Foreign Relations Law* § 441 (1987)). Here, the district court ruled that this doctrine did not apply because no

“unavoidable conflict” existed between requiring the Republic to turn over its YPF Shares and Argentine law. Turnover Order 30. That is demonstrably wrong.

Since 2012, Argentine law has barred the transfer of the Republic’s YPF Shares to *anyone* “without the permission of the National Congress by a two-thirds vote of its members.” *See* Dkt. 578-1 (YPF Expropriation Law) Art. 10. Notwithstanding this clear Argentine law, the district court concluded that there is “no unavoidable conflict between Argentine law and Plaintiff’s requested relief” because the Republic “has several choices,” including to “(1) receive the permission of the National Congress by two-thirds vote, (2) take action to change the law, or (3) satisfy the judgment through a separate agreement with Plaintiffs.” Turnover Order 30.

The district court’s purported “choices” demonstrate the impermissible conflict between its Turnover Order and Argentine law. The first two choices purport to require the Argentine Congress to change a law enacted years before this litigation. That is not the absence of a conflict; it is directing Argentine lawmakers to eliminate the conflict by bending to a U.S. court’s order. And federal courts cannot require “the legislature of a foreign sovereign” to “enact or change a law.” *In re Austrian, German Holocaust Litig.*, 250 F.3d 156, 164-65 (2d Cir. 2001). Meanwhile, the third “choice”—that the Republic could hypothetically satisfy the

\$16.1 billion judgment by settling with plaintiffs—simply assumes away the need to comply with the district court’s order.

## **II. THE REPUBLIC WILL BE IRREPARABLY INJURED ABSENT A STAY.**

Without any doubt, the Republic will be irreparably injured without a stay.

*First*, the turnover will have immediate and irreversible consequences. Even in a run-of-the-mill case, “the denial of a controlling ownership interest in a corporation may constitute irreparable harm.” *Wisdom Imp. Sales Co. v. Labatt Brewing Co.*, 339 F.3d 101, 114 (2d Cir. 2003). Here, the Republic’s potential loss of majority control is magnified because YPF is Argentina’s largest energy company. The change in control from the Republic to unknown third-parties would create uncertainty that could destabilize YPF and affect the Argentine economy. In addition, plaintiffs have made clear that they intend to sell the YPF Shares once transferred to them. Dkt. 587 at 19 (asking district court to “instruct BNYM to transfer the shares to the U.S. Marshal for the S.D.N.Y. *for sale to the public*”) (emphasis added). Without a stay, “it will be impossible to put the genie back in the bottle,” and thus “irreparable harm . . . is all but guaranteed.” *In re 650 Fifth Ave. & Related Props.*, 2020 WL 3000382, at \*3 (S.D.N.Y. June 4, 2020).

*Second*, the Turnover Order would irreparably harm the Republic’s sovereignty by requiring it to change or violate its own laws. In enacting the YPF Expropriation Law in 2012, the Argentine Congress declared that the Republic’s

expropriation of the YPF Shares was of “public interest” and prohibited “any future transfer of the shares” without a two-thirds vote. *See* YPF Expropriation Law, Art. 10. In other words, the Republic made a sovereign choice to expropriate 51% of Argentina’s largest energy company, whose operations are critical to Argentina’s economy. The district court’s order overrides that choice, undoing this quintessentially sovereign act. Federal courts have repeatedly found that such an infringement on a core sovereign power constitutes irreparable harm. *See, e.g., Seneca Nation of Indians v. Paterson*, 2010 WL 4027795, at \*2 (W.D.N.Y. Oct. 14, 2010) (“enforcement of a statute or regulation [that] threatens to infringe upon a . . . right of sovereignty [satisfies] the irreparable harm requirement”); *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah*, 790 F.3d 1000, 1005 (10th Cir. 2015) (“invasion of . . . sovereignty can constitute irreparable injury”) (citation omitted); *Mashpee Wampanoag Tribe v. Bernhardt*, 2020 WL 3034854, at \*3 (D.D.C. June 5, 2020) (“loss of sovereign authority, self-government, and jurisdiction . . . is unquestionably an irreparable harm”).

In opposing a stay in the district court, plaintiffs contended that the Republic “cannot claim irreparable harm” because any harm is “self-inflicted,”—meaning that the Republic did not satisfy the district court’s conditions for a stay of its underlying judgment. Dkt. 745 at 2. But the Republic could not satisfy those conditions “legally or practically” under Argentine law, for some of the same reasons that it cannot

comply with the Turnover Order. Dkt. 531 at 1-2. In any event, that execution of the underlying money judgment is not stayed does not foreclose a showing of substantial harm from any subsequent turnover order.

