
Subject: Argentina Files Reply Briefs in YPF Turnover Appeal
Date: Friday, December 12, 2025 at 10:34:11 PM Eastern Standard Time
From: Nicky Bryan
To: Nicky Bryan
CC: Paul A Holmes
Attachments: image002.png, image003.png, image004.png, Argentine Republic Reply Brief for Turnover Appeal in Second Circuit (Petersen).pdf, Argentine Republic Reply Brief for Turnover Appeal in Second Circuit (Eton Park).pdf

Hello,

We want to make sure you saw that the Argentine Republic has now filed its reply briefs in its appeal of the YPF turnover order in the U.S. Court of Appeals for the Second Circuit in the *Petersen Energia* and *Eton Park v. Argentina* cases (*attached*). As you will recall, the Republic is appealing the district court's June 30 order to turn over its YPF shares to litigation financier, Burford Capital, in partial satisfaction of an extraordinary $16.1B judgment.

The Republic describes the district court's order as an "*unprecedented encroachment on foreign sovereignty*" and a "*remarkable assertion of power"* (p. 1), noting that:

- *"[A]s the U.S. Government agrees, foreign-sovereign property located outside the United States has long been immune from the interference of U.S. courts, whether that interference takes the shape of direct execution, turnover for execution, or some other type of attachment"* (p.1)

- *"If this Court blesses the district court's attempt to reach into Argentina's territory to effect turnover in aid of execution, it would therefore be a first not just under U.S. law; it would be the* ***first judicial decision anywhere in the world*** *to contravene longstanding international law"* (p. 11)

The Second Circuit stayed the turnover order pending its consideration of this appeal. Oral arguments are scheduled for the week of March 2, 2026.

Please let us know if you have any questions. If helpful, we can set up a background conversation for you and members of the Republic's legal team to discuss the Republic's position and the wide-reaching implications of this appeal and case more broadly.

Thanks,
Nicky

Nicky Bryan
Managing Director
New York

[redacted]

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From: Chloe Clifford <Chloe.Clifford@fgsglobal.com>
Sent: Friday, September 26, 2025 12:19 AM
To: Chloe Clifford <Chloe.Clifford@fgsglobal.com>
Cc: Paul A Holmes <paul@fgsglobal.com>; Nicky Bryan <nicky.bryan@fgsglobal.com>
Subject: Argentina Files Opening Brief in YPF Turnover Appeal

Hello,

The Argentine Republic today filed its opening briefs in the U.S. Court of Appeals for the Second Circuit seeking to reverse the district court's unprecedented June 30 order to turn over its YPF shares in the *Petersen Energia* and *Eton Park v. Argentina* cases.

As you may recall, a federal judge in the district court ordered the Republic to surrender its 51% stake in Argentina's largest energy company, YPF, in violation of Argentine law to litigation financier Burford Capital in partial satisfaction of a $16.1 billion judgment.

The appeal briefs, which are attached, argue that the order would create "*a legal mess and a diplomatic disaster*" (page 1) if allowed to stand, given the extraordinary nature of the order and the risks it poses to fundamental principles of international law.

The Republic states: "*[T]he district court's Turnover Order is unprecedented and wrong. As the U.S. Government has made clear below and in this Court, the order, if affirmed, would be deeply injurious to the United States' interests, including creating the risk of reciprocal treatment of the United States and its U.S.-held property and damaging its relations with an important ally*" (page 5).

The Second Circuit stayed the turnover order pending its consideration of the appeal. Oral argument before the Second Circuit in the Republic's appeal against the underlying judgment and damages award is scheduled for October 29.

Please let us know if you have any questions or would like to speak to a member of the Republic's legal team on background about this critical appeal.

Best,
Chloe

Chloe Clifford
Managing Director | Los Angeles

[redacted]

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25-1687

In the United States Court of Appeals for the Second Circuit

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

v.

ARGENTINE REPUBLIC,
Defendant-Appellant,

YPF, S.A.,
Defendant.

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

PAGE PROOF REPLY BRIEF FOR DEFENDANT-APPELLANT THE ARGENTINE REPUBLIC

Amanda F. Davidoff
Thomas C. White
Morgan L. Ratner
SULLIVAN & CROMWELL LLP
1700 New York Avenue NW
Washington, DC 20006
(202) 956-7500
davidoffa@sullcrom.com

Robert J. Giuffra, Jr.
Sergio J. Galvis
Adam R. Brebner
Pedro José Izquierdo
Arturo Carlos Schultz
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
(212) 558-4000
giuffrar@sullcrom.com

Attorneys for the Argentine Republic

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INTRODUCTION

The district court's Turnover Order represents an unprecedented encroachment on foreign sovereignty. Plaintiffs ask this Court to endorse the district court's order that the Republic bring its valuable property from Argentina to the United States for the purpose of execution, on the basis that the court is not actually ordering execution—just exercising personal jurisdiction. Tellingly, plaintiffs fail to cite a single (non-vacated) case that has applied their theory to a foreign sovereign. The reason is simple: as the U.S. Government agrees, foreign-sovereign property located outside the United States has long been immune from the interference of U.S. courts, whether that interference takes the shape of direct execution, turnover for execution, or some other type of attachment.

Properly understood as the remarkable assertion of power that it is, the Turnover Order fails for four independent reasons. It violates (i) the federal common law, (ii) New York law, (iii) the Foreign Sovereign Immunities Act, and (iv) principles of international comity. Plaintiffs' attempts to justify the order—primarily by arguing that turnover in contemplation of execution is not actually execution—fail each time.

First, faced with longstanding common law providing absolute execution immunity to foreign-sovereign property located abroad, plaintiffs claim that this rule applies only to execution, not to turnover. But courts have never taken such a narrow

view. Both before and after the FSIA's enactment, courts have adopted a functional view of execution immunity that covers all forms of attachment and other coercive mechanisms in aid of execution. There is no principled reason for plaintiffs' "turnover exception" to this rule, and plaintiffs' only authority is either vacated or dicta.

Second, plaintiffs repeat the district court's erroneous interpretation of New York's turnover statute, C.P.L.R. § 5225, as authorizing turnover of foreign-sovereign property located abroad. Although the statute may be applied extraterritorially to private litigants, that does not extend to foreign sovereigns. Plaintiffs do not point to any indication that New York intended to override longstanding sovereign-immunity principles and customary international law through its ordinary, general-purpose turnover statute.

Third, plaintiffs fail to satisfy any of the three requirements for execution under the relevant provision of the FSIA. The Republic's YPF Shares are not "in the United States," because they are located in Argentina and were located there when the district court issued its order. 28 U.S.C. § 1610(a)(2). The district court cannot nullify this threshold requirement by ordering the Republic to bring the shares into the United States. Nor are the shares "used for a commercial activity in the United States," because all of the purported U.S. commercial activity that plaintiffs cite is undertaken by YPF, not the Republic. Plaintiffs have no explanation for how

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the YPF Shares could possibly have been "used for the commercial activity upon which the claim is based," when the underlying claim involves the Republic's acquisition of those shares.

Fourth, the Turnover Order violates foundational principles of international comity and the act-of-state doctrine. Plaintiffs stick their head in the sand, claiming not to see any conflict between the Turnover Order and Argentine law. But the Turnover Order requires the Republic to transfer its YPF Shares, and Argentine law expressly forbids such transfer. There can be no clearer conflict than that.

For any one of these independent reasons, this Court should reverse.

ARGUMENT

I. PLAINTIFFS CANNOT CIRCUMVENT LONGSTANDING FEDERAL-COMMON-LAW IMMUNITY FOR FOREIGN-SOVEREIGN PROPERTY OUTSIDE THE UNITED STATES.

Foreign-sovereign property located abroad is absolutely immune from execution to satisfy a U.S. judgment. This absolute immunity pre-dates the FSIA, was left untouched by the FSIA, and remains in force today. Across multiple administrations, the U.S. Government has reaffirmed that principle, as it again does here. U.S. Br. 2.

Plaintiffs have two primary responses. *First*, plaintiffs rely on semantics. They contend that an order requiring a foreign state to (i) hale property from outside the United States into the United States (ii) for subsequent execution in the United

States, does not actually implicate execution immunity for property abroad. But there is no substantive difference between execution and forced turnover for execution—which is presumably why plaintiffs fail to cite a single case allowing either against a foreign sovereign. *Second*, plaintiffs assert that the FSIA abrogated the federal common law, and that this Court should therefore readopt its vacated *Peterson* decision. It should not. This Court has the opportunity to course-correct from its brief misreading of the FSIA, and it should take it.

A. Federal Common Law Prohibits Forcing Sovereign Defendants to Turn Over Property Outside the United States.

Plaintiffs primarily contend that a U.S. court with personal jurisdiction over a foreign sovereign has, and has always had, the authority to order that sovereign to bring its sovereign property from anywhere in the world into the U.S. court's jurisdiction. In other words, although the district court lacks authority to "seize property [in Buenos Aires] to satisfy the judgment," the court may exercise its *in personam* jurisdiction to "simply order[] Argentina . . . to bring assets *into* New York to satisfy the judgment against it." Plaintiffs' Br. 23-25. Despite claiming (at 19) that this has been "black-letter law" "[s]ince before this Nation was founded," plaintiffs do not cite a single case ordering a foreign sovereign to turn over property located abroad. That lack of precedent is telling. The federal common law takes a broad view of execution immunity, and courts applying it have never distinguished among execution, turnover, and other attachment mechanisms.

1. Plaintiffs argue (at 23-25) that turnover-for-execution and execution "are entirely distinct." But courts have never drawn such a line. Nor could they, consistent with execution immunity's purpose of respecting foreign sovereigns and deferring to Executive Branch foreign-policy determinations. "It is a well-established rule of international law that the public property of a foreign sovereign is *immune from legal process* without the consent of that sovereign." *Loomis* v. *Rogers,* 254 F.2d 941, 943 (D.C. Cir. 1958) (emphasis added). That "legal process" includes turnover, execution, and other mechanisms in aid of execution.

Two cases, both cited in the House Report on the FSIA, H.R. Rep. 94-1487, at 26-27 (1976), exemplify U.S. courts' functional view of execution immunity.

