No. 24-

IN THE

Supreme Court of the United States

THE REPUBLIC OF ARGENTINA,

Petitioner,

v.

ATTESTOR MASTER VALUE FUND LP, TRINITY INVESTMENTS LIMITED, BISON BEE LLC, BYBROOK CAPITAL MASTER FUND LP, BYBROOK CAPITAL HAZELTON MASTER FUND LP, WHITE HAWTHORNE, LC, WHITE HAWTHORNE II, LLC,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

CARMINE D. BOCCUZZI, JR.
Counsel of Record
CLEARY GOTTLIEB STEEN & HAMILTON LLP
One Liberty Plaza
New York, NY 10006
(212) 225-2000
cboccuzzi@cgsh.com

Counsel for Petitioner

130644

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

(1) Whether, when evaluating if property of a foreign sovereign is immune from execution under the Foreign Sovereign Immunities Act of 1976 ("FSIA"), courts should apply state law to determine the location of the property, as held by the Second and Ninth Circuits, or a uniform federal standard, as held by the Fifth Circuit?

(2) Whether property of a foreign sovereign was "used for commercial activity in the United States" as contemplated by Section 1610 of the FSIA if the property is only connected to a broader transaction that includes U.S. components?

(3) Whether property of a foreign sovereign is subject to execution under Section 1610 of the FSIA if the only commercial use in the United States is aberrational or hypothetical?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

The petitioner in this case is the Republic of Argentina (Defendant-Appellant below). Petitioner is not a corporation, does not have a corporate parent, and is not owned in whole or part by any publicly held company. The respondents are Attestor Master Value Fund LP, Trinity Investments Limited, Bison Bee LLC, Bybrook Capital Master Fund LP, Bybrook Capital Hazelton Master Fund LP, White Hawthorne, LC, White Hawthorne II, LLC (Plaintiffs-Appellees below).

RELATED PROCEEDINGS

United States Court of Appeals (2d Cir.):

- *Attestor Master Value Fund LP v. Republic of Argentina*, No. 22-2301(L), 22-2198(CON), 22-2313(CON), 22-2325(CON), 22-2316 (CON), 22-2328(CON), 22-2330(CON), 22-2274(CON), 22-2282(CON), 22-2295(CON), 22-2296(CON), 22-2331(CON), 22-2332(CON), 22-2312(CON), 22-2231(CON) (Aug. 21, 2024), petition for reh'g denied (Oct. 2, 2024), motion to stay mandate granted (Nov. 21, 2024).

United States District Court (S.D.N.Y.):

- *Attestor Master Value Fund LP v. Republic of Argentina*, 14 Civ. 05849 (LAP), 14 Civ. 10016 (LAP), 15 Civ. 1588 (LAP), 15 Civ. 2611 (LAP), 15 Civ. 5886 (LAP), 15 Civ. 9982 (LAP), 16 Civ. 1436 (LAP) 15 Civ. 2369 (LAP), 15 Civ. 7367 (LAP), 16 Civ. 1192 (LAP), 21 Civ. 2060 (LAP), 15 Civ. 4767 (LAP), 15 Civ. 9601 (LAP), 16 Civ. 1042 (LAP), 18 Civ. 3446 (LAP) (Mar. 28, 2023) (granting turnover).

- *Attestor Master Value Fund LP v. Republic of Argentina*, 14 Civ. 05849 (LAP), 14 Civ. 10016 (LAP), 15 Civ. 1588 (LAP), 15 Civ. 2611 (LAP), 15 Civ. 5886 (LAP), 15 Civ. 9982 (LAP), 16 Civ. 1436 (LAP) 15 Civ. 2369 (LAP), 15 Civ. 7367 (LAP), 16 Civ. 1192 (LAP), 21 Civ. 2060 (LAP), 15 Civ. 4767 (LAP), 15 Civ. 9601 (LAP), 16 Civ. 1042 (LAP), 18 Civ. 3446 (LAP) (July 20, 2022) (denying motion to vacate attachment, granting motion to confirm attachment), (Aug. 22, 2022) (granting motion for attachment).

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

Table of Appendices

Page

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Page

Page

Statutes

Other Authorities

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Republic of Argentina (the "Republic") respectfully prays that this Court grant a writ of certiorari to the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 113 F.4th 220 (2nd Cir. Aug. 21, 2024). App. at 5a–31a.