### III. PLAINTIFFS WOULD SUFFER NO HARM FROM A STAY.

In contrast with the Republic's significant harms, plaintiffs would suffer "no appreciable harm" from a stay, which "does nothing more than maintain the status quo." *U.S. S.E.C. v. Citigroup Glob. Mkts. Inc.*, 673 F.3d 158, 168 (2d Cir. 2012). The Republic is not going anywhere and *cannot* sell its YPF Shares absent action by the Argentine Congress. *See* YPF Expropriation Law, Art. 10. This alone "eliminate[s] the risk of asset dissipation" pending appeal. *Citibank, N.A. v. Aralpa Holdings Ltd. P'ship*, 2024 WL 664782, at \*3 (S.D.N.Y. Feb. 16, 2024) (granting stay of turnover order pending appeal where temporary restraining order prohibited disposition of assets); *see SDF9 Cobk LLC v. AF & AR LLC*, 2015 WL 3440259, at \*3 (E.D.N.Y. May 27, 2015) (granting stay pending appeal where there was "virtually no risk of asset dissipation"). And in suggesting that Argentine law might change, plaintiffs have pointed only to a proposed non-binding resolution that *reaffirms* the existing two-thirds requirement. Dkt. 745 at 3; *see* Dkt. 746-1 at 2.

To the extent that plaintiffs raise the delay of payment of the judgment as a harm, that delay merits little weight. *See In re Johns-Manville Corp.*, 27 F.3d 48, 49 (2d Cir. 1994) (affirming stay even though trust beneficiaries would "experience

delays in receiving payments” from the trust); *In re 650 Fifth Ave.*, 2020 WL 3000382, at \*4 (delay of payment of judgment does “not strongly” “weigh[] against a stay”). The underlying judgment accrues interest and plaintiffs are not operating entities—the *Petersen* plaintiffs are in bankruptcy proceedings in Spain and the *Eton Park* plaintiffs are in liquidation. This Court could also mitigate any concerns on that front by ordering expedited briefing on appeal, to which the Republic would not object.

#### **IV. THE PUBLIC INTEREST WEIGHS HEAVILY IN FAVOR OF A STAY.**

The public interest unquestionably supports a stay. Unlike the typical “commercial dispute . . . between two companies,” *EJ Brooks Co. v. Cambridge Sec. Seals*, 2016 WL 908633, at \*2 (S.D.N.Y. Mar. 2, 2016), this dispute affects Argentina’s sovereignty and national governance. It also has implications far beyond the parties here. YPF is a publicly traded company that employs more than 23,000 people and has 49% of its outstanding equity held by shareholders *other* than the Republic. *See* Dkt. 560 at 6-7. A change of control could, for example, trigger irreversible events under YPF’s debt instruments or its bylaws’ tender-offer requirement. *Id.*; *see* Dkt. 363-1 § 7. Besides YPF, its investors, and its commercial partners, the Turnover Order would also affect the hydrocarbon-producing Argentine Provinces, which would potentially be affected by changes in company policies or governance. *See* Dkt. 560 at 6. Any impact on YPF, Argentina’s largest

energy company, could even jeopardize Argentina's ongoing efforts to stabilize its economy in cooperation with the IMF.

Finally, a stay serves judicial efficiency by maintaining the status quo while the underlying judgment is also on appeal. The Republic strongly believes that it will prevail on that appeal, which will moot the Turnover Order. This Court should allow that appeal process to conclude before wading into the enormous task of transferring ownership and control of 51% of Argentina's largest energy company.

### **CONCLUSION**

The Court should stay the Turnover Order pending appeal and grant an immediate administrative stay in the interim.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This motion complies with Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 5,169 words.

This motion also complies with the requirements of Federal Rule of Appellate Procedure 27(d) and 32(a) because it was prepared in 14-point font using a proportionally spaced typeface.

/s/ Robert J. Giuffra, Jr.

Robert J. Giuffra, Jr.

July 10, 2025

### **CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 2025, I filed the foregoing motion with the Clerk of Court for the U.S. Court of Appeals for the Second Circuit through the appellate CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*/s/ Robert J. Giuffra, Jr.*

\_\_\_\_\_  
Robert J. Giuffra, Jr.

July 10, 2025

# 25-1687

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**In the United States Court of Appeals  
for the Second Circuit**

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PETERSEN ENERGIA INVERSORA S.A.U., PETERSEN ENERGIA S.A.U.,  
*Plaintiffs-Appellees,*

v.

ARGENTINE REPUBLIC,  
*Defendant-Appellant.*

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On Appeal from the United States District Court  
for the Southern District of New York  
(No. 1:15-cv-02739) (Hon. Loretta A. Preska)

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**EMERGENCY MOTION FOR STAY PENDING  
APPEAL AND IMMEDIATE ADMINISTRATIVE STAY**

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## INTRODUCTION

This emergency motion relates to the appeal of a record-setting \$16.1 billion judgment against the Argentine Republic, which is separately pending before this Court. That judgment rests on a series of fundamental errors about Argentine-law questions of first impression. *See Petersen Energía Inversora, S.A.U. v. Argentine Republic*, Nos. 23-7370, 23-7463, 23-7614; *Eton Park Capital Management, L.P. v. Argentine Republic*, Nos. 23-7376, 23-7471, 23-7667. But while its deeply flawed judgment awaits this Court’s review, the district court entered another unprecedented order: on June 30, 2025, it required the Republic to transfer sovereign property located in Argentina—its 51% of Class D shares in the biggest Argentine energy company, YPF S.A. (the YPF Shares)—to a New York bank by July 14, 2025, for turnover to plaintiffs. *See* Dkt. 742 (Turnover Order, attached as Exhibit A).<sup>1</sup> To state that more simply: the district court has required a sovereign nation to transfer its foreign-located majority stake in its largest energy company to a U.S. bank for further transfer to plaintiffs. To flip the script, this order is akin to a foreign trial court directing the U.S. Government to pack up the gold stored at Fort Knox and ship it abroad based on that court’s erroneous interpretation of U.S. law.