First, in *Dexter & Carpenter, Inc.* v. *Kunglig Jarnvagsstyrelsen*, Sweden voluntarily consented to jurisdiction and incurred "a valid unsatisfied judgment." 43 F.2d 705, 707 (2d Cir. 1930). But this Court explained that "consenting to be sued does not give consent to a seizure or attachment of the property of a sovereign government." *Id.* at 708. The Court no doubt had *in personam* jurisdiction over Sweden. But it did not countenance any interference with foreign-sovereign property, instead invoking "the general international understanding, recognized by civilized nations, that a sovereign's person and property ought to be held free from seizure or molestation at all peaceful times and under all circumstances." *Id.*

Second, in *Weilamann* v. *Chase Manhattan Bank*, a New York court squarely rejected the argument that turnover is distinct from execution for purposes of execution immunity. 192 N.Y.S.2d 469 (N.Y. Sup. Ct. 1959). The plaintiffs there sought a "judgment directing that [a bank] turn over to the Sheriff" money from two accounts held by the Soviet Union in New York. *Id.* at 471. But the Executive Branch filed a suggestion of interest "to the effect that property of the USSR in the United States is immune 'from execution *or other action analogous to execution*.'" *Id.* at 472 (emphasis added). Like plaintiffs here, the plaintiffs in *Weilamann* tried to distinguish turnover from execution, "contend[ing] that th[e] action, being one in aid of an attachment, is merely a step in the court toward the perfecting of the attachment . . . and, therefore, may not be said to constitute action looking toward the execution of a judgment against the USSR." *Id.* But the court rejected that effort, observing that "the p[ur]pose of the [] action here is, in effect, the taking of action for the purpose of the execution of a judgment," and dismissing the case. *Id.* at 473.

The Turnover Order here should be rejected for the same reason. The district court directed the Republic to bring its sovereign property to the United States, and then deliver that property to plaintiffs in partial satisfaction of the judgment. As in *Weilamann*, that order plainly requires "the taking of action for the purpose of the execution of a judgment," *id.*, and therefore violates the common-law execution immunity.

2. Plaintiffs next argue (at 25) that, regardless of whether there is a distinction between turnover and execution, the federal common law has never provided absolute immunity for foreign-sovereign property located abroad. That argument cannot be squared with a long line of cases holding that, before the FSIA, wherever found in the world, "property of foreign states was absolutely immune from execution" as a matter of federal common law. *Walters* v. *Indus. & Com. Bank of China, Ltd.*, 651 F.3d 280, 289 (2d Cir. 2011) (quoting *De Letelier* v. *Republic of Chile*, 748 F.2d 790, 799 (2d Cir. 1984)); *see, e.g.*, *Conn. Bank of Com.* v. *Republic of Congo*, 309 F.3d 240, 252 (5th Cir. 2002) (before the FSIA, foreign sovereigns enjoyed "complete immunity . . . from execution against their property"); *see also* Republic Br. 22-24.

Plaintiffs claim (at 26) that this longstanding immunity was not truly absolute because "courts deferred to the Executive Branch." But the Executive Branch followed a blanket "policy of requesting immunity in all actions against friendly sovereigns" that was incorporated into the common law. *Republic of Austria* v. *Altmann*, 541 U.S. 677, 689 (2004); *see* Republic Br. 22. In any event, it is unclear how that helps plaintiffs here: the Executive Branch has made clear its position that the YPF Shares "are entitled under principles of foreign sovereign immunity to complete immunity from execution." U.S. Br. 2.

B. The FSIA Did Not Displace Common-Law Execution Immunity for Property Outside the United States.

In enacting the FSIA, Congress lifted execution immunity only in certain specified circumstances for foreign-sovereign property located "*in the United States*." 28 U.S.C. § 1609 (emphasis added). Congress did not silently abrogate the longstanding rule prohibiting execution against foreign-sovereign property *outside the United States*. Plaintiffs largely brush aside the statutory-interpretation tools and chorus of decisions that overwhelmingly support the rule that foreign-sovereign property outside the United States remains immune from execution. They instead rest on an overreading of the Supreme Court's *NML* decision, this Court's vacated *Peterson* decision, and a snippet of subsequent dicta. None of that justifies the significant departure from precedent and international norms that plaintiffs demand.

1. The FSIA's text does not reach foreign-sovereign property abroad.

As the Republic explained, every indicator of meaning—the FSIA's plain text, the international-law backdrop against which it was enacted, its legislative history, and the principle of avoiding absurd results—all make clear that in allowing for a limited execution against foreign-sovereign property *in the United States*, Congress did not silently abrogate immunity for foreign-sovereign property *outside the United States*. Republic Br. 24-30. Plaintiffs' responses lack merit.

a. Plaintiffs start by turning the text of the FSIA on its head. They argue (at 29) that the FSIA "nowhere provides execution immunity for foreign-sovereign property abroad." That is true, and it is exactly the point: the FSIA was enacted against a backdrop of absolute common-law execution immunity worldwide, and created certain enumerated *exceptions* to that regime. In areas where the FSIA is silent, the common-law immunity remains in place. *See* Republic Br. 26. In specifying exceptions to immunity for property *in the United States*, Congress did not lift immunity for any property outside the United States. *See Autotech Techs. LP* v. *Integral Rsch. & 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 that property is located around the world."). Plaintiffs have no response to this common-sense reading of the statute's scope.

Other statutes bolster that reading. When Congress wishes to abrogate common-law immunity, it does so expressly, not through silence. For example, 22 U.S.C. § 8772(a)(1) provides that certain assets of Iran "shall be subject to execution or attachment in aid of execution" to satisfy judgments in certain terrorism-related cases. In 2019, Congress amended Section 8772, striking the limitation that the assets must be located "in the United States," and adding that such assets "shall be subject to . . . an order directing that the asset be brought to the State in which the court is located and subsequently to execution or attachment in aid of

execution," *i.e.*, a turnover order. *Id.* Under plaintiffs' two-step approach, these amendments were unnecessary because courts already had inherent authority, as part of their *in personam* jurisdiction, to order that assets located abroad "be brought to the State in which the court is located" for execution. But when Congress wishes to reach sovereign assets outside the United States, it does not discuss execution "in the United States" or rely on *in personam* jurisdiction; it clearly abrogates common-law immunity. A comparable clear statement is nowhere to be found in the FSIA.[1]

b. Plaintiffs also construe the FSIA without regard to the background international law against which it was enacted. As both the Republic and the U.S. Government have explained, "the view that there is no execution immunity for extraterritorial sovereign assets would be inconsistent with customary international law." U.S. Br. 13; *see* Republic Br. 27-29. Multiple foreign sovereigns agree. Sovereign Nations Br. 5-12; Israel Br. 6-14. Plaintiffs try (at 33) to brush this aside by once again distinguishing between execution and turnover. But international law could not be clearer: "Under customary international law, a state may not exercise

[1] Plaintiffs' sole amici, "who have brought civil actions against" Iran, do not mention Section 8772. *See* Terrorism Victims' Br. 1. Section 8722 shows that Congress has expressly lowered the bar for terrorism victims in certain circumstances, in ways that it has not done under the FSIA for other plaintiffs.

jurisdiction to enforce in the territory of another state without the consent of that other state." Restatement (Fourth) of Foreign Relations Law § 432.

The U.S. Government has observed that it "is not aware of any foreign state that, either at the time of the FSIA's enactment or now, allows judgment creditors to reach a foreign sovereign's extraterritorial assets to satisfy a judgment against that foreign sovereign." U.S. Br. 14-15. And plaintiffs cannot point to any example either. If this Court blesses the district court's attempt to reach into Argentina's territory to effect turnover in aid of execution, it would therefore be a first not just under U.S. law; it would be the first judicial decision *anywhere in the world* to contravene longstanding international law.

c. Plaintiffs next try to avoid (at 33-34) the clear legislative history supporting the Republic's interpretation of the FSIA by pointing (yet again) to the supposed distinction between execution and turnover. But the legislative history rejects that distinction. *See* Republic Br. 29. Congress adopted a broad view of execution, noting that, as used in Section 1609, "[t]he term 'attachment in aid of execution' is intended to include attachments, garnishments, *and supplemental proceedings available under applicable Federal or State law*"—like New York's turnover statute—"to obtain satisfaction of a judgment." H.R. Rep. 94-1487, at 28 (emphasis added).

d. Finally, plaintiffs downplay the absurd result that, under their reading of the FSIA, "foreign state property in the United States . . . would be entitled to greater protection from coercive measures than a foreign state's property in its own territory." U.S. Br. 20; *see* Republic Br. 29-30. Plaintiffs respond (at 34-35) that under their two-step regime, once the property is brought into the United States, it will benefit from the protections of the FSIA. But under plaintiffs' theory, a U.S. court could freely order a foreign sovereign to manipulate foreign-located property —as here, by opening a global custody account and creating a new securities entitlement—before it comes within the FSIA's purview. That is, under plaintiffs' theory, foreign-sovereign property is protected by the FSIA when it is in the United States, but has *no* protection when it is abroad—a categorically absurd result.

2. Other courts continue to recognize common-law immunity for foreign-sovereign property abroad.

It is the consensus view of courts around the country that foreign-sovereign property located abroad remains immune from execution after the FSIA. Republic Br. 30-31 (collecting cases). In response, plaintiffs once more point to the illusory distinction between turnover and execution, arguing (at 35-36) that these cases "stand for the principle that courts cannot order execution (in the sense of forcible judicial seizure) on property abroad," but do not apply to turnover. That is wrong. Two of the Republic's cited cases expressly rejected application of New York's turnover statute. *See Walters*, 651 F.3d at 285 (affirming denial of "petition for

issuance of a turnover order pursuant to N.Y. C.P.L.R. § 5225(b)"); *Levin* v. *Bank of N.Y.*, 2022 WL 523901, at *4 (S.D.N.Y. Feb. 21, 2022) ("Plaintiffs cannot rely upon state law to circumvent the FSIA's authority."). And the rationale of the other decisions—that plaintiffs should "seek to execute the judgment in whatever foreign courts have jurisdiction over [the foreign sovereign's] assets"—is equally inconsistent with turnover. *Richmark Corp.* v. *Timber Falling Consultants*, 959 F.2d 1468, 1478 (9th Cir. 1992); *see Autotech*, 499 F.3d at 751 ("If assets exist in another country, the person seeking to reach them must try to obtain recognition and enforcement of the U.S. judgment in the courts of that country.").

Plaintiffs cite a bevy of cases (at 20) holding that "a court has authority to order [a defendant] party to turn over property under its control." Those cases are irrelevant at best. None involves foreign-sovereign property, and so none speaks to the limits of foreign-sovereign execution immunity. If anything, the fact that plaintiffs can cite so many cases about the turnover of *non*-sovereign property cuts exactly the other way: the most natural explanation for plaintiffs' inability to dig up a single relevant example is that the law does not allow such orders against foreign-sovereign property.

3. *NML*, *Peterson*, and *Bank Markazi* do not support the Turnover Order.

