No. 12-842

IN THE
Supreme Court of the United States

REPUBLIC OF ARGENTINA,
Petitioner,
v.
NML CAPITAL, LTD.
Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF OF SOUTH CAROLINA AND 20 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*

Amici are States that have invested billions of dollars in foreign sovereign debt through their public pension funds. Those investments will be seriously jeopardized—and State budgets may be severely impacted as a result—if the Court accepts the extreme proposition urged by the Republic of Argentina here: that foreign sovereigns may attract investors with the false promise that their debts will be enforceable in U.S. courts, only to change the rules and thwart enforcement when it comes time to collect on those debts.

State pension funds collectively hold at least $5.2 billion in direct investment in foreign sovereign debt.[1] In addition, state pension funds have significant investments in managed funds that hold sovereign debt.[2]

These pension funds could suffer tremendous losses if the Court accepts Argentina's position. And in some jurisdictions those losses could be passed on directly to state taxpayers, because most public pen-

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[1] This figure is based on financial reports issued by the 57 largest public pension funds, and thus likely underestimates the funds' collective sovereign-debt holdings, as many funds do not disclose such holdings.

[2] For example, the South Carolina Retirement System alone has invested more than $830 million in emerging market debt funds that invest a substantial portion of their holdings in emerging market sovereign debt. *See* South Carolina Retirement System Investment Commission, *Annual Investment Report* 11 (2013), *available at* http://www.ic.sc.gov/Reporting/AIR/PDFs/2013annualreport.pdf (visited Mar. 15, 2014).

sions guarantee defined benefits to public employees, regardless of the performance of the investments. *See*, *e.g.*, Jack M. Beermann, *The Public Pension Crisis*, 70 Wash. & Lee L. Rev. 3, 4-5 (2013); Joseph E. Slater, *Public-Sector Labor in the Age of Obama*, 87 Ind. L.J. 189, 199 (2012).

Moreover, many Americans have invested their own private funds in foreign sovereign debt, either directly or through mutual funds and retirement accounts. The States have an interest in protecting the economic well-being of their residents. *See*, *e.g.*, *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982).

SUMMARY OF THE ARGUMENT

Many foreign sovereigns—particularly those with emerging economies or troubled financial pasts—are able to access affordable capital from U.S. investors, *only* if they agree to waive sovereign immunity and thereby allow their debts to be enforced in U.S. court. That is precisely what the Republic of Argentina did here. And the arrangement benefits everyone involved. It gives investors confidence in the foreign sovereign debt market. It increases the capital available to foreign sovereigns. It promotes international capital markets and supports a robust secondary market for sovereign debt.

The arrangement works, however, only if U.S. courts hold foreign sovereigns to their word. By waiving sovereign immunity, the foreign sovereign agrees to subject itself to judicial process in U.S. court, pursuant to the Federal Rules of Civil Procedure. That includes post-judgment discovery under Rule 69. For example, if—as here—a foreign sovereign defaults on its debt and attempts to conceal its

assets, state pension funds and other U.S. creditors can pursue post-judgment discovery under Rule 69 to locate those assets.

According to Argentina, however, foreign sovereigns are not subject to post-judgment discovery under Rule 69—despite its prior waiver of sovereign immunity—unless the creditor identifies the assets *in advance*. This artificial limitation on Rule 69 has no basis. To the contrary, it squarely conflicts with the sovereign's agreement to waive its immunity. And it destroys the purpose of post-judgment discovery under Rule 69.

Argentina's position boils down to this: State pension funds and private investors can obtain paper judgments against foreign sovereigns—but they cannot actually have any meaningful opportunity to enforce them against a recalcitrant sovereign. This position should be troubling to creditors and debtors alike in the foreign sovereign debt market. It is certainly troubling to the state public pension funds who have invested billions on the assurance that U.S. courts will hold foreign sovereigns to their legal commitments.

ARGUMENT

I. STATES HAVE INVESTED BILLIONS OF DOLLARS BASED ON THE ASSURANCE THAT FOREIGN SOVEREIGN DEBT IS SUBJECT TO THE PROTECTION OF U.S. COURTS.

The Republic of Argentina sold billions of dollars of its sovereign debt to state pension funds and other investors around the world, with more than a mere promise to repay principal with interest. It made specific assurances that, in the event of default, in-

vestors would be able to protect their investments in U.S. courts.