The district court’s Turnover Order violates fundamental principles of U.S. and international law and demands this Court’s immediate review. *First*, the district

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<sup>1</sup> Unless specified, all docket citations are to the *Petersen* district court docket.

court concluded—over the U.S. Government’s objection—that there is no execution immunity for foreign-located sovereign property. *Second*, the court held that execution of the Republic’s YPF Shares is permissible under Section 1610(a)(2) of the Foreign Sovereign Immunities Act (FSIA), even though the shares: (1) are located in Argentina; (2) have been used only in Argentina; and (3) were not “used for the commercial activity upon which the claim is based” under plaintiffs’ own liability theory, *see* Dkt. 437 at 50. *Third*, the court rejected foundational principles of international comity, directing the Republic to take action in Argentina that would violate Argentine law. The Republic is likely to succeed on its appeal of any one of those holdings, each of which would be a sea change in how the U.S. legal system interacts with the rest of the world.

The stakes could not be higher for Argentina. If the Turnover Order is not stayed while on appeal, the Republic will suffer irreparable harm to its sovereignty, and be forced to choose between changing its own domestic laws, violating those laws, or disregarding a U.S. court’s order. Additionally, compliance with the Turnover Order—even if possible—would result in the irrevocable loss of a controlling stake in Argentina’s largest energy company. At bottom, the Turnover Order would result in a U.S. court reversing a lawful foreign expropriation, “a decidedly sovereign—rather than commercial—activity” carried out in the “national

public interest.” *Petersen Energía Inversora S.A.U. v. Argentine Republic*, 895 F.3d 194, 202, 205 (2d Cir. 2018).

Plaintiffs and their litigation funder, on the other hand, will suffer no harm in waiting for this Court’s decisions in the Republic’s appeal of the \$16.1 billion judgment and its appeal of the Turnover Order. The Republic and its YPF Shares are not going anywhere, as Argentine law prohibits their transfer without supermajority approval of the Argentine Congress. The Republic is also prepared to brief its appeal of the Turnover Order on an expedited basis.

Finally, the public interest is served by maintaining the status quo. Immediate enforcement of the Turnover Order would adversely affect numerous non-parties and destabilize YPF and the Argentine economy, all before this Court can consider this unprecedented order and the judgment underlying it.

The Turnover Order sets a July 14 deadline for the Republic to transfer the YPF Shares, and the district court has not yet taken action on the Republic’s stay request. This Court should therefore order an immediate administrative stay to allow it to consider this motion, and should stay the Turnover Order while the Republic appeals it. The Republic respectfully requests that this Court rule on the administrative stay by 10:00 a.m. on Monday, July 14, so that the Republic can seek relief from the Supreme Court, if necessary.

## BACKGROUND

1. On September 15, 2023, the district court entered a combined \$16.1 billion judgment in two actions against the Republic, based on its alleged violation of YPF’s corporate bylaws. That judgment is currently on appeal. *See* Dkt. 504. As the Republic has explained in that appeal,<sup>2</sup> the district court made numerous errors of Argentine and U.S. law. For instance, it refused to dismiss these claims—under Argentine law, against the Republic, concerning the alleged violation of the bylaws of an Argentine corporation after an expropriation in Argentina—under *forum non conveniens* or international comity. The court also repeatedly misconstrued Argentine public and private law, including by (i) recognizing the first-ever contract action for damages for “breach” of corporate bylaws; (ii) disregarding the bylaws’ exclusive penalty provision; and (iii) overriding Argentina’s comprehensive system for third-party claims arising from an expropriation. In addition, the court grossly inflated damages by relying on a currency-conversion rule that New York abrogated decades ago. Briefing on that appeal concluded on September 6, 2024, and this Court has not set an oral argument date.

2. Plaintiffs’ attempts to execute on this extraordinary judgment have been equally extraordinary. While the Republic’s appeal is pending, plaintiffs filed

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<sup>2</sup> *See Petersen Energía Inversora, S.A.U. v. Argentine Republic*, No. 23-7370 (2d Cir. filed Sept. 6, 2024), Dkt. 228 at 29-81.

a motion in the district court seeking an order requiring the Republic (1) to transfer its YPF Shares *held in Argentina* into a global custody account at Bank of New York Mellon (BNYM) in New York, and (2) to instruct BNYM to transfer ownership interests in those shares to plaintiffs or their designees. *See* Dkt. 555. The Republic opposed plaintiffs' motion because the FSIA, principles of international comity, the act-of-state doctrine, federal common law, and New York law all prohibit reaching into a foreign nation to grab its property for turnover in the United States. The United States filed a Statement of Interest supporting the Republic, "reiterat[ing] its long-standing position that foreign sovereign property located abroad is not subject to execution in U.S. courts." Dkt. 679 (U.S. Statement) at 1.