At bottom, plaintiffs argue (at 27-31) that the FSIA occupies the entire field of foreign-sovereign immunity, and that because the Act does not address the

execution immunity of property outside the United States, it silently abrogated that immunity entirely. In support, plaintiffs rely on (i) an overreading of the Supreme Court's decision in *Republic of Argentina* v. *NML Capital, Ltd.*, 573 U.S. 134 (2014), (ii) this Court's vacated decision in *Peterson* v. *Islamic Republic of Iran*, 876 F.3d 63 (2d Cir. 2017), and (iii) dicta from a footnote in *Peterson* v. *Bank Markazi*, 121 F.4th 983 (2d Cir. 2024). None of those authorities justifies the groundbreaking decision that plaintiffs want.

a. Plaintiffs insist (at 27-29) that *NML*'s reference to the FSIA as "comprehensive" forecloses the existence of any remaining common-law immunity. But subsequent Supreme Court precedent has clarified that "a suit not governed by the FSIA 'may still be barred by foreign sovereign immunity under the common law.'" *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 280 (2023) (quoting *Samantar* v. *Yousuf*, 560 U.S. 305, 324 (2010)). Plaintiffs try (at 32-33) to distinguish *Turkiye* and *Samantar* on their facts, but their reasoning is analogous. In *Turkiye*, common law governed because "the FSIA contains no grant of criminal jurisdiction and says nothing about criminal matters." 598 U.S. at 278. And *Samantar* declined to "presume that when Congress set out to codify state immunity, it must also have, *sub silentio*, intended to codify official immunity." 560 U.S. at 322. The FSIA likewise says nothing about execution of assets outside the United States, leaving the issue to the preexisting common law.

b. Plaintiffs next rely (at 30) on *Peterson*, which rested on the same overreading of *NML* to conclude that no common-law execution immunity "survived the enactment of the FSIA." 876 F.3d at 90. The Supreme Court vacated *Peterson*, and on remand, this Court chose not to "reinstate [its] analysis." *Peterson* v. *Islamic Republic of Iran*, 963 F.3d 192, 196 (2d Cir. 2020). The case is thus no longer good law, and the Court should not opt into—and extend—*Peterson*'s errors. *Peterson* misinterpreted *NML*, as both *Turkiye* and the Supreme Court's proceedings in *Peterson* have now made clear. *See* Republic Br. 33-34; U.S. Br. 17-18. This Court now also has the benefit of the U.S. Government's explanation that common-law immunities *did* survive the FSIA.

c. Finally, plaintiffs contend (at 30-31) that in *Bank Markazi*—a later decision in the *Peterson* case—this Court reinstated its previous conclusion that common-law execution immunity for foreign-sovereign assets abroad did not survive the FSIA. Although the court briefly suggested as much, it did so only in dicta in a footnote—and in contravention of the Court's previous express statement that it was not reinstating *Peterson*'s holding. While *Peterson* was pending before the Supreme Court, Congress amended Section 8772 to abrogate execution immunity for the specific assets at issue. *Bank Markazi*, 121 F.4th at 992. In *Bank Markazi*, this Court held that the newly amended law stripped Iran's central bank of execution immunity, though not jurisdictional immunity, and held that it lacked

jurisdiction. *Id.* at 995-996. The Court commented in a footnote that foreign-sovereign property outside the United States "possess[es] no execution immunity," *id.* at 996 n.3, but that comment was pure dicta in light of the Court's conclusion that it lacked personal jurisdiction. And dicta is not binding on future panels like this one. *See United States* v. *Sealed Defendant One*, 49 F.4th 690, 699 n.4 (2d Cir. 2022) ("[D]icta are not and cannot be binding.").

If anything, that terse footnote had things backward. Congress's determination that it needed to amend Section 8772 to allow for execution (including turnover) of specific foreign-sovereign property outside of the United States demonstrates that U.S. courts do not otherwise have such authority. *See* pp. 9-10, *supra*.

II. PLAINTIFFS DO NOT IDENTIFY THE NECESSARY CLEAR AUTHORITY IN THE C.P.L.R.

The district court also erred in interpreting New York's turnover statute to authorize the forced transfer of foreign-sovereign property located abroad. Although plaintiffs point (at 39) to New York decisions applying Section 5225 extraterritorially to *non*-sovereign property, they again fail to identify any precedent involving foreign-sovereign property. For foreign sovereigns, common-law and prescriptive-comity principles preclude the application of this statute to property abroad.

A. As a threshold matter, plaintiffs contend (at 39-40) that the Republic forfeited this argument. It did not. The Republic argued below that "even if New York procedural laws like C.P.L.R. § 5225 do allow courts to order the turnover of assets of private citizens held outside the United States . . . those laws are displaced when applied to a foreign sovereign's extraterritorial property." J.A. __(Dkt.577.at.28-29). The U.S. Government also raised the argument below. J.A. __(Dkt.679.at.8-9). And plaintiffs responded to the argument. J.A. __(Dkt.684.at.3-5). The district court then considered and rejected the argument. S.A. 29 n.21 (clarifying that the court had incorporated a previous decision and so did not separately "evaluate the parties' arguments regarding international comity as it pertains to the analysis of NY CPLR § 5225"). In short, the "issue is reviewable on appeal" because it was "'pressed or passed upon below'"—indeed, both. *United States* v. *Harrell*, 268 F.3d 141, 146 (2d Cir. 2001) (quoting *United States* v. *Williams*, 504 U.S. 36, 41 (1992)).

B. On the merits, plaintiffs concede that Section 5225 is "silen[t]" as to its application to foreign-sovereign property abroad, and thus contend that foreign sovereigns must be treated like any other litigant. Plaintiffs' Br. 40 (citing *Koehler* v. *Bank of Bermuda Ltd.*, 911 N.E.2d 825, 829 (N.Y. 2009)). But New York law treats silence differently for sovereigns. It is a fundamental "axiom" of New York law that "a statute in derogation of the sovereignty of a State must be strictly

construed." *Sharapata* v. *Town of Islip*, 437 N.E.2d 1104, 1106 (N.Y. 1982). Similarly, New York law requires "a clear and specific legislative intent [] to override the common law." *Ezrasons, Inc.* v. *Rudd*, — N.E.3d —, 2025 WL 1436000, at *4 (N.Y. May 20, 2025). Applying New York's turnover statute to the extraterritorial assets of private entities does not violate the common law; applying the statute that way to sovereigns does. So, under basic New York principles, the same statute can—and must—have a different scope for foreign sovereigns. *Cf.* *Krohn* v. *N.Y.C. Police Dep't*, 811 N.E.2d 8, 13 (N.Y. 2004) (punitive-damages provision not applicable to government defendants because "the provision does not clearly, expressly and specifically waive New York City's sovereign immunity").

Plaintiffs also say (at 40) that in *Attestor Master Value Fund LP* v. *Argentina*, 113 F.4th 220, 234 (2d Cir. 2024), this Court rejected the argument that Section 5225 "implicitly excludes foreign sovereigns." But while *Attestor* rejected the argument that a foreign sovereign cannot be considered a "judgment debtor" under the C.P.L.R., it did not address the narrower question of whether Section 5225 applies to foreign-sovereign property located outside the United States. Indeed, the property at issue there was deemed to be "located within the United States." *Id.* at 233.

C. Plaintiffs alternatively contend (at 41-43) that, if Section 5225 is bounded by principles of prescriptive comity, no comity principle applies here because (i) international law does not prohibit the Turnover Order, and (ii) the

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Turnover Order does not otherwise upset "justified expectations," Restatement (Third) of Foreign Relations Law § 403(2)(d). Plaintiffs are wrong on both counts.

As explained above, international law broadly prohibits enforcement of any kind within a sovereign's own territory without the sovereign's consent and does not distinguish between turnover and execution. *See* pp. 10-11, *supra*; Republic Br. 38; U.S. Br. 13-15.

Plaintiffs also gloss over (at 42-43) how the district court's misreading of Section 5225 unreasonably upsets justified expectations by creating significant problems under New York law. *First*, plaintiffs' assertion that the court did not expressly order non-party BNYM to enter into a new commercial relationship ignores reality. As amici Bank Policy Institute and the American Bankers Association explain, the Turnover Order "presupposes that BNY[M] can and should open such an account," as "[t]hat is the only way in which the Republic *could*" comply with the order. BPI/ABA Br. 5. *Second*, plaintiffs say that the YPF Shares are transferable "by their terms," but the share documentation they identify does not say anything about transferability. *Third*, plaintiffs do not dispute that, because the YPF Shares must remain in Argentina, the Turnover Order requires the creation of new property that is not currently in the Republic's possession or custody. Republic Br. 40. All of these practical problems further underscore why New York requires more from its statutes before pushing past the bounds of prescriptive comity.

III. PLAINTIFFS CANNOT CONTORT THE TURNOVER ORDER TO FIT THE FSIA'S EXCEPTIONS.

The FSIA independently requires reversal of the district court's order. Section 1610 permits execution on foreign-sovereign property only if three criteria are met, and plaintiffs fail to demonstrate that any of these requirements were satisfied here.

A. The YPF Shares Are Not "in the United States."

Plaintiffs concede (at 44) that the YPF Shares are not located in the United States right now and were not located in the United States at the time of the Turnover Order. That should be the end of the analysis.

Plaintiffs' only response (at 44) is that the YPF Shares "will be" in the United States "once Argentina complies with the court's order" requiring the Republic to bring the property into New York. But even if the YPF Shares could be brought into the United States—which they cannot, as they exist only in book-entry form in Argentina (Republic Br. 44-45)—this assertion lays bare the flaw in the district court's analysis. Section 1610(a) of the FSIA refers to foreign-sovereign property "in the United States." The statute does not refer to property that "will be located" or that "can be moved to be located" here. Plaintiffs do not deny that their interpretation would effectively render the most "basic criteri[on]" of Section 1610(a) a nullity. Republic Br. 44; *see* U.S. Br. 23. This Court rejects such "disingenuous flouting of the FSIA" because "[t]he FSIA would become meaningless if courts could eviscerate its protections" by "grant[ing], by injunction,

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relief which they may not provide by attachment." *S & S Mach. Co.* v. *Masinexportimport*, 706 F.2d 411, 418 (2d Cir. 1983).

Plaintiffs attempt (at 45) to distinguish the many contrary cases by saying that none concerned turnover orders. True enough—and more evidence against turnover of sovereign property. What the courts plainly cared about in each instance was the property's location *without the involvement of a U.S. court*. *See Rubin* v. *Islamic Republic of Iran*, 830 F.3d 470, 475 (7th Cir. 2016) (property was "outside the reach of this proceeding" because of its "present location" outside of the United States), *aff'd*, 583 U.S. 202 (2018); *Richmark*, 959 F.2d at 1478 (Section 1610 "does not empower United States courts to levy on assets located outside of the United States"); *Autotech*, 499 F.3d at 751 (rejecting attempt to "levy against assets outside the United States"); *Peterson* v. *Islamic Republic of Iran*, 627 F.3d 1117, 1130-1132 (9th Cir. 2010) (Section 1610 applies only if property "is located in the United States").