The orders of the district court on appeal are dated June 29, 2021, App. at 78a–96a, July 20, 2022, App. at 59a–77a, August 22, 2022, App. at 52a–58a, March 15, 2023, App. at 40a–51a, and March 28, 2023. App. at 32a–39a. The district court decisions are unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on August 21, 2024. App. at 5a–31a. A petition for panel rehearing and rehearing en banc was denied on October 2, 2024. App. at 3a–4a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The relevant statutory provision, 28 U.S.C. § 1610(a) and (d) is set forth at App. at 97a–99a.

STATEMENT OF THE CASE

This case arises under the FSIA and concerns execution on foreign sovereign assets by judgment creditors of the Republic who hold judgments related to the Republic's default on its sovereign debt. The assets at issue are the Republic's purported reversionary interest in—or, right to receive—approximately $300 million of excess proceeds of liquidated collateral previously securing certain "Brady Bonds" that matured in March 2023.

The Brady Bonds were issued by the Republic in 1993. The Brady Bonds were created under the aegis of a U.S. foreign policy initiative (the "Brady Plan," named after then-U.S. Secretary of Treasury Nicholas F. Brady) launched to alleviate the Latin American debt crisis of the 1980s.[1] Only sovereigns could participate in the Brady Plan. The Brady Plan required the Republic to implement structural reforms in order to access the IMF funds needed to acquire the collateral securing the Brady Bonds.[2]

---

1. The Republic participated in the Brady Plan, receiving loans from the IMF, the World Bank, and the Inter-American Development Bank to purchase collateral. Participating creditors then exchanged outstanding Republic debt for collateralized Brady Bonds. *See* The Brady Plan, Trade Ass'n for the Emerging Mkts., https://www.emta.org/em-background/the-brady-plan/ (last visited Dec. 9, 2024); Ross P. Buckley, *The Facilitation of the Brady Plan: Emerging Markets Debt Trading From 1989 to 1993*, 21 Fordham Int'l L.J. 1802, 1861 n.385 (1997).

2. *See*, *e.g.*, *Pravin Banker Assocs., Ltd. v. Banco Popular Del Peru*, 109 F.3d 850, 853 (2d Cir. 1997) ("Countries entering Brady Plan negotiations [were] expected to conform to IMF

The Brady Bonds relevant to the present proceedings include U.S. dollar denominated Brady Bonds governed by New York law (the USD Discount Series and USD Par Series, together the "USD Brady Bonds"), and deutsche mark (now Euro) denominated Brady Bonds governed by German law (the DMK Discount Series and DMK Par Series, together, the "DMK Brady Bonds.") The excess collateral for the USD Brady Bonds ("USD Brady Collateral") is denominated in U.S. dollars and held in New York at the Federal Reserve Bank of New York ("FRBNY"), and is worth about $254 million. The excess collateral for the DMK Brady Bonds ("DMK Brady Collateral"), originally denominated in deutsche marks (now Euros) and worth about €52 million, is held entirely outside the United States in Germany and Switzerland.

It is black letter law that Plaintiffs may execute on foreign state property only if it is located in the United States and used for a commercial activity in the United States. The Republic's reversionary interest in the DMK Brady Collateral meets neither of these criteria. That collateral, and any Republic interest in it, was not—and has never been—located in the United States. In its decision, the Second Circuit applied New York state law

---

requirements for restructuring their economy, and the IMF [was] charged with overseeing the negotiations between each country and its creditors."); Press Release, Domingo F. Cavallo, Minister of Economy and Public Works and Services, Republic of Argentina 1992 Financing Plan at 3 (June 23, 1992) (Court of Appeals Joint Appendix II, ECF Nos. 355–368, at 1705) ("Argentina has received indications from official sources as to the financing of the collateral. . . . Such financing will be made available to Argentina only in compliance with the rules and restrictions imposed by such official sources, and Argentina relies upon the ability to access the full amount available if it is to be able to implement the plan.").

to the question of the "situs" of the DMK Brady Collateral and the Republic's rights in it. Applying New York law, the decision below looked solely to the New York location of the FRBNY—the Republic's counterparty on the Collateral Pledge Agreement—in concluding that the Republic's purported reversionary right to these assets, sitting in bank accounts in Europe, was nevertheless located "in the United States." In so doing it disagreed with the Fifth Circuit's determination that a federal test instead of individual state law should govern the situs analysis of a foreign sovereign's asset for purposes of determining execution immunity under the FSIA. Had the Second Circuit properly applied the Fifth Circuit's holistic federal test to determine the situs of the reversionary interest, and therefore considered all characteristics of the assets and transactions at issue, the tenuous connection between the United States and any reversionary interest in the DMK Brady Collateral would have been insufficient to defeat execution immunity under the FSIA.