On June 30, 2025, without oral argument, the district court granted plaintiffs' motion. The court ordered the Republic to "(i) transfer its Class D shares of YPF to a global custody account at BNYM in New York within 14 days" and "(ii) instruct BNYM to initiate a transfer of the Republic's ownership interests in its Class D shares of YPF to Plaintiffs" the following day. Turnover Order 33. The court simultaneously entered a nearly identical order in a separate action against the Republic. *See Bainbridge Fund Ltd. v. The Republic of Argentina*, No. 16-cv-8605 (LAP), Dkt. 189. And plaintiffs in 15 other actions quickly filed "me too" motions thereafter. *See Attestor Master Value Fund LP v. The Republic of Argentina*, No. 14-cv-5849 (LAP), Dkt. 197.

3. On July 1, 2025, the day after the district court’s Turnover Order, the Republic moved the district court for a stay pending appeal. After letter briefing, which concluded on July 8, the district court has not ruled on the Republic’s motion. The Republic noticed its appeal on July 10, 2025.

### ARGUMENT

This Court should stay the district court’s Turnover Order pending appeal. A stay turns on four factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted). These factors are evaluated on a “sliding scale”—“more of one excuses less of the other.” *Thapa v. Gonzales*, 460 F.3d 323, 334 (2d Cir. 2006) (citation omitted). The “first two factors . . . are the most critical.” *Nken*, 556 U.S. at 434.

Each of the four factors favors the Republic—indeed, overwhelmingly so.

*First*, the Republic’s appeal raises substantial legal questions on which the Republic is likely to succeed. No other U.S. district court has ever issued an order like this one, which casts aside federal-common-law principles barring the execution of a foreign sovereign’s extraterritorial assets, dramatically expands the scope of the FSIA Section 1610(a)’s “used for a commercial activity in the United States”

exception, and directs a foreign sovereign to change its own laws to comply with the U.S. court's order.

*Second*, absent a stay, the Republic will be irreparably injured. Plaintiffs have stated that they intend to sell the Republic's majority stake in YPF, Argentina's largest energy company, which has operated under the Republic's majority ownership for over a decade. A change in control of YPF would be impossible to unwind and, in the interim, could cause immense uncertainty and destabilize the company and the Argentine economy.

*Third*, plaintiffs will not be injured by the issuance of a stay because Argentine law prohibits the Republic from transferring the YPF Shares without a two-thirds vote of the Argentine Congress.

*Fourth*, the public interest supports a stay because the turnover of the YPF Shares would substantially harm not just the Republic but also YPF; its minority shareholders, commercial partners, and 23,000 employees; the hydrocarbon-producing Argentine Provinces; the people of Argentina; and the United States's global reputation.

## **I. THE REPUBLIC IS LIKELY TO PREVAIL ON THE MERITS.**

On at least three independent grounds, the Republic is likely to prevail on the merits, including that (1) federal common law bars execution on sovereign property outside the United States; (2) turnover here would be barred by the FSIA regardless;

and (3) the Turnover Order violates principles of international comity. At the very least, the Republic has demonstrated a “substantial possibility” of success on these serious legal issues. *Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002) (citation omitted).

**A. Federal Common Law Bars Execution on Foreign-Sovereign Property Outside the United States.**

Before the FSIA’s enactment, “property of foreign states was absolutely immune from execution”—whether within or outside the United States—as a matter of federal common law. *Walters v. Indus. & Com. Bank of China*, 651 F.3d 280, 289 (2d Cir. 2011) (citation omitted). In 1976, Congress passed the FSIA, in part, “to codify the restrictive theory of sovereign immunity.” *Samantar v. Yousuf*, 560 U.S. 305, 319 (2010). The FSIA provides that “the property *in the United States* of a foreign state” is “immune from attachment arrest and execution except as provided in sections 1610 and 1611.” 28 U.S.C. § 1609 (emphasis added). Sections 1610 and 1611, in turn, specify when foreign-sovereign property located in the United States is available for execution. *See* 28 U.S.C. §§ 1610, 1611.

In enacting the FSIA against the backdrop of an established sovereign-immunity regime, Congress only “partially lower[ed] the barrier of immunity from execution.” H.R. Rep. No. 94-1487, at 27 (1976). Congress did not mention foreign-sovereign property outside the United States—thus preserving the longstanding common-law immunity from execution of such property. *See United States v. Texas*,

507 U.S. 529, 534 (1993) (“In order to abrogate a common-law principle, the statute must ‘speak directly’ to the question addressed by the common law.”) (citation omitted). Indeed, the Supreme Court has made clear that the FSIA does not occupy the field of foreign sovereign immunity: “[e]ven if a suit is not governed by the [FSIA], it may still be barred by foreign sovereign immunity under the common law.” *Samantar*, 560 U.S. at 324.