Moreover, Argentina articulated those assurances in the broadest of terms. Argentina agreed to "irrevocably waive[]" "any immunity from suit, . . . from attachment prior to judgment, . . . from execution of a judgment or from any other legal or judicial process or remedy." Pet. App. 4 n.1. It agreed to do so "to the fullest extent permitted by the laws of such jurisdiction." *Id.* And it "consent[ed] generally for the purposes of the Foreign Sovereign Immunities Act to the giving of any relief or the issue of any process in connection with any Related Proceeding or Related Judgment." *Id.*

Argentina made these assurances for good reason. Enforcement of foreign debt obligations in U.S. court benefits investors and foreign sovereigns alike. It gives confidence to investors by facilitating the smooth functioning of foreign sovereign debt markets, and it provides foreign sovereigns with access to affordable capital.

A. JUDICIAL PROCESS IN U.S. COURTS PROMOTES INVESTOR CONFIDENCE IN THE SMOOTH FUNCTIONING OF FOREIGN DEBT MARKETS.

The market for foreign sovereign debt obligations well exceeds __ billions of dollars. *See*, *e.g.*, David Reilly, *Euro Pain Could Blow Back on Big U.S. Banks*, Wall St. J., May 14, 2010, at B14. State pension funds alone have invested billions in foreign sovereign debt, both directly and through managed funds. *See*, *e.g.*, South Carolina Retirement System Investment Commission, *Annual Investment Report* at 11 (2013), *available at* http://www.ic.sc.gov/

Reporting/AIR/PDFs/2013annualreport.pdf (visited Mar. 15, 2014).

States thus have a vital interest in protecting their investments in foreign sovereign debt—and stand to suffer massive losses in the event they are unable to do so. Moreover, those losses could be suffered directly by state taxpayers, because most public pensions guarantee defined benefits to public employees, regardless of the performance of the investments. *See* Beermann, *supra*, 70 Wash. & Lee L. Rev. at 4-5; Slater, *supra*, 87 Ind. L.J. at 199. Put simply, if a foreign state can unilaterally refuse to pay its debts, States will come under enormous hardship to cover the costs of education, infrastructure, and public safety.

In light of the considerable stakes involved, state pension funds and other investors routinely demand that foreign states waive their sovereign immunity to suit in U.S. court, as a condition of investing in foreign sovereign debt. Investors rely on U.S. courts to enforce these waivers. *See Allied Bank Int'l v. Banco Credito Agricola de Cartago*, 757 F.2d 516, 521-22 (2d. Cir. 1984); *Weltover, Inc. v. Republic of Argentina*, 941 F.2d 145, 153 (2d Cir. 1991), *aff'd*, 504 U.S. 607 (1992). And such judicial enforcement achieves a number of significant objectives for investors: It discourages opportunistic default; it encourages voluntary negotiations in the event of default; and it protects liquidity by fostering a robust secondary market for sovereign debt.

1. Absent U.S. court enforcement, many foreign sovereigns might be tempted to engage in "opportunistic default." Jill E. Fisch & Caroline M. Gentile, *Vultures or Vanguards?: The Role of Litigation in Sovereign Debt Restructuring*, 53 Emory L.J. 1043,

1050 (2004). "Throughout history, countries have indeed defaulted during bad times, but they have also suspended payments when domestic economic conditions were highly favorable." Michael Tomz and Mark L. J. Wright, *Do Countries Default in "Bad Times"*, 5 J. Eur. Econ. Assoc. 352, 359 (2007).

"The only effective remedy" against opportunistic default "is to allow creditors to enforce their contract rights effectively against sovereigns in default." Hal S. Scott, *Sovereign Debt Default, Cry for the United States, Not Argentina* 1 (Washington Legal Foundation 2006), *available at* http://www.wlf.org/upload/Scott%20WP%20Final.pdf (visited Mar. 15, 2014). "If sovereign debtors expect that creditors . . . will enforce their claims through litigation, then they may be less likely to default when they are able to make the payments required on their debts." Fisch & Gentile, *supra*, 53 Emory L.J. at 1099-100.