The Court of Appeals further erred in its conclusion that the DMK Brady Collateral, or the Republic's right to it, was somehow "used for a commercial activity in the United States." The Republic has never used any interest it holds in the DMK Brady Collateral in commercial activity in the United States since that collateral relates only to bonds never offered by the Republic in the United States. That the DMK Brady Bonds were part of a broader global exchange that included U.S. dollar bonds and the USD Brady Collateral does not somehow mean the DMK Brady Collateral or any interest in it was used in the United States.

Finally, the only supposed "use" identified by the courts below as to either the DMK or USD Brady Collateral was the Republic's exchange offers in 2005 and 2010. But in neither instance did the Republic use any purported right to receive any of the collateral. Brady Bonds were not even eligible for the exchange offer in 2010. The Second Circuit broke with other circuits—and its own prior precedent—in holding otherwise.

The Court should take this opportunity to clarify the law and promote uniformity among the circuits on this important federal issue of when courts in the United States may use their power to order a friendly foreign sovereign to turn over assets to satisfy a judgment.

A. Attachment and Turnover Orders

On June 29, 2021, Plaintiffs obtained an ex parte order of attachment on the Republic's purported reversionary interest in excess USD Brady Collateral held in the custody of the FRBNY. App. at 78a–96a.

The order of attachment was confirmed, App. at 59a–62a, following oral argument on July 20, 2022, App. at 64a–77a, for the reasons stated on the record at oral argument and again confirmed in a final order on August 22, 2022, App. at 52a–58a.

At a March 15, 2023 hearing, App. at 40a–51a, and as subsequently confirmed in an order on March 28, 2023, App. at 32a–39a, Plaintiffs additionally obtained attachment of the Republic's purported reversionary interest in excess DMK Brady Collateral and the district court ordered turnover of the USD and DMK Brady

Collateral. The appeals of the various district court orders were consolidated.

B. USD Brady Collateral

The USD Brady Collateral is currently comprised of the proceeds of a non-marketable zero-coupon bond specially issued by the U.S. Treasury for purposes of the Brady Plan. Under the Memorandum of Understanding ("MOU"), *see* Court of Appeals Joint Appendix II, ECF Nos. 355–368 ("C.A. JA2") at 1694, entered into between the United States and the Republic governing the zero-coupon bond, that bond is not transferable to any entity other than the Republic, its central bank (the "BCRA"), or the FRBNY as the Republic's collateral agent.

The Collateral Pledge Agreement ("CPA"), *see* C.A. JA2 at 363, entered into by the Republic and the FRBNY, sets out the procedures for liquidation of the collateral and provides that any excess is to be transferred to an account of the BCRA. After the Brady bondholders were paid at maturity, Sections 3.03 and 3.04 of the CPA directed the Republic to deliver a Notice of Full Payment to the FRBNY. The Notice of Full Payment, the form of which is provided as Schedule K to the CPA, provided instructions for delivery of any excess Brady Collateral. *See* C.A. JA2 at 1256–57. Though it leaves space for information such as the account number to be filled in later, Schedule K clearly provides that the recipient of the excess collateral is the BCRA.

When the Brady Bonds matured on March 31, 2023, the USD Brady Collateral was liquidated by the U.S. Treasury and the proceeds were delivered to the FRBNY.

Amounts sufficient to pay principal due to the holders of outstanding USD Brady Bonds were then delivered to Citibank N.A. as paying agent and subsequently to the bondholders. Any remaining liquidated excess remains in accounts at the FRBNY in New York, subject to the district court's attachment orders.

C. DMK Brady Collateral

The DMK Brady Collateral, like the USD Brady Collateral, is currently comprised of the proceeds of a non-marketable zero-coupon bond specially issued for purposes of the Brady Plan. *See* DMK Bond Purchase Agreement ("BPA"), C.A. JA2 at 2324. The DMK Brady Collateral was purchased in Germany from the Kreditanstalt für Wiederaufbau ("KfW"). The DMK Brady Collateral is governed by the BPA and the DMK Collateral Pledge Agreement ("DMK CPA"), C.A. JA2 at 524, both subject to German law. The FRBNY acts as collateral agent, but liquidation of any excess at maturity is the responsibility of KfW as principal paying agent. *See* BPA, C.A. JA2 at 2320. The DMK CPA then provides for transfer of the excess to the BCRA. *See* DMK CPA, C.A. JA2 at 1408–09.