Thus, federal courts have long agreed that the FSIA’s abrogation of execution immunity for some foreign sovereign property *in* the United States does not vitiate execution immunity for all foreign sovereign property *outside* the United States. As the Fifth Circuit has explained, Congress “did not intend to reverse completely the historical and international antipathy to executing against a foreign state’s property.” *Conn. Bank of Com. v. Republic of Congo*, 309 F.3d 240, 252 (5th Cir. 2002).

The overwhelming weight of authority in this Circuit and elsewhere holds that a foreign sovereign’s extraterritorial property remains absolutely immune from execution as a matter of U.S. law. *See, e.g., EM Ltd. v. Republic of Argentina*, 695 F.3d 201, 208 (2d Cir. 2012) (“district court sitting in Manhattan does not have the power to attach Argentinian property in foreign countries”); *Walters*, 651 F.3d at 297 (China’s assets “*outside* of the United States” are “categorically immune from execution under the FSIA”); *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1130 (9th Cir. 2010) (property not “in the United States” was “immune from

execution”); *Autotech Techs. LP v. Integral Research & Dev. Corp.*, 499 F.3d 737, 750 (7th Cir. 2007) (“The FSIA did not purport to authorize execution against a foreign sovereign’s property . . . wherever . . . located around the world.”); *see also* U.S. Statement 5.

In rejecting this longstanding consensus, the district court relied on its own earlier decision in *Bainbridge Fund Ltd. v. Republic of Argentina*, 690 F. Supp. 3d 411 (S.D.N.Y. 2023), which in turn rested almost exclusively on this Court’s now-vacated decision in *Peterson v. Islamic Republic of Iran*, 876 F.3d 63 (2d Cir. 2017), *judgment vacated sub nom. Clearstream Banking S.A. v. Peterson*, 140 S. Ct. 813 (2020). In *Peterson*, this Court held that a New York court could “recall to New York extraterritorial assets owned by a foreign sovereign.” *Peterson*, 876 F.3d at 92. The *Peterson* panel pointed to the Supreme Court’s decision in *Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134 (2014), which supposedly “abrogated decades of pre-existing sovereign immunity common law” and held that the FSIA solely governs sovereign immunity. *Peterson*, 876 F.3d at 69, 89. Before the Supreme Court, the U.S. Government filed a brief explaining that this Court had overread the Supreme Court’s *NML* decision. U.S. Br. 13-15, *Clearstream Banking S.A. v. Peterson*, 17-1529 & 17-1534 (U.S. Dec. 9, 2019). After an intervening statutory amendment, the Supreme Court vacated this Court’s decision and remanded.

Now that *Peterson* has been vacated, the district court erred by continuing to rely on *Peterson*'s misreading of *NML*. As *NML*'s opening sentence makes clear, the question there was about whether the FSIA "limits the scope of discovery available to a judgment creditor in a federal postjudgment execution proceeding against a foreign sovereign," not whether a foreign sovereign's extraterritorial assets are immune from execution. *NML*, 573 U.S. at 136; *see id.* at 140 (describing the "single, narrow question" before the Court). The Supreme Court did not quietly wipe away centuries of execution law. As to execution, *NML* recognized that U.S. "courts generally lack authority in the first place to execute against property in other countries," which occurs "under the relevant jurisdiction's law." 573 U.S. at 144; *see Rubin v. Islamic Republic of Iran*, 830 F.3d 470, 475 (7th Cir. 2016) (citing *NML* in explaining that, to be "even potentially subject to attachment and execution," property must be "within the territorial jurisdiction of the district court").

To be sure, the Supreme Court also noted that the briefing in *NML* did not support the distinct proposition that "extraterritorial assets enjoyed absolute execution immunity in United States courts"—an observation that the *Peterson* panel emphasized. 573 U.S. at 144; *see Peterson*, 876 F.3d at 90. But that execution question was not before the Court. And the Supreme Court plainly does not view *NML* as having resolved that question, given that it called for the views of the Solicitor General in *Peterson*. *See* U.S. Br. 1, *Clearstream Banking S.A. v. Peterson*,

17-1529 & 17-1534 (U.S. Dec. 9, 2019). Moreover, since *NML*, the Supreme Court has further confirmed that the FSIA does not solely occupy the field of foreign sovereign immunity. *See Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 280 (2023).