2. The threat of U.S. court enforcement also facilitates voluntary restructuring. Investors rely on the threat of litigation to keep defaulting debtors at the negotiating table and thereby ensure that restructuring remains voluntary. "When a restructuring becomes inevitable, debtors and creditors should engage in a restructuring process that is voluntary and based on good faith." Institute for International Finance, Inc., *Principles for Stable Capital Flows and Fair Debt Restructuring in Emerging Markets* 13 (Mar. 31, 2005), *available at* http://www.iif.com/download.php?id=4fyB5BGIKzU= (visited March 15, 2014).

The United States has long agreed that "creditor participation in such negotiations should be on a strictly voluntary basis." *Pravin Banker Assocs., Ltd. v. Banco Popular del Peru*, 109 F.3d 850, 855 (2d Cir.

1997). *See also* Br. for Republic of France as *Amicus Curiae* in Support of the Republic of Argentina's Petition for a Writ of Certiorari 3, *Republic of Argentina v. NML Capital, Ltd.*, No. 12-194 (July 26, 2013); Br. of U.S. as *Amicus Curiae* in Support of Reversal 9, *NML Capital, Ltd. v. Republic of Argentina*, No. 12-105 (2d Cir. Apr. 4, 2013). Preserving the "voluntary" nature of these negotiations means that investors must have a meaningful "right to withdraw" and "reject[t] . . . terms of [a] settlement" that they find "unacceptable." *Turkmani v. Republic of Bolivia*, 193 F. Supp. 2d 165, 182 (D.D.C. 2002). *See also Elliott Assocs. L.P. v. Banco de la Nacion*, 194 F.3d 363, 376 (2d Cir. 1999).

Instead of engaging in voluntary negotiations, Argentina has adopted a "unilateral and coercive approach to [its] debt restructuring." Moody's Investor Service, *Sovereign Defaults Series: The Role of Holdout Creditors and CACs in Sovereign Debt Restructurings*, at 2 (Apr. 10, 2013). After years of refusing to negotiate with investors—despite a significant economic recovery shortly after its default, *see* Scott, *supra*, at 4—Argentina made a take-it-or-leave it offer of "25 to 29 cents on the dollar," backed by the threat to permanently withhold payment from those who refused. *NML Capital, Ltd. v. Argentina*, 699 F.3d 246, 252 (2d Cir. 2012).

If courts do not diligently enforce creditors' rights, Argentina's uniquely coercive approach to restructuring threatens to become the norm. "The very harsh way that Argentina has dealt with its bondholders, despite the substantial recovery of its ability to service its contractual obligations, has set a troubling precedent for other sovereign debtors in future financial straits." Arturo C. Porzecanski, *From*

Rogue Creditors to Rogue Debtors: Implications of Argentina's Default, 6 Chi. J. Int'l L. 311, 331 (2005). As one Argentine official announced in the wake of Argentina's 2005 restructuring, "[t]he rules of the game have changed." Larry Rohter, *Argentina Announces Deal on Its Debt Default*, N.Y. Times, Mar. 4, 2005 at C1. Under these new rules, as Argentina would have them, investors would be powerless to protest when a foreign sovereign brazenly lowballs its creditors by offering dimes on the dollar for what it owes. "Voluntary" restructuring in such an environment would be impossible.

Preserving investors' rights in court would discourage other foreign sovereigns from following Argentina's lead: "[l]itigation . . . operate[s] as a check on the terms of a proposed restructuring, giving a creditor recourse against a restructuring that provides insufficient value to creditors or that unduly favors some creditors over others." Fisch & Gentile, *supra*, at 1050-51.

3. Finally, the refusal to hold sovereigns to their waivers could imperil the secondary market for sovereign debt. "A well-developed market of secondary purchasers of defaulted sovereign debt . . . provides incentives for primary lenders"—such as state pension funds—"to continue to lend to high-risk countries." *Elliott*, 194 F.3d at 380. *See also Turkmani*, 193 F. Supp. 2d at 181-82. Without a robust secondary market, primary lenders "would have substantial difficulty selling [bond] instruments if payment were not voluntarily forthcoming," which would "add significantly to the risk of making loans to developing nations with poor credit ratings." *Ibid.* Strengthening the secondary market means that, if a sovereign defaults, primary lenders can choose

whether to accept a foreign sovereign's restructuring offer or sell their bonds at a rate that reflects secondary purchasers' ability to collect on the debt. But the secondary market requires that courts hold sovereigns to their waivers of immunity. Increasing secondary purchasers' ability to identify attachable assets thus translates to greater payouts to primary lenders that choose to cut their losses.