B. The YPF Shares Are Not "Used for a Commercial Activity in the United States."

Plaintiffs are also wrong that the Republic "used" the YPF shares for "commercial activity in the United States." Plaintiffs do not dispute (at 46) that the Republic used the YPF Shares "exclusively in Argentina." Nor do they identify any commercial activity that the Republic itself undertook in the United States. Instead, the purported U.S. commercial activity that plaintiffs cite (at 46) was undertaken by

YPF, a separate legal entity. Plaintiffs claim (at 47) that they "are not trying to pierce the corporate veil and hold Argentina liable for activity by YPF." But they are doing just that. They are attributing the alleged commercial activity of one entity (YPF) to its 51% shareholder (the Republic)—something that cannot be done absent a piercing of the corporate veil. Republic. Br. 48.

No matter how much plaintiffs try, none of the district court's cited cases supports their erroneous rule. Plaintiffs contend (at 48) that these cases show that a foreign sovereign engages in commercial activity for purposes of Section 1610 when it uses its shares to "direct" a company's subsequent U.S. commercial activity. But in both *Crystallex* and *650 Fifth Avenue*, the sovereigns engaged in commercial activity in the United States by using their shares in *U.S. entities*, which happens in the United States. *See Crystallex Int'l Corp.* v. *Venezuela*, 932 F.3d 126, 132, 151 (3d Cir. 2019) (Venezuela, through its alter ego, "used" shares in alter ego's "U.S. subsidiary"); *In re 650 Fifth Ave. & Related Props.*, 2014 WL 1284494, at *13, *17 (S.D.N.Y. Mar. 28, 2014) (Iran, through alter egos, used shares in an entity "organized as a partnership under New York state law"), *vacated & remanded sub nom.*, *Kirschenbaum* v. *650 Fifth Ave. & Related Props.*, 830 F.3d 107 (2d Cir. 2016). And *Foremost-McKesson, Inc.* v. *Islamic Republic of Iran*, 905 F.2d 438 (D.C. Cir. 1990), did not concern the commercial-activity exception to *execution*

immunity. It instead concerned the intentionally broader commercial-activity exception to *jurisdictional* immunity. *See id.* at 449-451; *see also* Republic Br. 46.

C. The YPF Shares Were Not "Used for the Commercial Activity Upon Which the Claim Is Based."

Finally, 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). Plaintiffs (at 49) parrot the district court's conclusion that the Republic "used" the YPF Shares "to effectuate" the Republic's alleged breach of YPF's bylaws. But like the district court, plaintiffs do not explain what that actually means. Under plaintiffs' theory, the Republic wrongfully acquired the YPF Shares without conducting a tender offer. The Republic simply could not have "used" the YPF Shares to acquire the YPF Shares. Nor did plaintiffs seek damages for or secure a judgment involving any subsequent "use" of the now-acquired YPF Shares.

IV. THE TURNOVER ORDER VIOLATES INTERNATIONAL COMITY AND THE ACT-OF-STATE DOCTRINE.

A. The Turnover Order Violates International Comity.

In requiring the Republic to relinquish its sovereign property in violation of its own law, the Turnover Order is an egregious affront to international comity. For that reason, seven foreign sovereigns, in addition to the United States itself, filed amicus briefs supporting the Republic. *See* 2d Cir. Dkts. 78, 83, 88 (Republic of Chile, Italian Republic, Romania, Ukraine, Oriental Republic of Uruguay, Republic

of Ecuador, and State of Israel). They warned that the Turnover Order "threatens the sovereignty of all nations" and "the stability of international relations," Sovereign Nations Br. 1, 21; "carr[ies] real, substantial costs for foreign States that participate in and contribute to the global economy," Israel Br. 16; and "would cause major instability in international legal and business relations," Ecuador Br. 23. Plaintiffs try to brush away these important comity considerations by arguing that (i) comity principles do not apply after the FSIA, (ii) there is no conflict with Argentine law, and (iii) comity is a balancing test that the Turnover Order satisfies. Each argument fails.

1. Plaintiffs first argue (at 51-52) that there is "no room for a separate international comity analysis" after the FSIA, on the theory that the FSIA did all necessary comity balancing. Although the FSIA reflects comity principles, comity is a prudential doctrine that must be considered separately from and in addition to the FSIA's jurisdictional requirements. Comity abstention is thus akin to other common-law abstention principles such as *forum non conveniens* and remains available to foreign sovereigns that are not immune from jurisdiction under the FSIA. *Cf. Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 490 n.15 (1983) (the FSIA "does not appear to affect the traditional doctrine of *forum non conveniens*").

The Supreme Court has strongly suggested that comity-based abstention remains available in suits against foreign states. In *Republic of Austria*, the Court indicated that even where an exception to the FSIA applies, courts "might well" defer to a "statement[] of interest" filed by the Executive Branch "suggesting that courts decline to exercise jurisdiction in particular cases" in light of "the implications of exercising jurisdiction over *particular* [defendants]." 541 U.S. at 701-702. Although the Court did not decisively resolve the question there, its discussion presumed that comity-based abstention remains available.

Congress has also indicated that comity considerations remain relevant after the FSIA. In lowering the bar for execution against certain Iranian assets in certain circumstances, Section 8772 expressly notes that execution and turnover are permissible in those circumstances "without regard to concerns relating to international comity." 22 U.S.C. § 8772(a)(1). That language would not be necessary if the FSIA had already wiped out all comity concerns.

2. Plaintiffs next try (at 52-53) to defend the absurd proposition that the Turnover Order does not present a conflict between U.S. and Argentine law. There is no serious question on that front. The Turnover Order requires the Republic to transfer its YPF Shares to plaintiffs. But under Argentine law, absent congressional authorization, the YPF Shares "cannot be 'transferred' in any way, either by Executive or Judicial branches, without violating the constitutional legal order and

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the separation of powers." J.A. __(Dkt.597-1¶6). Those two things are not compatible.

Contrary to plaintiffs' assertion (at 52-53), the YPF Expropriation Law does not exempt judicial transfers or "appl[y] only to *voluntary* transfers of the YPF shares." Nor does it depend (at 53) on the "situs of [the Republic's] ownership interest." The law expressly forbids "*any* . . . transfer." S.A. 49 (emphasis added); *see* Republic Br. 8-9, 54. Accordingly, as the Republic's Argentine-law expert explained, "[a]ny order by a judge providing for acts that would entail or lead to the transfer of the expropriated shares would constitute a measure in violation of a public policy rule and, therefore, be illegitimate under Argentine law." J.A. __(Dkt.597-1¶6). On that Argentine-law point, this Court "should accord respectful consideration" to the Republic's interpretation of its own laws, particularly where the Republic's interpretation is consistent with the law's plain text. *Animal Sci. Prods., Inc.* v. *Hebei Welcome Pharm. Co.*, 585 U.S. 33, 36 (2018).

Plaintiffs also claim (at 54) that there is no conflict between the Turnover Order and the YPF Expropriation Law because "Argentina could simply seek the two-thirds approval from the Argentine Congress." But U.S. courts have no power to require "the legislature of a foreign sovereign" to "enact or change a law." *In re Austrian & German Holocaust Litig.*, 250 F.3d 156, 164-165 (2d Cir. 2001); *see* Republic Br. 55. Plaintiffs seemingly recognize as much when they wisely abandon

(at 54) the district court's other two options for avoiding a conflict with Argentine law—"tak[ing] action to change the law" or "satisfy[ing] the judgment through a separate agreement with Plaintiffs." S.A. 30. But obtaining a two-thirds vote of Congress is a change in Argentine law, just as much as an enacted bill signed by the President. Those are the only options the district court surmised to avoid the legal conflict, and they illustrate precisely why the Turnover Order should be rejected.

3. Faced with this clear conflict of law, plaintiffs try (at 52) to avoid the "well established" rule 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). Plaintiffs offer no response to the application of this brightline rule in *Motorola* and *Reebok International Ltd.* v. *McLaughlin*, 49 F.3d 1387 (9th Cir. 1995). *See* Republic Br. 52-53. Instead, plaintiffs point (at 56) to *In re Vitamin C Antitrust Litigation*, 8 F.4th 136, 143 (2d Cir. 2021), in which this Court applied a balancing test before subjecting parties to conflicting legal obligations here and in their home country. That is not the applicable test where, as here and in *Reebok*, U.S. law is construed to require a person to *take an action* in another country that violates the law of that country. *See* Republic Br. 56.

In any event, the Turnover Order fails under an international-comity balancing test, just as under a brightline rule. Plaintiffs propose (at 57) a one-sided balancing

test under which "the United States' interest in enforcing its duly entered judgment must prevail." That is no balancing test at all; it just means that a U.S. judgment always wins.

Under an actual balancing, the interests here are lopsided for the Republic. The United States has little interest in turnover in support of a judgment based entirely on Argentine law. Indeed, the U.S. Government has repeatedly advocated *against* turnover in this case. *See* U.S. Br.; J.A. __(Dkt.679); J.A. __(Dkt.702).[2] As it has explained, its "strong interest" in this case is in "enforcing the limits of the FSIA's exceptions to execution immunity, on the basis of comity and respect for fellow sovereigns, as well as to avoid the risk of reciprocal actions against the United States and its property in foreign courts." U.S. Br. 21. The Turnover Order could

[2] Plaintiffs disingenuously point out (at 57 n.8) that, consistent with standard practice in this Court, the U.S. Attorney's Office for the Southern District of New York rather than the State Department signed the United States' amicus brief. The United States has consistently taken the same position across multiple administrations, with the full participation of the Department of Justice and Department of State. *See, e.g.*, U.S. Br., *Clearstream Banking S.A.* v. *Peterson*, Nos. 17-1529 & 17-1534 (U.S. Dec. 9, 2019); U.S. Br., *Levin* v. *Bank of N.Y. Mellon*, No. 22-624 (2d Cir. Nov. 10, 2022).

"put U.S. property at risk, given the possibility of reciprocal adverse treatment of the United States in foreign courts." *Id.* at 20.[3]

On the other side of the balance, meanwhile, are the serious implications for comity and the international order if a U.S. court were to depart from customary international law and order, *for the first time in history anywhere in the world*, that a foreign sovereign transfer assets from inside its own borders into another nation. Such a result would "fundamentally alter the balance of international law that has governed relations between states for centuries," Sovereign Nations Br. 2, and "establish[] a dangerous precedent that threatens the stable, predictable legal framework on which international commerce and diplomacy depend," Ecuador Br. 20.

B. The Turnover Order Violates the Act-of-State Doctrine.

The Turnover Order also violates the act-of-state doctrine, which "compels federal and state courts to treat foreign official acts as 'valid' in the sense that a court may not declare them 'null and void.'" *Celestin* v. *Caribbean Air Mail, Inc.*, 30 F.4th 133, 138 (2d Cir. 2022) (quoting *W.S. Kirkpatrick & Co., Inc.* v. *Env't*

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[3] Plaintiffs suggest (at 41) that there is no risk of reciprocal mistreatment because the Republic is a uniquely "recalcitrant debtor." The United States says otherwise. And as this Court has recognized, "times have changed, and Argentina is 'uniquely recalcitrant' no more." *Bison Bee LLC* v. *Republic of Argentina*, 778 Fed. Appx. 72, 73 (2d Cir. 2019).