The DMK Brady Collateral was held, in physical bearer bond form, at the Bundesbank in Germany.[3] The

3. As of maturity of the Brady Bonds, only the zero-coupon bond collateralizing principal due on the DMK Brady Bonds was held at the Bundesbank. The collateral for outstanding interest due was held (and remains) at the Bank of International Settlements in Basel, Switzerland. *See* Resp. of Non-Party Garnishee FRBNY to Pls.' Mot. for Pre-Judgment and Post-Judgment Attach., Inj. Relief, and Turnover of Collateral at 2–3, No. 14 Civ. 05849 (LAP) (S.D.N.Y. Feb. 23, 2023).

DMK Brady Bonds secured by the DMK Brady Collateral could not be offered or sold in the United States, were not registered under the U.S. Securities Act of 1933, and were governed by German law. *See* Form of DMK Global Bearer Bond, C.A. JA2 at 2355; DMK Discount Bond and Par Bond Fiscal Agency Agreement § 16(a) (Apr. 7, 1993), C.A. JA2 at 2406.

When the DMK Brady Bonds matured on March 31, 2023, they were liquidated by the KfW. The proceeds were delivered to the Bundesbank, then to Citibank Frankfurt as paying agent, and then subsequently to the bondholders. The excess sits in accounts at the Bundesbank in Germany and the Bank of International Settlements in Switzerland, subject to the district court's orders. Because the DMK Brady Collateral was liquidated into euros, it could not be held at the FRBNY because the FRBNY does not maintain euro-denominated accounts. *See* Resp. of Non-Party Garnishee FRBNY to Pls.' Mot. for Pre-Judgment and Post-Judgment Attach., Inj. Relief, and Turnover of Collateral at 2–3, No. 14 Civ. 05849 (S.D.N.Y. Feb. 23, 2023).

D. 2005 and 2010 Exchange Offers

In 2005, the Republic launched an exchange offer to all holders of Republic bonds ("2005 Exchange"). *See*, *e.g.*, *Cap. Ventures Int'l v. Republic of Argentina* ("*CVI*"), 652 F.3d 266, 268 (2d Cir. 2011). Through the 2005 Exchange, Brady bondholders could exchange their defaulted Brady Bonds "for the proceeds of the collateral securing them plus new debt that [the Republic] would issue." *Id.*

The Republic launched another exchange offer in 2010 (the "2010 Exchange").[4] However, the 2011 decision of the Second Circuit in *CVI* prevented either the USD or DMK Brady Bonds from being included as eligible securities in the 2010 Exchange. *See CVI*, 652 F.3d 266 at 270. In its opinion, the Second Circuit reasoned that the CPA governing the collateral provided the Republic with at least two reversionary interests, the first under Section 3.03 (the post-maturity reversionary interest which Plaintiffs in the present case have attached), and the second under Section 6.01 (applicable prior to the bonds' 2023 maturity date). *Id.* The Second Circuit held that since the 2010 Exchange would "effectively destroy" the reversionary interest under Section 6.01, which plaintiff CVI had attached, Brady Bonds were not eligible for purposes of the 2010 Exchange. *Id.* at 272.

REASONS FOR GRANTING THE PETITION

I. The Court Should Resolve The Circuit Split Regarding What Law Governs The Situs Determination For Intangible Property For Purposes Of Execution Immunity Under The FSIA

Prior to the enactment of the FSIA, property of a foreign sovereign was generally considered absolutely immune from execution. *See* H.R. Rep. No. 1487, 94th Cong., 2d Sess. at 27 (1976) (prior to enactment of the FSIA, "property of foreign states [was] absolutely immune from execution") (citing *Dexter & Carpenter, Inc. v.*

4. *See* Republic of Argentina, Prospectus Supplement to Prospectus dated Apr. 13, 2010 (Form 424(b)(5)) (Apr. 28, 2010), *available at* https://www.sec.gov/Archives/edgar/data/0000914021/000090342310000252/roa-424b5_0428.htm.

Kunglig Jarnvagstyrelsen, 43 F.2d 705 (2d Cir. 1930)). This was so even after the United States adopted the "restrictive theory" of sovereign immunity in the 1950s, which allowed United States courts to exercise jurisdiction over foreign sovereigns in some circumstances. *See Conn. Bank of Com. v. Republic of Congo*, 309 F.3d 240, 252 (5th Cir. 2002). Still today, property of a foreign sovereign is immune from attachment and execution unless Congress has created an exception. *See*, *e.g.*, *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1128–29 (9th Cir. 2010) (when a plaintiff seeks to execute against property owned by a foreign state, a presumption of immunity is automatically triggered and it is the plaintiff's burden to prove an exception to immunity applies); *TIG Ins. Co. v. Republic of Argentina*, 967 F.3d 778, 781 (D.C. Cir. 2020) (to enforce an award against a foreign state in the United States, a party must overcome the "default presumption" of execution immunity); *see also Walters v. Indus. and Com. Bank of China, Ltd.*, 651 F.3d 280, 289 (2d Cir. 2011) (execution immunity is broader than jurisdictional immunity, reflecting a deliberate congressional choice, because execution against a foreign staten's property is a greater affront to its sovereignty than merely permitting jurisdiction).