B. JUDICIAL PROCESS IN U.S. COURTS ALSO BENEFITS FOREIGN SOVEREIGNS AND ENHANCES U.S. LEADERSHIP IN GLOBAL MARKETS.

By holding sovereigns to their waivers, courts also protect international capital markets, improve developing countries' access to capital, and fortify the United States' preeminent role in global finance.

1. Protecting investors' bargained-for rights is "essential to the integrity of the capital markets." *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 248 (2d Cir. 2013). "Experience shows that debt markets work best when the rights of creditors are protected most effectively." Andrei Shleifer, *Will the Sovereign Debt Market Survive?*, 93 Am. Econ. Rev. 85, 85 (2003). Strong creditors' rights encourage investor confidence in the bond market, increasing investment and bringing additional capital to emerging markets while also lowering the cost of capital.

Indeed, emerging economies such as Argentina's rely on capital from foreign investors to finance economic growth and to provide basic services to their citizens. Thus, while court decisions favoring sovereign borrowers over lenders may benefit individual foreign sovereigns in the short term, the long-term interests of foreign economies are best served by pro-

tecting investors and thus encouraging investment. *See Elliott*, 194 F.3d at 380; *cf.* Alexander Hamilton, *First Report on the Public Credit* (Jan. 14, 1790), in 2 *The Works of Alexander Hamilton* 227, 228 (Henry Cabot Lodge ed. 1904) ("[W]hen the credit of a country is in any degree questionable . . . it never fails to give an extravagant premium, in one shape or another, upon all the loans it has occasion to make."). If sovereign debt agreements prove unenforceable, sovereigns with a poor history may find themselves walled off from financial markets altogether.

2. Moreover, diluting creditors' rights may cause the United States to lose its leading role in international capital markets, and particularly in the financing of emerging market sovereign debt. *See Allied Bank*, 757 F.2d at 521. As of 2009, "a large majority of outstanding emerging-market bonds issued in international markets" were governed by the laws of U.S. jurisdictions. Udaibir S. Das *et al.*, *Sovereign Debt Restructurings 1950–2010: Literature Survey, Data, and Stylized Facts* 41 (IMF Working Paper WP/12/203, August 2012). To preserve that trend, "[t]he United States has an interest in ensuring that creditors entitled to payment in the United States in United States dollars under contracts subject to the jurisdiction of United States courts may assume that, except under the most extraordinary circumstances, their rights will be determined in accordance with recognized principles of contract law." *Allied Bank*, 757 F.2d at 521-22; *see also Weltover*, 941 F.2d at 153. "Th[at] interest—one widely shared in the financial community— . . . is advanced by requiring debtors, including foreign debtors, to pay their debts." *NML*, 727 F.3d at 248. Indeed, even Argentina's oft-cited professor Mitu Gulati (*see*, *e.g.*, Pet. for Writ of Cert., *Republic of Argentina v. NML*

Capital, Ltd., No. 13-990, 9, 33 (Feb. 18, 2014)) recently predicted that investors could "embrace" efforts to strengthen enforcement of sovereign debt contracts and pay a premium for debt issued in the "one jurisdiction [the United States] that is willing to try to protect their rights." Tracey Alloway *et al.*, *BNY Mellon joins Argentina spat*, Financial Times (Dec. 4, 2012). The United States' predominant role in global finance thus depends on the willingness of courts to hold sovereign-debt issuers to their contracts.

II. ARGENTINA SECURED BILLIONS OF DOLLARS OF CAPITAL BY SUBMITTING TO SUIT IN U.S. COURT—SO IT MUST NOW ADHERE TO U.S. JUDICIAL PROCESS.

The Republic of Argentina benefited tremendously when it sold billions of dollars of its sovereign debt based on its explicit assurance that it would not invoke sovereign immunity in U.S. court in the event of default. Having done so, Argentina is now subject to ordinary judicial process in U.S. court, pursuant to the Federal Rules of Civil Procedure.