Tectonics Corp., Int'l, 493 U.S. 400, 406 (1990)). Plaintiffs do not contest that this doctrine forecloses judicial action that would require another country both to act in direct contravention of its own laws and to reverse a lawful expropriation. *See* Republic Br. 58-59; *Braka* v. *Bancomer, S.N.C.*, 762 F.2d 222, 225 (2d Cir. 1985); *Credit Suisse* v. *U.S. Dist. Ct. for the Cent. Dist. of Cal.*, 130 F.3d 1342, 1347 (9th Cir. 1997). Instead, plaintiffs merely repeat (at 59) their implausible argument that "nothing in the district court's order requires Argentina to violate its laws in any way." Because that argument fails for the reasons above, the act-of-state doctrine bars the Turnover Order too.

CONCLUSION

For the foregoing reasons, this Court should reverse.

Respectfully submitted,

/s/ Robert J. Giuffra, Jr.

Robert J. Giuffra, Jr.
Sergio J. Galvis
Adam R. Brebner
Pedro José Izquierdo
Arturo Carlos Schultz
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
(212) 558-4000
giuffrar@sullcrom.com

Amanda F. Davidoff
Thomas C. White
Morgan L. Ratner
SULLIVAN & CROMWELL LLP
1700 New York Avenue NW
Washington, DC 20006
(202) 956-7500

Attorneys for the Argentine Republic

December 12, 2025

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CERTIFICATE OF COMPLIANCE

This Brief complies with Federal Rule of Appellate Procedure 32(a) and Local Rule 32.1(a) because it contains 7,000 words.

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

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

December 12, 2025

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2025, I filed the foregoing Brief with the Clerk of Court for the U.S. Court of Appeals for the Second Circuit through the ACMS system. I certify that all participants in these cases are registered ACMS users and that service will be accomplished by the ACMS system.

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

December 12, 2025

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25-1689

In the United States Court of Appeals for the Second Circuit

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

v.

ARGENTINE REPUBLIC,
Defendant-Appellant,

YPF, S.A.,
Defendant.

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

PAGE PROOF REPLY BRIEF FOR DEFENDANT-APPELLANT THE ARGENTINE REPUBLIC

Amanda F. Davidoff
Thomas C. White
Morgan L. Ratner
SULLIVAN & CROMWELL LLP
1700 New York Avenue NW
Washington, DC 20006
(202) 956-7500
davidoffa@sullcrom.com

Robert J. Giuffra, Jr.
Sergio J. Galvis
Adam R. Brebner
Pedro José Izquierdo
Arturo Carlos Schultz
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
(212) 558-4000
giuffrar@sullcrom.com

Attorneys for the Argentine Republic

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INTRODUCTION

The district court's Turnover Order represents an unprecedented encroachment on foreign sovereignty. Plaintiffs ask this Court to endorse the district court's order that the Republic bring its valuable property from Argentina to the United States for the purpose of execution, on the basis that the court is not actually ordering execution—just exercising personal jurisdiction. Tellingly, plaintiffs fail to cite a single (non-vacated) case that has applied their theory to a foreign sovereign. The reason is simple: as the U.S. Government agrees, foreign-sovereign property located outside the United States has long been immune from the interference of U.S. courts, whether that interference takes the shape of direct execution, turnover for execution, or some other type of attachment.

Properly understood as the remarkable assertion of power that it is, the Turnover Order fails for four independent reasons. It violates (i) the federal common law, (ii) New York law, (iii) the Foreign Sovereign Immunities Act, and (iv) principles of international comity. Plaintiffs' attempts to justify the order—primarily by arguing that turnover in contemplation of execution is not actually execution—fail each time.

First, faced with longstanding common law providing absolute execution immunity to foreign-sovereign property located abroad, plaintiffs claim that this rule applies only to execution, not to turnover. But courts have never taken such a narrow

view. Both before and after the FSIA's enactment, courts have adopted a functional view of execution immunity that covers all forms of attachment and other coercive mechanisms in aid of execution. There is no principled reason for plaintiffs' "turnover exception" to this rule, and plaintiffs' only authority is either vacated or dicta.

Second, plaintiffs repeat the district court's erroneous interpretation of New York's turnover statute, C.P.L.R. § 5225, as authorizing turnover of foreign-sovereign property located abroad. Although the statute may be applied extraterritorially to private litigants, that does not extend to foreign sovereigns. Plaintiffs do not point to any indication that New York intended to override longstanding sovereign-immunity principles and customary international law through its ordinary, general-purpose turnover statute.

Third, plaintiffs fail to satisfy any of the three requirements for execution under the relevant provision of the FSIA. The Republic's YPF Shares are not "in the United States," because they are located in Argentina and were located there when the district court issued its order. 28 U.S.C. § 1610(a)(2). The district court cannot nullify this threshold requirement by ordering the Republic to bring the shares into the United States. Nor are the shares "used for a commercial activity in the United States," because all of the purported U.S. commercial activity that plaintiffs cite is undertaken by YPF, not the Republic. Plaintiffs have no explanation for how

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the YPF Shares could possibly have been "used for the commercial activity upon which the claim is based," when the underlying claim involves the Republic's acquisition of those shares.

Fourth, the Turnover Order violates foundational principles of international comity and the act-of-state doctrine. Plaintiffs stick their head in the sand, claiming not to see any conflict between the Turnover Order and Argentine law. But the Turnover Order requires the Republic to transfer its YPF Shares, and Argentine law expressly forbids such transfer. There can be no clearer conflict than that.

For any one of these independent reasons, this Court should reverse.

ARGUMENT

I. PLAINTIFFS CANNOT CIRCUMVENT LONGSTANDING FEDERAL-COMMON-LAW IMMUNITY FOR FOREIGN-SOVEREIGN PROPERTY OUTSIDE THE UNITED STATES.

Foreign-sovereign property located abroad is absolutely immune from execution to satisfy a U.S. judgment. This absolute immunity pre-dates the FSIA, was left untouched by the FSIA, and remains in force today. Across multiple administrations, the U.S. Government has reaffirmed that principle, as it again does here. U.S. Br. 2.

Plaintiffs have two primary responses. *First*, plaintiffs rely on semantics. They contend that an order requiring a foreign state to (i) hale property from outside the United States into the United States (ii) for subsequent execution in the United

States, does not actually implicate execution immunity for property abroad. But there is no substantive difference between execution and forced turnover for execution—which is presumably why plaintiffs fail to cite a single case allowing either against a foreign sovereign. *Second*, plaintiffs assert that the FSIA abrogated the federal common law, and that this Court should therefore readopt its vacated *Peterson* decision. It should not. This Court has the opportunity to course-correct from its brief misreading of the FSIA, and it should take it.

A. Federal Common Law Prohibits Forcing Sovereign Defendants to Turn Over Property Outside the United States.

Plaintiffs primarily contend that a U.S. court with personal jurisdiction over a foreign sovereign has, and has always had, the authority to order that sovereign to bring its sovereign property from anywhere in the world into the U.S. court's jurisdiction. In other words, although the district court lacks authority to "seize property [in Buenos Aires] to satisfy the judgment," the court may exercise its *in personam* jurisdiction to "simply order[] Argentina . . . to bring assets *into* New York to satisfy the judgment against it." Plaintiffs' Br. 23-25. Despite claiming (at 19) that this has been "black-letter law" "[s]ince before this Nation was founded," plaintiffs do not cite a single case ordering a foreign sovereign to turn over property located abroad. That lack of precedent is telling. The federal common law takes a broad view of execution immunity, and courts applying it have never distinguished among execution, turnover, and other attachment mechanisms.

1. Plaintiffs argue (at 23-25) that turnover-for-execution and execution "are entirely distinct." But courts have never drawn such a line. Nor could they, consistent with execution immunity's purpose of respecting foreign sovereigns and deferring to Executive Branch foreign-policy determinations. "It is a well-established rule of international law that the public property of a foreign sovereign is *immune from legal process* without the consent of that sovereign." *Loomis* v. *Rogers,* 254 F.2d 941, 943 (D.C. Cir. 1958) (emphasis added). That "legal process" includes turnover, execution, and other mechanisms in aid of execution.

Two cases, both cited in the House Report on the FSIA, H.R. Rep. 94-1487, at 26-27 (1976), exemplify U.S. courts' functional view of execution immunity.

First, in *Dexter & Carpenter, Inc.* v. *Kunglig Jarnvagsstyrelsen*, Sweden voluntarily consented to jurisdiction and incurred "a valid unsatisfied judgment." 43 F.2d 705, 707 (2d Cir. 1930). But this Court explained that "consenting to be sued does not give consent to a seizure or attachment of the property of a sovereign government." *Id.* at 708. The Court no doubt had *in personam* jurisdiction over Sweden. But it did not countenance any interference with foreign-sovereign property, instead invoking "the general international understanding, recognized by civilized nations, that a sovereign's person and property ought to be held free from seizure or molestation at all peaceful times and under all circumstances." *Id.*

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Second, in *Weilamann* v. *Chase Manhattan Bank*, a New York court squarely rejected the argument that turnover is distinct from execution for purposes of execution immunity. 192 N.Y.S.2d 469 (N.Y. Sup. Ct. 1959). The plaintiffs there sought a "judgment directing that [a bank] turn over to the Sheriff" money from two accounts held by the Soviet Union in New York. *Id.* at 471. But the Executive Branch filed a suggestion of interest "to the effect that property of the USSR in the United States is immune 'from execution *or other action analogous to execution*.'" *Id.* at 472 (emphasis added). Like plaintiffs here, the plaintiffs in *Weilamann* tried to distinguish turnover from execution, "contend[ing] that th[e] action, being one in aid of an attachment, is merely a step in the court toward the perfecting of the attachment . . . and, therefore, may not be said to constitute action looking toward the execution of a judgment against the USSR." *Id.* But the court rejected that effort, observing that "the p[ur]pose of the [] action here is, in effect, the taking of action for the purpose of the execution of a judgment," and dismissing the case. *Id.* at 473.

The Turnover Order here should be rejected for the same reason. The district court directed the Republic to bring its sovereign property to the United States, and then deliver that property to plaintiffs in partial satisfaction of the judgment. As in *Weilamann*, that order plainly requires "the taking of action for the purpose of the execution of a judgment," *id.*, and therefore violates the common-law execution immunity.

2. Plaintiffs next argue (at 25) that, regardless of whether there is a distinction between turnover and execution, the federal common law has never provided absolute immunity for foreign-sovereign property located abroad. That argument cannot be squared with a long line of cases holding that, before the FSIA, wherever found in the world, "property of foreign states was absolutely immune from execution" as a matter of federal common law. *Walters* v. *Indus. & Com. Bank of China, Ltd.*, 651 F.3d 280, 289 (2d Cir. 2011) (quoting *De Letelier* v. *Republic of Chile*, 748 F.2d 790, 799 (2d Cir. 1984)); *see, e.g.*, *Conn. Bank of Com.* v. *Republic of Congo*, 309 F.3d 240, 252 (5th Cir. 2002) (before the FSIA, foreign sovereigns enjoyed "complete immunity . . . from execution against their property"); *see also* Republic Br. 22-24.