The U.S. Government reiterated these principles in the district court. As it explained in supporting the Republic, “common law sovereign immunity principles that predate the FSIA continue to preclude execution by judgment creditors against foreign sovereign property outside the United States.” U.S. Statement 5. “Accordingly, to the extent New York’s turnover statute, CPLR 5225, can be construed as applying to a foreign sovereign’s property outside of the United States, such execution is barred by federal common law.” *Id.*<sup>3</sup>

**B. The FSIA Independently Bars Turnover Here.**

Even if a foreign sovereign’s non-U.S. assets were subject to execution, the FSIA permits execution only in narrow circumstances not present here. The district court erred in holding that the Republic’s YPF Shares fell into the exception enumerated in FSIA Section 1610(a)(2), Turnover Order 16-23, for a foreign state’s

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<sup>3</sup> On appeal, the Republic also intends to argue that New York’s statute should be construed to preclude execution on non-U.S. sovereign property, which would violate both traditional common-law principles and international law. *See pp. 16-18, infra*. New York generally construes its laws not to abrogate common-law immunity principles without a “clear and specific” statement to that effect. *Ezrasons, Inc. v. Rudd*, 2025 WL 1436000, at \*4 (N.Y. May 20, 2025).

property (1) “in the United States,” (2) “used for a commercial activity in the United States,” and (3) “used for the commercial activity upon which the claim is based.” 28 U.S.C. § 1610(a)(2). The Turnover Order fails each of those requirements.

*First*, the Republic’s YPF Shares are not and cannot be “in the United States.” 28 U.S.C. § 1610(a). As the district court recognized, the Republic’s YPF Shares, like all YPF shares, are book-entry shares maintained only in Argentina with Caja de Valores. S.A., a privately owned securities depository in Argentina. Turnover Order 6, 27 (even after “[t]ransferring the Shares to a global custody account at BNYM in New York,” “the Shares would remain in the register maintained by [Caja de Valores] in Argentina”). Because this first element of Section 1610(a) cannot be satisfied, the court should have ended its analysis.

Circumventing this statutory requirement, the district court concluded that it could order Argentina to deliver the YPF Shares into the United States under C.P.L.R. Section 5225. Turnover Order 23-27. As the U.S. Government explained, the court’s interpretation “renders the FSIA’s clear statutory prerequisite that foreign sovereign property be located in the United States a nullity.” U.S. Statement 8. Section 1610(a) covers only the execution or attachment of “[t]he property in the United States of a foreign state,” not property that a district court could simultaneously order to be brought here and then deemed exempt from immunity. *See* U.S. Statement 8-9 (“Every [non-vacated] decision of a court of appeals that has

addressed the issue . . . has treated the presence of foreign sovereign property in the United States as a prerequisite to execution in U.S. courts.”).

*Second*, the Republic’s YPF Shares are not “used for a commercial activity in the United States.” 28 U.S.C. § 1610(a). As the district court found, the Republic “used” its YPF Shares to “vote[] to elect the Board and to approve initiatives generally proposed by the Board.” Turnover Order 19. But under Argentine law, all YPF shareholder meetings must—and do—take place *in Argentina*. See Dkt. 577 at 6. In other words, the commercial activity for which the Republic has used the YPF Shares—whether voting or any other shareholder activity—occurred exclusively in Argentina. Even if *YPF* subsequently conducted its own commercial activity in the United States, YPF is a separate entity whose actions cannot be attributed to the Republic. See *Rubin*, 830 F.3d at 480 (“foreign state[s] may lose execution immunity only by virtue of their own commercial use of their property in the United States”).

The district court nevertheless created a sweeping new rule for commercial activity: “a foreign sovereign’s use of its controlling shares to direct a company’s commercial activity in the United States satisfies” the FSIA’s commercial-activity-in-the-United States requirement, regardless of where the sovereign’s shareholder activities occur. Turnover Order 18. In support of its extraordinary rule, the court cited three cases. None applies. In *Crystallex International Corp. v. Bolivarian*

*Republic of Venezuela*, the Third Circuit concluded that Venezuela, through its alter-ego PDVSA, voted PDVSA's shares in a wholly owned *U.S. subsidiary*, and that voting the shares of a U.S. company constituted using those shares for commercial activity in the United States. 932 F.3d 126, 151-52 (3d Cir. 2019). Similarly, in *In re 650 Fifth Ave. & Related Properties*, the district court held that Iran used shares in a New York entity in New York. 2014 WL 1284494, at \*13, 17 (S.D.N.Y. Mar. 28, 2014), *vacated & remanded sub nom. Kirschenbaum v. 650 Fifth Ave. & Related Props.*, 830 F.3d 107 (2d Cir. 2016). And in *Foremost-McKesson, Inc. v. Islamic Republic of Iran*, the court assessed jurisdictional immunity based on *Iran's* conduct—not the activities of the corporation it allegedly controlled—in “a corporate dispute between majority and minority shareholders.” 905 F.2d 438, 450 (D.C. Cir. 1990). Each decision turned on U.S. commercial activities of the defendant, or its alter-ego. By contrast, the district court here held for the first time that the mere voting of shares in a non-U.S. corporation *outside* of the United States constitutes “use for a commercial activity in the United States.”