Argentina's broad waiver of sovereign immunity, once granted, cannot be "withdraw[n]." 28 U.S.C. §§ 1605(a)(1), 1610(a)(1). *See also* H.R. Rep. 94-1487 at 18, *reprinted in* 1976 U.S.C.C.A.N. 6604 at 6617 ("[A] foreign state which has induced a private person into a contract by promising not to invoke its immunity cannot, when a dispute arises, go back on its promise and seek to revoke the waiver unilaterally."). Nor can Argentina hide behind the Foreign Sovereign Immunities Act. As the Act's legislative history makes clear, Congress understood that the FSIA "does not attempt to deal with questions of discovery." H.R. Rep. No. 94-1487, at 23 (1976), *re-*

printed in 1976 U.S.C.C.A.N. 6604, 6621; *Samantar v. Yousuf*, 560 U.S. 305, 328 (2010) (Scalia, J., concurring).

To be sure, if Argentina had wished to reserve additional protections, rather than submit to the ordinary rules of procedure, they could have tried to do so. *Cf. In re Tex. E. Transmission Corp. PCB Contamination Ins. Coverage Litig.*, 15 F.3d 1230, 1246 (3d Cir. 1994) (foreign sovereigns can hire "competent lawyers to draft and review their contracts and thereby insure that [their] rights [as sovereigns] are not inadvertently compromised."). But such an explicit reservation of rights would have also alerted investors to additional investment risks—and raised the cost of capital to Argentina accordingly. So instead, Argentina did precisely the opposite: It offered investors a broadly worded waiver of sovereign immunity (Pet. App. 4 n.1)—and received better access to global markets and more affordable capital from U.S. and other investors as a result.

"[B]orrowers and lenders may . . . negotiate mutually agreeable terms for their transactions"—and then they must be "held to those terms." *NML*, 727 F.3d at 248. Investors relied on Argentina's unqualified waiver of immunity in committing billions of dollars to the Argentine treasury. These "settled expectations should not be lightly disrupted"—as this Court has recognized in other areas. *Landgraf v. USI Film Products*, 511 U.S. 244 (1994) (retroactive application of legislation). For example, under the Takings Clause, federal, state, and local governments may not impose regulations that "interfer[e]"—without compensation—"with distinct *investment-backed expectations*." *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978)

(emphasis added). Similarly, "the Contract Clause limits the power of the States to modify their own contracts," including state bond agreements. *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 17 (1977). If states cannot repudiate their bond contracts, there is no reason foreign sovereigns should be allowed to do the same.

III. SUBMISSION TO SUIT IN U.S. COURT IS MEANINGLESS ABSENT POST-JUDGMENT DISCOVERY UNDER RULE 69.

Broad post-judgment discovery in aid of execution is essential to enforcing judgments against recalcitrant debtors like Argentina. The "heart of the problem" for investors in foreign sovereign debt is that "it has become exceedingly difficult . . . to actually collect on their debts." Scott, *supra*, at 9. Unless the sovereign debtor will voluntarily pay, creditors will be forced to collect by attaching and selling the debtor's assets. *See FG Hemisphere Assocs., LLC v. Democratic Republic of Congo*, 637 F.3d 373, 377 (D.C. Cir. 2011). This task is made more difficult because the FSIA (and analogs in other nations) renders certain of the sovereign debtor's property immune from attachment and execution. *See*, *e.g.*, 28 U.S.C. §§ 1609- 1611. If creditors are to collect on their judgments, therefore, they must be able to locate assets that are not immune from attachment. *See Walters v. Indus. & Commercial Bank of China*, 651 F.3d 280, 297 (2d Cir. 2011) (requiring creditors to identify assets through discovery prior to attachment). That task requires meaningful post-judgment discovery.