Plaintiffs claim (at 26) that this longstanding immunity was not truly absolute because "courts deferred to the Executive Branch." But the Executive Branch followed a blanket "policy of requesting immunity in all actions against friendly sovereigns" that was incorporated into the common law. *Republic of Austria* v. *Altmann*, 541 U.S. 677, 689 (2004); *see* Republic Br. 22. In any event, it is unclear how that helps plaintiffs here: the Executive Branch has made clear its position that the YPF Shares "are entitled under principles of foreign sovereign immunity to complete immunity from execution." U.S. Br. 2.

B. The FSIA Did Not Displace Common-Law Execution Immunity for Property Outside the United States.

In enacting the FSIA, Congress lifted execution immunity only in certain specified circumstances for foreign-sovereign property located "*in the United States*." 28 U.S.C. § 1609 (emphasis added). Congress did not silently abrogate the longstanding rule prohibiting execution against foreign-sovereign property *outside the United States*. Plaintiffs largely brush aside the statutory-interpretation tools and chorus of decisions that overwhelmingly support the rule that foreign-sovereign property outside the United States remains immune from execution. They instead rest on an overreading of the Supreme Court's *NML* decision, this Court's vacated *Peterson* decision, and a snippet of subsequent dicta. None of that justifies the significant departure from precedent and international norms that plaintiffs demand.

1. The FSIA's text does not reach foreign-sovereign property abroad.

As the Republic explained, every indicator of meaning—the FSIA's plain text, the international-law backdrop against which it was enacted, its legislative history, and the principle of avoiding absurd results—all make clear that in allowing for a limited execution against foreign-sovereign property *in the United States*, Congress did not silently abrogate immunity for foreign-sovereign property *outside the United States*. Republic Br. 24-30. Plaintiffs' responses lack merit.

a. Plaintiffs start by turning the text of the FSIA on its head. They argue (at 29) that the FSIA "nowhere provides execution immunity for foreign-sovereign property abroad." That is true, and it is exactly the point: the FSIA was enacted against a backdrop of absolute common-law execution immunity worldwide, and created certain enumerated *exceptions* to that regime. In areas where the FSIA is silent, the common-law immunity remains in place. *See* Republic Br. 26. In specifying exceptions to immunity for property *in the United States*, Congress did not lift immunity for any property outside the United States. *See Autotech Techs. LP* v. *Integral Rsch. & 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 that property is located around the world."). Plaintiffs have no response to this common-sense reading of the statute's scope.

Other statutes bolster that reading. When Congress wishes to abrogate common-law immunity, it does so expressly, not through silence. For example, 22 U.S.C. § 8772(a)(1) provides that certain assets of Iran "shall be subject to execution or attachment in aid of execution" to satisfy judgments in certain terrorism-related cases. In 2019, Congress amended Section 8772, striking the limitation that the assets must be located "in the United States," and adding that such assets "shall be subject to . . . an order directing that the asset be brought to the State in which the court is located and subsequently to execution or attachment in aid of

execution," *i.e.*, a turnover order. *Id.* Under plaintiffs' two-step approach, these amendments were unnecessary because courts already had inherent authority, as part of their *in personam* jurisdiction, to order that assets located abroad "be brought to the State in which the court is located" for execution. But when Congress wishes to reach sovereign assets outside the United States, it does not discuss execution "in the United States" or rely on *in personam* jurisdiction; it clearly abrogates common-law immunity. A comparable clear statement is nowhere to be found in the FSIA.[1]

b. Plaintiffs also construe the FSIA without regard to the background international law against which it was enacted. As both the Republic and the U.S. Government have explained, "the view that there is no execution immunity for extraterritorial sovereign assets would be inconsistent with customary international law." U.S. Br. 13; *see* Republic Br. 27-29. Multiple foreign sovereigns agree. Sovereign Nations Br. 5-12; Israel Br. 6-14. Plaintiffs try (at 33) to brush this aside by once again distinguishing between execution and turnover. But international law could not be clearer: "Under customary international law, a state may not exercise

[1] Plaintiffs' sole amici, "who have brought civil actions against" Iran, do not mention Section 8772. *See* Terrorism Victims' Br. 1. Section 8722 shows that Congress has expressly lowered the bar for terrorism victims in certain circumstances, in ways that it has not done under the FSIA for other plaintiffs.

jurisdiction to enforce in the territory of another state without the consent of that other state." Restatement (Fourth) of Foreign Relations Law § 432.

The U.S. Government has observed that it "is not aware of any foreign state that, either at the time of the FSIA's enactment or now, allows judgment creditors to reach a foreign sovereign's extraterritorial assets to satisfy a judgment against that foreign sovereign." U.S. Br. 14-15. And plaintiffs cannot point to any example either. If this Court blesses the district court's attempt to reach into Argentina's territory to effect turnover in aid of execution, it would therefore be a first not just under U.S. law; it would be the first judicial decision *anywhere in the world* to contravene longstanding international law.

c. Plaintiffs next try to avoid (at 33-34) the clear legislative history supporting the Republic's interpretation of the FSIA by pointing (yet again) to the supposed distinction between execution and turnover. But the legislative history rejects that distinction. *See* Republic Br. 29. Congress adopted a broad view of execution, noting that, as used in Section 1609, "[t]he term 'attachment in aid of execution' is intended to include attachments, garnishments, *and supplemental proceedings available under applicable Federal or State law*"—like New York's turnover statute—"to obtain satisfaction of a judgment." H.R. Rep. 94-1487, at 28 (emphasis added).

d. Finally, plaintiffs downplay the absurd result that, under their reading of the FSIA, "foreign state property in the United States . . . would be entitled to greater protection from coercive measures than a foreign state's property in its own territory." U.S. Br. 20; *see* Republic Br. 29-30. Plaintiffs respond (at 34-35) that under their two-step regime, once the property is brought into the United States, it will benefit from the protections of the FSIA. But under plaintiffs' theory, a U.S. court could freely order a foreign sovereign to manipulate foreign-located property —as here, by opening a global custody account and creating a new securities entitlement—before it comes within the FSIA's purview. That is, under plaintiffs' theory, foreign-sovereign property is protected by the FSIA when it is in the United States, but has *no* protection when it is abroad—a categorically absurd result.

2. Other courts continue to recognize common-law immunity for foreign-sovereign property abroad.

It is the consensus view of courts around the country that foreign-sovereign property located abroad remains immune from execution after the FSIA. Republic Br. 30-31 (collecting cases). In response, plaintiffs once more point to the illusory distinction between turnover and execution, arguing (at 35-36) that these cases "stand for the principle that courts cannot order execution (in the sense of forcible judicial seizure) on property abroad," but do not apply to turnover. That is wrong. Two of the Republic's cited cases expressly rejected application of New York's turnover statute. *See Walters*, 651 F.3d at 285 (affirming denial of "petition for

issuance of a turnover order pursuant to N.Y. C.P.L.R. § 5225(b)"); *Levin* v. *Bank of N.Y.*, 2022 WL 523901, at *4 (S.D.N.Y. Feb. 21, 2022) ("Plaintiffs cannot rely upon state law to circumvent the FSIA's authority."). And the rationale of the other decisions—that plaintiffs should "seek to execute the judgment in whatever foreign courts have jurisdiction over [the foreign sovereign's] assets"—is equally inconsistent with turnover. *Richmark Corp.* v. *Timber Falling Consultants*, 959 F.2d 1468, 1478 (9th Cir. 1992); *see Autotech*, 499 F.3d at 751 ("If assets exist in another country, the person seeking to reach them must try to obtain recognition and enforcement of the U.S. judgment in the courts of that country.").

Plaintiffs cite a bevy of cases (at 20) holding that "a court has authority to order [a defendant] party to turn over property under its control." Those cases are irrelevant at best. None involves foreign-sovereign property, and so none speaks to the limits of foreign-sovereign execution immunity. If anything, the fact that plaintiffs can cite so many cases about the turnover of *non*-sovereign property cuts exactly the other way: the most natural explanation for plaintiffs' inability to dig up a single relevant example is that the law does not allow such orders against foreign-sovereign property.

3. *NML*, *Peterson*, and *Bank Markazi* do not support the Turnover Order.

At bottom, plaintiffs argue (at 27-31) that the FSIA occupies the entire field of foreign-sovereign immunity, and that because the Act does not address the

execution immunity of property outside the United States, it silently abrogated that immunity entirely. In support, plaintiffs rely on (i) an overreading of the Supreme Court's decision in *Republic of Argentina* v. *NML Capital, Ltd.*, 573 U.S. 134 (2014), (ii) this Court's vacated decision in *Peterson* v. *Islamic Republic of Iran*, 876 F.3d 63 (2d Cir. 2017), and (iii) dicta from a footnote in *Peterson* v. *Bank Markazi*, 121 F.4th 983 (2d Cir. 2024). None of those authorities justifies the groundbreaking decision that plaintiffs want.

a. Plaintiffs insist (at 27-29) that *NML*'s reference to the FSIA as "comprehensive" forecloses the existence of any remaining common-law immunity. But subsequent Supreme Court precedent has clarified that "a suit not governed by the FSIA 'may still be barred by foreign sovereign immunity under the common law.'" *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 280 (2023) (quoting *Samantar* v. *Yousuf*, 560 U.S. 305, 324 (2010)). Plaintiffs try (at 32-33) to distinguish *Turkiye* and *Samantar* on their facts, but their reasoning is analogous. In *Turkiye*, common law governed because "the FSIA contains no grant of criminal jurisdiction and says nothing about criminal matters." 598 U.S. at 278. And *Samantar* declined to "presume that when Congress set out to codify state immunity, it must also have, *sub silentio*, intended to codify official immunity." 560 U.S. at 322. The FSIA likewise says nothing about execution of assets outside the United States, leaving the issue to the preexisting common law.

b. Plaintiffs next rely (at 30) on *Peterson*, which rested on the same overreading of *NML* to conclude that no common-law execution immunity "survived the enactment of the FSIA." 876 F.3d at 90. The Supreme Court vacated *Peterson*, and on remand, this Court chose not to "reinstate [its] analysis." *Peterson* v. *Islamic Republic of Iran*, 963 F.3d 192, 196 (2d Cir. 2020). The case is thus no longer good law, and the Court should not opt into—and extend—*Peterson*'s errors. *Peterson* misinterpreted *NML*, as both *Turkiye* and the Supreme Court's proceedings in *Peterson* have now made clear. *See* Republic Br. 33-34; U.S. Br. 17-18. This Court now also has the benefit of the U.S. Government's explanation that common-law immunities *did* survive the FSIA.

c. Finally, plaintiffs contend (at 30-31) that in *Bank Markazi*—a later decision in the *Peterson* case—this Court reinstated its previous conclusion that common-law execution immunity for foreign-sovereign assets abroad did not survive the FSIA. Although the court briefly suggested as much, it did so only in dicta in a footnote—and in contravention of the Court's previous express statement that it was not reinstating *Peterson*'s holding. While *Peterson* was pending before the Supreme Court, Congress amended Section 8772 to abrogate execution immunity for the specific assets at issue. *Bank Markazi*, 121 F.4th at 992. In *Bank Markazi*, this Court held that the newly amended law stripped Iran's central bank of execution immunity, though not jurisdictional immunity, and held that it lacked

jurisdiction. *Id.* at 995-996. The Court commented in a footnote that foreign-sovereign property outside the United States "possess[es] no execution immunity," *id.* at 996 n.3, but that comment was pure dicta in light of the Court's conclusion that it lacked personal jurisdiction. And dicta is not binding on future panels like this one. *See United States* v. *Sealed Defendant One*, 49 F.4th 690, 699 n.4 (2d Cir. 2022) ("[D]icta are not and cannot be binding.").