*Third*, the Republic's YPF Shares have never been used “for the commercial activity upon which the claim is based.” 28 U.S.C. § 1610(a)(2). In its liability decision, now on appeal, the district court held that the expropriated “shares were not the source of the tender offer obligation” underlying plaintiffs' claims, and thus that Argentina's General Expropriation Law did not preempt those claims. Dkt. 437

at 53; *see id.* at 50 (“[T]he tender offer obligation is not attached to the shares that the Republic acquired.”). In the Turnover Order, by contrast, the court held that the expropriated shares were used “to effectuate the breach of the tender offer obligation because [control of the shares] ensured that (1) the bylaws would never be enforced and (2) the Republic holds the Shares today.” Turnover Order 21. These inconsistent rulings confirm why this Court should first resolve the merits of the district court’s \$16.1 billion judgment.

**C. The Turnover Order Violates Longstanding Principles of International Comity.**

Even if it were otherwise permitted under the FSIA, the Turnover Order violates established principles of international comity. International comity is “the recognition which one nation allows within its territory to . . . another nation, having due regard to both international duty and convenience, and to the rights of its own citizens or of other persons who are under the protections of its laws.” *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa*, 482 U.S. 522, 543 n.27 (1987) (citation omitted). Under prescriptive comity, “it is well established that ‘a state may not require a person to do an act in another state that is prohibited by the law of that state.’” *Motorola Credit Corp. v. Uzan*, 388 F.3d 39, 60 (2d Cir. 2004) (quoting *Restatement (Third) of Foreign Relations Law* § 441 (1987)). Here, the district court ruled that this doctrine did not apply because no

“unavoidable conflict” existed between requiring the Republic to turn over its YPF Shares and Argentine law. Turnover Order 30. That is demonstrably wrong.

Since 2012, Argentine law has barred the transfer of the Republic’s YPF Shares to *anyone* “without the permission of the National Congress by a two-thirds vote of its members.” *See* Dkt. 578-1 (YPF Expropriation Law) Art. 10. Notwithstanding this clear Argentine law, the district court concluded that there is “no unavoidable conflict between Argentine law and Plaintiff’s requested relief” because the Republic “has several choices,” including to “(1) receive the permission of the National Congress by two-thirds vote, (2) take action to change the law, or (3) satisfy the judgment through a separate agreement with Plaintiffs.” Turnover Order 30.

The district court’s purported “choices” demonstrate the impermissible conflict between its Turnover Order and Argentine law. The first two choices purport to require the Argentine Congress to change a law enacted years before this litigation. That is not the absence of a conflict; it is directing Argentine lawmakers to eliminate the conflict by bending to a U.S. court’s order. And federal courts cannot require “the legislature of a foreign sovereign” to “enact or change a law.” *In re Austrian, German Holocaust Litig.*, 250 F.3d 156, 164-65 (2d Cir. 2001). Meanwhile, the third “choice”—that the Republic could hypothetically satisfy the

\$16.1 billion judgment by settling with plaintiffs—simply assumes away the need to comply with the district court’s order.

## **II. THE REPUBLIC WILL BE IRREPARABLY INJURED ABSENT A STAY.**

Without any doubt, the Republic will be irreparably injured without a stay.

*First*, the turnover will have immediate and irreversible consequences. Even in a run-of-the-mill case, “the denial of a controlling ownership interest in a corporation may constitute irreparable harm.” *Wisdom Imp. Sales Co. v. Labatt Brewing Co.*, 339 F.3d 101, 114 (2d Cir. 2003). Here, the Republic’s potential loss of majority control is magnified because YPF is Argentina’s largest energy company. The change in control from the Republic to unknown third-parties would create uncertainty that could destabilize YPF and affect the Argentine economy. In addition, plaintiffs have made clear that they intend to sell the YPF Shares once transferred to them. Dkt. 587 at 19 (asking district court to “instruct BNYM to transfer the shares to the U.S. Marshal for the S.D.N.Y. *for sale to the public*”) (emphasis added). Without a stay, “it will be impossible to put the genie back in the bottle,” and thus “irreparable harm . . . is all but guaranteed.” *In re 650 Fifth Ave. & Related Props.*, 2020 WL 3000382, at \*3 (S.D.N.Y. June 4, 2020).

*Second*, the Turnover Order would irreparably harm the Republic’s sovereignty by requiring it to change or violate its own laws. In enacting the YPF Expropriation Law in 2012, the Argentine Congress declared that the Republic’s

expropriation of the YPF Shares was of “public interest” and prohibited “any future transfer of the shares” without a two-thirds vote. *See* YPF Expropriation Law, Art. 10. In other words, the Republic made a sovereign choice to expropriate 51% of Argentina’s largest energy company, whose operations are critical to Argentina’s economy. The district court’s order overrides that choice, undoing this quintessentially sovereign act. Federal courts have repeatedly found that such an infringement on a core sovereign power constitutes irreparable harm. *See, e.g., Seneca Nation of Indians v. Paterson*, 2010 WL 4027795, at \*2 (W.D.N.Y. Oct. 14, 2010) (“enforcement of a statute or regulation [that] threatens to infringe upon a . . . right of sovereignty [satisfies] the irreparable harm requirement”); *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah*, 790 F.3d 1000, 1005 (10th Cir. 2015) (“invasion of . . . sovereignty can constitute irreparable injury”) (citation omitted); *Mashpee Wampanoag Tribe v. Bernhardt*, 2020 WL 3034854, at \*3 (D.D.C. June 5, 2020) (“loss of sovereign authority, self-government, and jurisdiction . . . is unquestionably an irreparable harm”).