The plain language of Section 1610 of the FSIA, which provides the relevant exception to execution immunity in this case, requires that in order to be subject to attachment and execution, the property of a foreign state must be in the United States and used for a commercial activity in the United States. 28 U.S.C. § 1610; *Aurelius Cap. Partners, LP v. Republic of Argentina*, 584 F.3d 120, 130 (2d Cir. 2009) ("Thus, the property that is subject to attachment and execution must be 'property in the United

States of a foreign state' and must have been 'used for commercial activity[.]'"). Indeed, the Court of Appeals in this case acknowledged as much: "The FSIA requires that the attached property be in the United States and that the use of that property in commercial activity occur in the United States." App. at 24a. Even when sovereigns waive their immunity completely, a United States court may still only execute on property that meets these two "statutory criteria." *Conn. Bank of Com.*, 309 F.3d at 247. Thus, the law governing how a court should determine where a particular piece of property is located and used is of critical importance. *Cf. Af-Cap, Inc. v. Republic of Congo*, 462 F.3d 417, 429 n.10 (5th Cir. 2006) ("The situs has great relevance in an FSIA determination because a court can only attach a foreign state's property if that property is in the United States.") (citing 28 U.S.C. § 1610(a)).

In this case, the Second Circuit determined that the Republic's "reversionary interest" in the DMK Brady Collateral was "located" in New York and therefore satisfied the exception to immunity set forth in Section 1610(a)(1) of the FSIA. App. at 24a–26a. To reach this conclusion, the Circuit purportedly applied the test under New York state law for the situs of an intangible asset. *Id.* In doing so, the Court noted that it was "assum[ing] that New York law—not federal law—provides the relevant test for locating the situs of the reversionary interests." *Id.* at 25a, n.9. The Second Circuit acknowledged that the Fifth Circuit applies a different test grounded in federal law but claimed—without engaging in any analysis whatsoever—that the result would be the same either way. *Id.* The Second Circuit was wrong to apply New York state law and wrong that the test was irrelevant.

Both the district court and Second Circuit acknowledged that the DMK Brady Collateral was not located in the United States. App. at 10a; 25a; 41a. Despite this, the Second Circuit affirmed the district court's analysis which looked solely to New York state law in determining that the situs of the Republic's intangible reversionary interest in the DMK Brady Collateral was New York. App. at 24a–26a. The district court reasoned that under New York law the situs of intangible property such as the reversionary interest is the location of the party of whom performance is required by the terms of the contract. App. at 46a–47a; 68a–69a. The Second Circuit agreed, pointing to the New York Court of Appeals decision in *ABKCO Indus., Inc. v. Apple Films, Inc.*, 39 N.Y.2d 670, 675 (1976), which held that under New York law, the situs of intangible property is the location of the party "upon whom rests the obligation of performance." App. at 24a–25a. Both the Second Circuit and district court determined that the party whose performance was required in this case was the FRBNY because the FRBNY, as collateral agent, was the party who would instruct the return of any excess collateral to the Republic. App. at 24a–26a; 45a–46a.

In contrast to the Second Circuit's analysis, the Fifth Circuit has determined that the situs analysis of an intangible asset for purposes of execution immunity under the FSIA should be hollistic and should take into account the entire context of the assets at issue and how execution on such assets would or would not work with the nature and purpose of the FSIA. *See Af-Cap, Inc. v. Republic of Congo*, 383 F.3d 361, 371–73 (5th Cir. 2004). Because the situs determination of an intangible asset is "necessarily a legal fiction" the test should be "context-

specific" and embody a "common sense appraisal of the requirements of justice and convenience." *Id.* (internal citations and quotations omitted). Indeed, the situs of a particular intangible may be different from one context to another, and it may especially differ where an "overriding national concern, like the application of the Act of State doctrine is involved." *Id.* (citing *Tabacalera Severiano Jorge, S.A. v. Standard Cigar Co.*, 392 F.2d 706, 714–15 (5th Cir. 1968)). Execution immunity under the FSIA is just such an "overriding national concern." *Id.*

In some circumstances, taking the full context into account may lead to a conclusion that aligns with a state law analysis. *See Af-Cap*, 383 F.3d at 372. But courts should not be constrained to that outcome when it does not fit. *See id.* (acknowledging that determining situs for purposes of execution immunity under the FSIA implicates different issues and concerns than determining situs in other contexts but finding that the difference was immaterial in that case because the general rule did not frustrate the purpose of the FSIA). In *Af-Cap*, the Fifth Circuit did not believe that the FSIA would be frustrated by finding the situs of "commercial debt obligations owed by business entities formed and headquartered in the United States" to be in the United States. *Id.* at 373.