If anything, that terse footnote had things backward. Congress's determination that it needed to amend Section 8772 to allow for execution (including turnover) of specific foreign-sovereign property outside of the United States demonstrates that U.S. courts do not otherwise have such authority. *See* pp. 9-10, *supra*.

II. PLAINTIFFS DO NOT IDENTIFY THE NECESSARY CLEAR AUTHORITY IN THE C.P.L.R.

The district court also erred in interpreting New York's turnover statute to authorize the forced transfer of foreign-sovereign property located abroad. Although plaintiffs point (at 39) to New York decisions applying Section 5225 extraterritorially to *non*-sovereign property, they again fail to identify any precedent involving foreign-sovereign property. For foreign sovereigns, common-law and prescriptive-comity principles preclude the application of this statute to property abroad.

A. As a threshold matter, plaintiffs contend (at 39-40) that the Republic forfeited this argument. It did not. The Republic argued below that "even if New York procedural laws like C.P.L.R. § 5225 do allow courts to order the turnover of assets of private citizens held outside the United States . . . those laws are displaced when applied to a foreign sovereign's extraterritorial property." J.A. __(Dkt.577.at.28-29). The U.S. Government also raised the argument below. J.A. __(Dkt.679.at.8-9). And plaintiffs responded to the argument. J.A. __(Dkt.684.at.3-5). The district court then considered and rejected the argument. S.A. 29 n.21 (clarifying that the court had incorporated a previous decision and so did not separately "evaluate the parties' arguments regarding international comity as it pertains to the analysis of NY CPLR § 5225"). In short, the "issue is reviewable on appeal" because it was "'pressed or passed upon below'"—indeed, both. *United States* v. *Harrell*, 268 F.3d 141, 146 (2d Cir. 2001) (quoting *United States* v. *Williams*, 504 U.S. 36, 41 (1992)).

B. On the merits, plaintiffs concede that Section 5225 is "silen[t]" as to its application to foreign-sovereign property abroad, and thus contend that foreign sovereigns must be treated like any other litigant. Plaintiffs' Br. 40 (citing *Koehler* v. *Bank of Bermuda Ltd.*, 911 N.E.2d 825, 829 (N.Y. 2009)). But New York law treats silence differently for sovereigns. It is a fundamental "axiom" of New York law that "a statute in derogation of the sovereignty of a State must be strictly

construed." *Sharapata* v. *Town of Islip*, 437 N.E.2d 1104, 1106 (N.Y. 1982). Similarly, New York law requires "a clear and specific legislative intent [] to override the common law." *Ezrasons, Inc.* v. *Rudd*, — N.E.3d —, 2025 WL 1436000, at *4 (N.Y. May 20, 2025). Applying New York's turnover statute to the extraterritorial assets of private entities does not violate the common law; applying the statute that way to sovereigns does. So, under basic New York principles, the same statute can—and must—have a different scope for foreign sovereigns. *Cf.* *Krohn* v. *N.Y.C. Police Dep't*, 811 N.E.2d 8, 13 (N.Y. 2004) (punitive-damages provision not applicable to government defendants because "the provision does not clearly, expressly and specifically waive New York City's sovereign immunity").

Plaintiffs also say (at 40) that in *Attestor Master Value Fund LP* v. *Argentina*, 113 F.4th 220, 234 (2d Cir. 2024), this Court rejected the argument that Section 5225 "implicitly excludes foreign sovereigns." But while *Attestor* rejected the argument that a foreign sovereign cannot be considered a "judgment debtor" under the C.P.L.R., it did not address the narrower question of whether Section 5225 applies to foreign-sovereign property located outside the United States. Indeed, the property at issue there was deemed to be "located within the United States." *Id.* at 233.

C. Plaintiffs alternatively contend (at 41-43) that, if Section 5225 is bounded by principles of prescriptive comity, no comity principle applies here because (i) international law does not prohibit the Turnover Order, and (ii) the

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Turnover Order does not otherwise upset "justified expectations," Restatement (Third) of Foreign Relations Law § 403(2)(d). Plaintiffs are wrong on both counts.

As explained above, international law broadly prohibits enforcement of any kind within a sovereign's own territory without the sovereign's consent and does not distinguish between turnover and execution. *See* pp. 10-11, *supra*; Republic Br. 38; U.S. Br. 13-15.

Plaintiffs also gloss over (at 42-43) how the district court's misreading of Section 5225 unreasonably upsets justified expectations by creating significant problems under New York law. *First*, plaintiffs' assertion that the court did not expressly order non-party BNYM to enter into a new commercial relationship ignores reality. As amici Bank Policy Institute and the American Bankers Association explain, the Turnover Order "presupposes that BNY[M] can and should open such an account," as "[t]hat is the only way in which the Republic *could*" comply with the order. BPI/ABA Br. 5. *Second*, plaintiffs say that the YPF Shares are transferable "by their terms," but the share documentation they identify does not say anything about transferability. *Third*, plaintiffs do not dispute that, because the YPF Shares must remain in Argentina, the Turnover Order requires the creation of new property that is not currently in the Republic's possession or custody. Republic Br. 40. All of these practical problems further underscore why New York requires more from its statutes before pushing past the bounds of prescriptive comity.

III. PLAINTIFFS CANNOT CONTORT THE TURNOVER ORDER TO FIT THE FSIA'S EXCEPTIONS.

The FSIA independently requires reversal of the district court's order. Section 1610 permits execution on foreign-sovereign property only if three criteria are met, and plaintiffs fail to demonstrate that any of these requirements were satisfied here.

A. The YPF Shares Are Not "in the United States."

Plaintiffs concede (at 44) that the YPF Shares are not located in the United States right now and were not located in the United States at the time of the Turnover Order. That should be the end of the analysis.

Plaintiffs' only response (at 44) is that the YPF Shares "will be" in the United States "once Argentina complies with the court's order" requiring the Republic to bring the property into New York. But even if the YPF Shares could be brought into the United States—which they cannot, as they exist only in book-entry form in Argentina (Republic Br. 44-45)—this assertion lays bare the flaw in the district court's analysis. Section 1610(a) of the FSIA refers to foreign-sovereign property "in the United States." The statute does not refer to property that "will be located" or that "can be moved to be located" here. Plaintiffs do not deny that their interpretation would effectively render the most "basic criteri[on]" of Section 1610(a) a nullity. Republic Br. 44; *see* U.S. Br. 23. This Court rejects such "disingenuous flouting of the FSIA" because "[t]he FSIA would become meaningless if courts could eviscerate its protections" by "grant[ing], by injunction,

relief which they may not provide by attachment." *S & S Mach. Co.* v. *Masinexportimport*, 706 F.2d 411, 418 (2d Cir. 1983).

Plaintiffs attempt (at 45) to distinguish the many contrary cases by saying that none concerned turnover orders. True enough—and more evidence against turnover of sovereign property. What the courts plainly cared about in each instance was the property's location *without the involvement of a U.S. court*. *See Rubin* v. *Islamic Republic of Iran*, 830 F.3d 470, 475 (7th Cir. 2016) (property was "outside the reach of this proceeding" because of its "present location" outside of the United States), *aff'd*, 583 U.S. 202 (2018); *Richmark*, 959 F.2d at 1478 (Section 1610 "does not empower United States courts to levy on assets located outside of the United States"); *Autotech*, 499 F.3d at 751 (rejecting attempt to "levy against assets outside the United States"); *Peterson* v. *Islamic Republic of Iran*, 627 F.3d 1117, 1130-1132 (9th Cir. 2010) (Section 1610 applies only if property "is located in the United States").

B. The YPF Shares Are Not "Used for a Commercial Activity in the United States."

Plaintiffs are also wrong that the Republic "used" the YPF shares for "commercial activity in the United States." Plaintiffs do not dispute (at 46) that the Republic used the YPF Shares "exclusively in Argentina." Nor do they identify any commercial activity that the Republic itself undertook in the United States. Instead, the purported U.S. commercial activity that plaintiffs cite (at 46) was undertaken by

YPF, a separate legal entity. Plaintiffs claim (at 47) that they "are not trying to pierce the corporate veil and hold Argentina liable for activity by YPF." But they are doing just that. They are attributing the alleged commercial activity of one entity (YPF) to its 51% shareholder (the Republic)—something that cannot be done absent a piercing of the corporate veil. Republic. Br. 48.

No matter how much plaintiffs try, none of the district court's cited cases supports their erroneous rule. Plaintiffs contend (at 48) that these cases show that a foreign sovereign engages in commercial activity for purposes of Section 1610 when it uses its shares to "direct" a company's subsequent U.S. commercial activity. But in both *Crystallex* and *650 Fifth Avenue*, the sovereigns engaged in commercial activity in the United States by using their shares in *U.S. entities*, which happens in the United States. *See Crystallex Int'l Corp.* v. *Venezuela*, 932 F.3d 126, 132, 151 (3d Cir. 2019) (Venezuela, through its alter ego, "used" shares in alter ego's "U.S. subsidiary"); *In re 650 Fifth Ave. & Related Props.*, 2014 WL 1284494, at *13, *17 (S.D.N.Y. Mar. 28, 2014) (Iran, through alter egos, used shares in an entity "organized as a partnership under New York state law"), *vacated & remanded sub nom.*, *Kirschenbaum* v. *650 Fifth Ave. & Related Props.*, 830 F.3d 107 (2d Cir. 2016). And *Foremost-McKesson, Inc.* v. *Islamic Republic of Iran*, 905 F.2d 438 (D.C. Cir. 1990), did not concern the commercial-activity exception to *execution*

immunity. It instead concerned the intentionally broader commercial-activity exception to *jurisdictional* immunity. *See id.* at 449-451; *see also* Republic Br. 46.