In opposing a stay in the district court, plaintiffs contended that the Republic “cannot claim irreparable harm” because any harm is “self-inflicted,”—meaning that the Republic did not satisfy the district court’s conditions for a stay of its underlying judgment. Dkt. 745 at 2. But the Republic could not satisfy those conditions “legally or practically” under Argentine law, for some of the same reasons that it cannot

comply with the Turnover Order. Dkt. 531 at 1-2. In any event, that execution of the underlying money judgment is not stayed does not foreclose a showing of substantial harm from any subsequent turnover order.

### **III. PLAINTIFFS WOULD SUFFER NO HARM FROM A STAY.**

In contrast with the Republic's significant harms, plaintiffs would suffer "no appreciable harm" from a stay, which "does nothing more than maintain the status quo." *U.S. S.E.C. v. Citigroup Glob. Mkts. Inc.*, 673 F.3d 158, 168 (2d Cir. 2012). The Republic is not going anywhere and *cannot* sell its YPF Shares absent action by the Argentine Congress. *See* YPF Expropriation Law, Art. 10. This alone "eliminate[s] the risk of asset dissipation" pending appeal. *Citibank, N.A. v. Aralpa Holdings Ltd. P'ship*, 2024 WL 664782, at \*3 (S.D.N.Y. Feb. 16, 2024) (granting stay of turnover order pending appeal where temporary restraining order prohibited disposition of assets); *see SDF9 Cobk LLC v. AF & AR LLC*, 2015 WL 3440259, at \*3 (E.D.N.Y. May 27, 2015) (granting stay pending appeal where there was "virtually no risk of asset dissipation"). And in suggesting that Argentine law might change, plaintiffs have pointed only to a proposed non-binding resolution that *reaffirms* the existing two-thirds requirement. Dkt. 745 at 3; *see* Dkt. 746-1 at 2.

To the extent that plaintiffs raise the delay of payment of the judgment as a harm, that delay merits little weight. *See In re Johns-Manville Corp.*, 27 F.3d 48, 49 (2d Cir. 1994) (affirming stay even though trust beneficiaries would "experience

delays in receiving payments” from the trust); *In re 650 Fifth Ave.*, 2020 WL 3000382, at \*4 (delay of payment of judgment does “not strongly” “weigh[] against a stay”). The underlying judgment accrues interest and plaintiffs are not operating entities—the *Petersen* plaintiffs are in bankruptcy proceedings in Spain and the *Eton Park* plaintiffs are in liquidation. This Court could also mitigate any concerns on that front by ordering expedited briefing on appeal, to which the Republic would not object.

#### **IV. THE PUBLIC INTEREST WEIGHS HEAVILY IN FAVOR OF A STAY.**

The public interest unquestionably supports a stay. Unlike the typical “commercial dispute . . . between two companies,” *EJ Brooks Co. v. Cambridge Sec. Seals*, 2016 WL 908633, at \*2 (S.D.N.Y. Mar. 2, 2016), this dispute affects Argentina’s sovereignty and national governance. It also has implications far beyond the parties here. YPF is a publicly traded company that employs more than 23,000 people and has 49% of its outstanding equity held by shareholders *other* than the Republic. *See* Dkt. 560 at 6-7. A change of control could, for example, trigger irreversible events under YPF’s debt instruments or its bylaws’ tender-offer requirement. *Id.*; *see* Dkt. 363-1 § 7. Besides YPF, its investors, and its commercial partners, the Turnover Order would also affect the hydrocarbon-producing Argentine Provinces, which would potentially be affected by changes in company policies or governance. *See* Dkt. 560 at 6. Any impact on YPF, Argentina’s largest

energy company, could even jeopardize Argentina's ongoing efforts to stabilize its economy in cooperation with the IMF.

Finally, a stay serves judicial efficiency by maintaining the status quo while the underlying judgment is also on appeal. The Republic strongly believes that it will prevail on that appeal, which will moot the Turnover Order. This Court should allow that appeal process to conclude before wading into the enormous task of transferring ownership and control of 51% of Argentina's largest energy company.

### **CONCLUSION**

The Court should stay the Turnover Order pending appeal and grant an immediate administrative stay in the interim.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This motion complies with Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 5,169 words.

This motion also complies with the requirements of Federal Rule of Appellate Procedure 27(d) and 32(a) because it was prepared in 14-point font using a proportionally spaced typeface.

/s/ Robert J. Giuffra, Jr.

Robert J. Giuffra, Jr.

July 10, 2025

### **CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 2025, I filed the foregoing motion with the Clerk of Court for the U.S. Court of Appeals for the Second Circuit through the appellate CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Robert J. Giuffra, Jr.

Robert J. Giuffra, Jr.

July 10, 2025