Here, in contrast, if the Second Circuit had properly applied a holistic federal test to determine the situs of the reversionary interest, the inevitable conclusion is that such interest is not located in the United States and finding otherwise frustrates the purposes of the FSIA. By focusing solely on the location of the FRBNY because of its limited role in directing the disposition of the DMK Brady Collateral, the district court and Second Circuit

ignored all other aspects of the transactions and assets at issue. Unlike a typical situation in which an intangible right like a simple debt is located where the debtor who owes payment is located, *see*, *e.g.*, *Peterson*, 627 F.3d at 1131–32 (debt obligation owed by French company was located in France), the role of the FRBNY with respect to the reversionary interest in the DMK Brady Collateral is significantly limited. The FRBNY is not an obligor that owes payment to the Republic. At most, in its role as collateral agent, the FRBNY can direct parties in Germany and Switzerland—where the collateral proceeds are located—to transfer the funds as permitted under the relevant agreements (none of which would involve any collateral ever coming into the United States). The Brady Bonds associated with the DMK Brady Collateral were not offered or sold in the U.S., were governed by German law, were not registered under the Securities Act of 1933, and all "servicing" of the bonds occurred in Europe. Aside from the single instruction of the FRBNY to the Bundesbank, all aspects of the DMK Brady Collateral and the Republic's so-called reversionary interests in the same are located outside the United States. The bonds were liquidated by KfW and since they were liquidated into euros, they cannot even be held by the FRBNY since it does not maintain euro-denominated accounts.[5] The

5. The Second Circuit took pains to point out the difference between the Republic's reversionary interest in the DMK Brady Collateral and the DMK Brady Collateral itself. But obviously the point of the attachment and turnover is for Plaintiffs to receive the DMK Brady Collateral. Indeed, Plaintiffs admitted that they seek "turnover of the full amount of excess collateral to them upon the maturity of the Brady Bonds." Pl. C.A. Br., No. 22-2301 (2d Cir. Feb. 21, 2023) at 15. *Cf. Aurelius Cap. Partners, LP v. Republic of Argentina*, No. 07 Civ. 11327(TPG), 2010 WL 2925072, at *3

very tenuous connection between the United States and any reversionary interest in the DMK Brady Collateral is insufficient under the FSIA. *See*, *e.g.*, *Af-Cap, Inc. v. Chevron Overseas (Congo)*, 475 F.3d 1080, 1094 (9th Cir. 2007) (the method of payment is not determinative; rather the appropriate inquiry is whether the property in question was used for a commercial activity in the U.S., not simply a connection or nexus to the U.S.). It makes little sense that the FRBNY's tangential involvement should mean that an interest in collateral which is not currently located in the United States and has nothing to do with the United States is somehow "located" here under a legal fiction. Finding that the situs of the reversionary interest in the DMK Brady Collateral is New York in this situation frustrates the purposes of the FSIA.

In addition to the circuit split, this issue also raises an exceptionally important question of law that should be resolved by this Court. Exceptions to execution immunity are narrow because "judicial seizure of the property of a friendly state may be regarded as an affront to its dignity and may . . . affect our relations with it." *Republic of Phil. v. Pimentel*, 553 U.S. 851, 866 (2008). *See also Rubin v. Islamic Republic of Iran*, 830 F.3d 470, 480 (7th Cir. 2016) (recognizing the "settled principle" that exceptions to execution immunity are narrower than and independent from exceptions to jurisdictional immunity based on the "critical diplomatic reality" that seizing

---

(S.D.N.Y. July 23, 2010) (finding "it is clear that what plaintiffs are seeking in this proceeding is not the Republic's beneficial interest in the Trust Bonds, but the Trust Bonds themselves," and so "the situs analysis in this case is properly focused not on the Republic's beneficial interest in the Trust Bonds, but on the Trust Bonds themselves").