C. The YPF Shares Were Not "Used for the Commercial Activity Upon Which the Claim Is Based."

Finally, 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). Plaintiffs (at 49) parrot the district court's conclusion that the Republic "used" the YPF Shares "to effectuate" the Republic's alleged breach of YPF's bylaws. But like the district court, plaintiffs do not explain what that actually means. Under plaintiffs' theory, the Republic wrongfully acquired the YPF Shares without conducting a tender offer. The Republic simply could not have "used" the YPF Shares to acquire the YPF Shares. Nor did plaintiffs seek damages for or secure a judgment involving any subsequent "use" of the now-acquired YPF Shares.

IV. THE TURNOVER ORDER VIOLATES INTERNATIONAL COMITY AND THE ACT-OF-STATE DOCTRINE.

A. The Turnover Order Violates International Comity.

In requiring the Republic to relinquish its sovereign property in violation of its own law, the Turnover Order is an egregious affront to international comity. For that reason, seven foreign sovereigns, in addition to the United States itself, filed amicus briefs supporting the Republic. *See* 2d Cir. Dkts. 78, 83, 88 (Republic of Chile, Italian Republic, Romania, Ukraine, Oriental Republic of Uruguay, Republic

of Ecuador, and State of Israel). They warned that the Turnover Order "threatens the sovereignty of all nations" and "the stability of international relations," Sovereign Nations Br. 1, 21; "carr[ies] real, substantial costs for foreign States that participate in and contribute to the global economy," Israel Br. 16; and "would cause major instability in international legal and business relations," Ecuador Br. 23. Plaintiffs try to brush away these important comity considerations by arguing that (i) comity principles do not apply after the FSIA, (ii) there is no conflict with Argentine law, and (iii) comity is a balancing test that the Turnover Order satisfies. Each argument fails.

1. Plaintiffs first argue (at 51-52) that there is "no room for a separate international comity analysis" after the FSIA, on the theory that the FSIA did all necessary comity balancing. Although the FSIA reflects comity principles, comity is a prudential doctrine that must be considered separately from and in addition to the FSIA's jurisdictional requirements. Comity abstention is thus akin to other common-law abstention principles such as *forum non conveniens* and remains available to foreign sovereigns that are not immune from jurisdiction under the FSIA. *Cf. Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 490 n.15 (1983) (the FSIA "does not appear to affect the traditional doctrine of *forum non conveniens*").

The Supreme Court has strongly suggested that comity-based abstention remains available in suits against foreign states. In *Republic of Austria*, the Court indicated that even where an exception to the FSIA applies, courts "might well" defer to a "statement[] of interest" filed by the Executive Branch "suggesting that courts decline to exercise jurisdiction in particular cases" in light of "the implications of exercising jurisdiction over *particular* [defendants]." 541 U.S. at 701-702. Although the Court did not decisively resolve the question there, its discussion presumed that comity-based abstention remains available.

Congress has also indicated that comity considerations remain relevant after the FSIA. In lowering the bar for execution against certain Iranian assets in certain circumstances, Section 8772 expressly notes that execution and turnover are permissible in those circumstances "without regard to concerns relating to international comity." 22 U.S.C. § 8772(a)(1). That language would not be necessary if the FSIA had already wiped out all comity concerns.

2. Plaintiffs next try (at 52-53) to defend the absurd proposition that the Turnover Order does not present a conflict between U.S. and Argentine law. There is no serious question on that front. The Turnover Order requires the Republic to transfer its YPF Shares to plaintiffs. But under Argentine law, absent congressional authorization, the YPF Shares "cannot be 'transferred' in any way, either by Executive or Judicial branches, without violating the constitutional legal order and

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the separation of powers." J.A. __(Dkt.597-1¶6). Those two things are not compatible.

Contrary to plaintiffs' assertion (at 52-53), the YPF Expropriation Law does not exempt judicial transfers or "appl[y] only to *voluntary* transfers of the YPF shares." Nor does it depend (at 53) on the "situs of [the Republic's] ownership interest." The law expressly forbids "*any* . . . transfer." S.A. 49 (emphasis added); *see* Republic Br. 8-9, 54. Accordingly, as the Republic's Argentine-law expert explained, "[a]ny order by a judge providing for acts that would entail or lead to the transfer of the expropriated shares would constitute a measure in violation of a public policy rule and, therefore, be illegitimate under Argentine law." J.A. __(Dkt.597-1¶6). On that Argentine-law point, this Court "should accord respectful consideration" to the Republic's interpretation of its own laws, particularly where the Republic's interpretation is consistent with the law's plain text. *Animal Sci. Prods., Inc.* v. *Hebei Welcome Pharm. Co.*, 585 U.S. 33, 36 (2018).

Plaintiffs also claim (at 54) that there is no conflict between the Turnover Order and the YPF Expropriation Law because "Argentina could simply seek the two-thirds approval from the Argentine Congress." But U.S. courts have no power to require "the legislature of a foreign sovereign" to "enact or change a law." *In re Austrian & German Holocaust Litig.*, 250 F.3d 156, 164-165 (2d Cir. 2001); *see* Republic Br. 55. Plaintiffs seemingly recognize as much when they wisely abandon

(at 54) the district court's other two options for avoiding a conflict with Argentine law—"tak[ing] action to change the law" or "satisfy[ing] the judgment through a separate agreement with Plaintiffs." S.A. 30. But obtaining a two-thirds vote of Congress is a change in Argentine law, just as much as an enacted bill signed by the President. Those are the only options the district court surmised to avoid the legal conflict, and they illustrate precisely why the Turnover Order should be rejected.

3. Faced with this clear conflict of law, plaintiffs try (at 52) to avoid the "well established" rule 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). Plaintiffs offer no response to the application of this brightline rule in *Motorola* and *Reebok International Ltd.* v. *McLaughlin*, 49 F.3d 1387 (9th Cir. 1995). *See* Republic Br. 52-53. Instead, plaintiffs point (at 56) to *In re Vitamin C Antitrust Litigation*, 8 F.4th 136, 143 (2d Cir. 2021), in which this Court applied a balancing test before subjecting parties to conflicting legal obligations here and in their home country. That is not the applicable test where, as here and in *Reebok*, U.S. law is construed to require a person to *take an action* in another country that violates the law of that country. *See* Republic Br. 56.

In any event, the Turnover Order fails under an international-comity balancing test, just as under a brightline rule. Plaintiffs propose (at 57) a one-sided balancing

test under which "the United States' interest in enforcing its duly entered judgment must prevail." That is no balancing test at all; it just means that a U.S. judgment always wins.

Under an actual balancing, the interests here are lopsided for the Republic. The United States has little interest in turnover in support of a judgment based entirely on Argentine law. Indeed, the U.S. Government has repeatedly advocated *against* turnover in this case. *See* U.S. Br.; J.A. __(Dkt.679); J.A. __(Dkt.702).[2] As it has explained, its "strong interest" in this case is in "enforcing the limits of the FSIA's exceptions to execution immunity, on the basis of comity and respect for fellow sovereigns, as well as to avoid the risk of reciprocal actions against the United States and its property in foreign courts." U.S. Br. 21. The Turnover Order could

[2] Plaintiffs disingenuously point out (at 57 n.8) that, consistent with standard practice in this Court, the U.S. Attorney's Office for the Southern District of New York rather than the State Department signed the United States' amicus brief. The United States has consistently taken the same position across multiple administrations, with the full participation of the Department of Justice and Department of State. *See, e.g.*, U.S. Br., *Clearstream Banking S.A.* v. *Peterson*, Nos. 17-1529 & 17-1534 (U.S. Dec. 9, 2019); U.S. Br., *Levin* v. *Bank of N.Y. Mellon*, No. 22-624 (2d Cir. Nov. 10, 2022).

"put U.S. property at risk, given the possibility of reciprocal adverse treatment of the United States in foreign courts." *Id.* at 20.[3]

On the other side of the balance, meanwhile, are the serious implications for comity and the international order if a U.S. court were to depart from customary international law and order, *for the first time in history anywhere in the world*, that a foreign sovereign transfer assets from inside its own borders into another nation. Such a result would "fundamentally alter the balance of international law that has governed relations between states for centuries," Sovereign Nations Br. 2, and "establish[] a dangerous precedent that threatens the stable, predictable legal framework on which international commerce and diplomacy depend," Ecuador Br. 20.

B. The Turnover Order Violates the Act-of-State Doctrine.

The Turnover Order also violates the act-of-state doctrine, which "compels federal and state courts to treat foreign official acts as 'valid' in the sense that a court may not declare them 'null and void.'" *Celestin* v. *Caribbean Air Mail, Inc.*, 30 F.4th 133, 138 (2d Cir. 2022) (quoting *W.S. Kirkpatrick & Co., Inc.* v. *Env't*

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[3] Plaintiffs suggest (at 41) that there is no risk of reciprocal mistreatment because the Republic is a uniquely "recalcitrant debtor." The United States says otherwise. And as this Court has recognized, "times have changed, and Argentina is 'uniquely recalcitrant' no more." *Bison Bee LLC* v. *Republic of Argentina*, 778 Fed. Appx. 72, 73 (2d Cir. 2019).

Tectonics Corp., Int'l, 493 U.S. 400, 406 (1990)). Plaintiffs do not contest that this doctrine forecloses judicial action that would require another country both to act in direct contravention of its own laws and to reverse a lawful expropriation. *See* Republic Br. 58-59; *Braka* v. *Bancomer, S.N.C.*, 762 F.2d 222, 225 (2d Cir. 1985); *Credit Suisse* v. *U.S. Dist. Ct. for the Cent. Dist. of Cal.*, 130 F.3d 1342, 1347 (9th Cir. 1997). Instead, plaintiffs merely repeat (at 59) their implausible argument that "nothing in the district court's order requires Argentina to violate its laws in any way." Because that argument fails for the reasons above, the act-of-state doctrine bars the Turnover Order too.

CONCLUSION

For the foregoing reasons, this Court should reverse.

Respectfully submitted,

/s/ Robert J. Giuffra, Jr.

Robert J. Giuffra, Jr.
Sergio J. Galvis
Adam R. Brebner
Pedro José Izquierdo
Arturo Carlos Schultz
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
(212) 558-4000
giuffrar@sullcrom.com

Amanda F. Davidoff
Thomas C. White
Morgan L. Ratner
SULLIVAN & CROMWELL LLP
1700 New York Avenue NW
Washington, DC 20006
(202) 956-7500

Attorneys for the Argentine Republic

December 12, 2025

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CERTIFICATE OF COMPLIANCE

This Brief complies with Federal Rule of Appellate Procedure 32(a) and Local Rule 32.1(a) because it contains 7,000 words.

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

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

December 12, 2025

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2025, I filed the foregoing Brief with the Clerk of Court for the U.S. Court of Appeals for the Second Circuit through the ACMS system. I certify that all participants in these cases are registered ACMS users and that service will be accomplished by the ACMS system.

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

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