Broad discovery in aid of execution is thus the norm in federal court. Federal Rule of Civil Procedure 69 provides that a "judgment creditor . . . may

obtain discovery" "in aid of . . . execution" of a judgment. "Discovery of a judgment debtor's assets is conducted routinely" under that rule. *First City, Texas-Houston, N.A. v. Rafidain Bank*, 281 F.3d 48, 54 (2d Cir. 2002); *see also Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc.*, 999 F.2d 314, 317 (8th Cir. 1993) ("[T]he remedies of a judgment creditor include the ability to question the judgment debtor about the nature and location of assets that might satisfy the judgment."). "The scope of [such] discovery" must be "very broad to permit a judgment creditor to discover assets upon which execution may be made." *Seven Arts Pictures, Inc. v. Jonesfilm*, 512 F. App'x 419, 425 (5th Cir. 2013); *see also Bank of Am., N.A. v. Veluchamy*, 643 F.3d 185, 188 (7th Cir. 2011) ("The powers available to a district court in a post-judgment proceeding . . . are to be broadly construed, providing the district court with the authority to enter a wide variety of orders to ensure that usable assets are located, seized, and—where appropriate—applied to the judgment."); *United States v. Conces*, 507 F.3d 1028, 1040 (6th Cir. 2007) ("[T]he scope of postjudgment discovery is very broad." (internal quotations omitted)).

The broad remedy of post-judgment discovery reaches "assets held outside the jurisdiction of the court where the discovery request is made," including assets held abroad. Pet. App. 14-15. Discovery as to a judgment debtor's foreign assets is common under both federal and State law, either of which may support discovery under Rule 69. *See*, *e.g. Eitzen Bulk A/S v. Bank of India*, 827 F. Supp. 2d 234, 238-39 (S.D.N.Y. 2011) (subpoena on New York branch of Indian bank "reaches all responsive materials within the corporation's control, even if those materials are located outside New York"); *Raji v.*

Bank Sepah-Iran, 139 Misc. 2d 1026, 529 N.Y.S. 2d 420, 423-24 (Sup. Ct. 1988) (allowing discovery into judgment debtor's foreign assets). "A judgment creditor is entitled to discover the identity and location of any of the judgment debtor's assets, *wherever located*." *Rafidain*, 281 F.3d at 54 (quoting *Nat'l Serv. Indus., Inc. v. Vafla Corp.*, 694 F.2d 246, 250 (11th Cir. 1982)) (emphasis added).

Significantly, "the district court's power to order [such] discovery . . . does not derive from its ultimate ability to attach the property in question," but instead "from [the district court's] power to conduct supplementary proceedings, involving persons indisputably within its jurisdiction, to enforce valid judgments." Pet. App. 16 (citing *Rafidain*, 281 F.3d at 53-54). As this Court has long recognized, "[p]rocess subsequent to judgment is as essential to jurisdiction as process antecedent to judgment, else the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution." *Riggs v. Johnson Cnty.*, 73 U.S. 166, 187 (1867).

Rule 69's broad reach is also necessary to prevent debtors from removing attachable assets from the jurisdiction in which a judgment issues. "[Under Rule 69(a),] the judgment creditor must be given the freedom to make a broad inquiry to discover *hidden or concealed assets* of the judgment debtor." *Caisson Corp. v. County West Bldg. Corp.*, 62 F.R.D. 331, 334 (E.D. Pa. 1974) (emphasis added). The cost of seeking discovery locally in every jurisdiction where an attachable asset could conceivably be hidden would be prohibitive, and would thus allow a debtor to defeat enforcement simply by removing assets to unexpected locations. That risk is particularly acute in

foreign sovereign debt litigation. Foreign sovereigns are often both distant and powerful, and can easily move assets internationally to defeat collection efforts by investors, just as Argentina has done in this case. *See The Government is Protecting Itself from Attachment*, La Nación (Feb. 5, 2004).

Argentina's efforts to limit this crucial remedy would undermine the ability of investors to enforce foreign sovereign debt contracts. "[T]he purpose of the rules allowing discovery in aid of execution would be defeated if discovery could be directed only to persons already known to possess assets" subject to attachment. Laura Hunter Dietz *et al.*, 30 Am. Jur. 2d § 617 (2014). Requiring judgment creditors to identify assets available to satisfy a judgment *before* obtaining discovery would effectively deprive them of any realistic opportunity to conduct asset discovery. Doing so would unduly impede enforcement of foreign sovereign debt obligations and further encourage sovereign debtors to remove attachable assets from the United States.

CONCLUSION

To protect the bargained-for rights of investors in foreign sovereign debt, this Court should hold that the FSIA does not limit post-judgment asset discovery under Rule 69.

Respectfully submitted,

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