foreign state property is a serious affront to sovereignty with "potentially far-reaching implications for American property abroad"). Indeed, a key purpose of the FSIA was to create a uniform federal system for U.S. courts to obtain jurisdiction over foreign sovereigns and to execute on a foreign state's assets. *See Republic of Austria v. Altmann*, 541 U.S. 677, 690–91 (2004) (noting that by enacting the FSIA, Congress sought to remedy the problem of sovereign immunity standards that were unclear and not uniformly applied); *see also Republic of Argentina v. NML Cap., Ltd.*, 573 U.S. 134, 141 (2014) (similar); *Reed v. Islamic Republic of Iran*, 845 F.Supp. 2d 204, 212 (D.C. Cir. 2012) (FSIA created uniform, comprehensive federal standard); H.R. Rep. No. 1487, 94th Cong. 2d Sess. at 13, 32 (1976) (noting that promoting uniformity in decision was "desirable since a disparate treatment of cases involving foreign governments may have adverse foreign relations consequences" and highlighting "the importance of developing a uniform body of law in this area").

The result of the Second Circuit's approach, which looks purely to state law to interpret a provision of the FSIA, would be that whether a particular piece of foreign state property is located in the United States for the purpose of FSIA immunity depends on the vagaries of 50 different state laws. For example, in contrast to New York, Michigan law provides that the situs of intangible assets is the domicile of the owner. *See Macatawa Bank v. Wipperfurth*, 294 Mich. App. 617, 620 (Mich. Ct. App. 2011). Thus the Second Circuit's approach would mean, contrary to the FSIA's command of uniformity in dealing with foreign state property, that the same property would be subject to execution in some states but not others. *Cf. Callejo v. Bancomer, S.A.*, 764 F.2d 1101, 1122 (5th Cir. 1985) (recognizing that federal, not state, law governs

a situs determination for purposes of the act of state doctrine because "[i]t is fundamental to our constitutional scheme that in dealing with other nations the country must speak with a united voice" and it would "needlessly complicate" foreign relations if there was diversity across states) (quoting *Republic of Iraq v. First Nat'l City Bank*, 353 F.2d 47, 50–51 (2d Cir. 1965) (Friendly, J.); *Levin v. Bank of N.Y.*, No. 09-CV-5900 (JPO), 2022 WL 523901, at *4 (S.D.N.Y. Feb. 21, 2022) ("Plaintiffs cannot rely upon state law to circumvent the FSIA's authority"). Under the Second Circuit's scheme, a foreign sovereign would need to account for 50 different sets of laws with respect to every individual intangible property interest and plaintiffs would be encouraged to forum shop. Such a result is at odds with the purposes of the FSIA. Individual state law should not be permitted to override the overarching purpose of the FSIA by, in effect, allowing for execution against assets not located in the United States.

The Fifth Circuit's holistic approach also aligns with decisions by other circuits that have held that the FSIA demands holistic analysis. *See*, *e.g.*, *TIG Ins. Co.*, *v. Republic of Argentina*, 967 F.3d 778, 786 (D.C. Cir. 2020) (whether property was used for commercial activity requires holistic, contextual analysis); *Crystallex Int'l Corp. v. Bolivarian Republic of Venez.*, 932 F.3d 126, 150 (3d Cir. 2019) (commercial activity exception requires totality-of-the-circumstances analysis). It also fits with decisions holding that a situs analysis for intangible assets should differ from the usual analysis when considering issues implicating foreign sovereigns. *See Allied Bank Int'l v. Banco Credito Agricola de Cartago*, 757 F.2d 516, 521–22 (2d Cir. 1985) (noting that the "concept of the situs of a debt for act of state purposes differs from the ordinary concept"). The situs analysis for purposes of execution

immunity under the FSIA should likewise differ from the ordinary state law situs analysis in that it should be a holistic, context-specific and totality of the circumstances test that is applied uniformly across the 50 states.

This Court should clarify the proper standard for analyzing the situs of an intangible asset belonging to a foreign sovereign on which a judgment creditor seeks to execute pursuant to Section 1610 of the FSIA.

II. The Court Should Provide Clarity On The Important Federal Question Of Whether Courts Can Ignore Actual "Use" Of Sovereign Property When Conducting The Section 1610 "Used For A Commercial Activity" Analysis And Apply Instead A More Relaxed "In Connection With" Standard

The Second Circuit's Decision that the reversionary interest in the DMK Brady Collateral was used for a "commercial activity in the United States" fails to distinguish between commercial use of that asset specifically and use of any reversionary interest in other collateral related to other bond series involved in the 2005 and 2010 Exchange Offers.

The decision devotes only two sentences to the analysis of this complex question, stating:

> "*Second, the commercial activity in which Argentina used the reversionary interests took place at least in part in the United States. Both the 2005 and 2010 exchange offers were made in the United States and registered with the Securities and Exchange Commission.*"

App. at 26a. This conclusory analysis clearly conflates the use of the reversionary interest in the DMK Brady

Collateral with the purported use of collateral in the 2005 and 2010 Exchange Offers writ large (which each involved multiple non-Brady bond series). It fails to distinguish between the property interest upon which plaintiffs actually seek to execute and other property interests of the Republic insofar as use of those different interests were lumped into one broad transaction.

The Second Circuit's gloss over the meaning of the word "property" also creates a seemingly inadvertent circuit split, as its decision stands in contrast with the approach adopted by the Fifth and Ninth Circuits. *See Af-Cap*, 475 F.3d at 1091 ("Like the Fifth Circuit, we conclude that property is 'used for a commercial activity in the United States' when the property in question is put into action, put into service, availed or employed for a commercial activity, not in connection with a commercial activity or in relation to a commercial activity.")

Using the reasoning adopted by the Fifth and Ninth Circuits, which the Second Circuit does not even mention much less distinguish, the "property in question" is the relevant inquiry. The Second Circuit's decision points only to two instances of "use" of the reversionary interest—the 2005 Exchange and 2010 Exchange. Neither of these instances constitutes "use," as described *infra* in Section III, but certainly neither constitutes use "for a commercial activity in the United States" with respect to the DMK reversionary interest and the Second Circuit does not even reason to the contrary in its decision.

As described above, *supra* Background(D), the 2010 Exchange Offer did not involve any Brady Bonds, including the DMK Brady Bonds. Thus the DMK reversionary interest was not used for commercial activity of any sort in 2010, much less activity in the United States. *CVI*,

652 F.3d at 272 (holding the 2010 Exchange "may not go forward" with respect to the Brady Bonds against the then-existing attachments).

The 2005 Exchange Offer did proceed, and did include Brady Bonds. However, even if this isolated and aberrational alleged use was sufficient under Section 1610(a)—it is not for the reasons described *infra* Section III—the alleged commercial use of the DMK reversionary interest (as opposed to reversionary interests in other Brady collateral) took place entirely outside the United States.

The 2005 Exchange allowed for the DMK Brady Bonds to be tendered through clearing systems in Europe or Argentina and cash proceeds distributed through the same.[6] Plaintiffs have shown no evidence to suggest that these bonds or their proceeds ever entered the United States during the 2005 Exchange.

Plaintiffs failed to demonstrate and the Second Circuit similarly failed to explain how the submission of the 2005 Exchange Offer to the Securities and Exchange Commission (SEC) constitutes commercial activity in the United States involving the DMK reversionary interest. The registration material rightfully disclosed the 2005 Exchange Offer as a whole, but specifically directs investors interested in purchasing the DMK Brady Bonds to a separate German prospectus. This makes sense since

6. *See* Republic of Argentina, Prospectus Supplement to Prospectus dated Dec. 27, 2004, at S-10 (Jan. 10, 2005), *available at* https://www.argentina.gob.ar/sites/default/files/mfin_us_prospectus_and_prospectus_supplement.pdf.

the DMK Brady Bonds could not be offered in the U.S. The "nexus" between the interest in the DMK Brady Collateral and any commercial activity in the United States has been found by other circuits to be insufficient to constitute use for a commercial activity in the United States under Section 1610. *See Af-Cap*, 475 F.3d at 1091. In other words, if the Republic had only engaged in the 2005 Exchange with respect to the DMK Brady Bonds, there would have been no U.S. touchpoint whatsoever. That the 2005 Exchange was a broader transaction that included exchange of other bonds secured by other collateral should not somehow mean that the Republic's interest in the DMK Brady Collateral was used in the United States. At most, it was used in connection with a broader transaction, some components of which were U.S.-based.

Even if the 2005 Exchange Offer standing alone was sufficient to qualify as commercial activity in the United States for purposes of the FSIA, it would still be irrelevant for purposes of the Republic's interest in the DMK Brady Collateral. The reversionary interest in the DMK Brady Collateral bears no relationship to securities not secured by that collateral. This Court should provide clarity on whether this attenuated connection to "commercial activity in the United States" is sufficient under the FSIA, or whether the property that plaintiffs seek to attach or execute upon must itself be involved in commercial activity in the United States.

III. The Court Should Provide Clarity On The Important Federal Issue Whether Aberrational Or Hypothetical Commercial Use Is Sufficient To Permit Attachment Under The FSIA

The Second Circuit's decision that the Republic "used [its] reversionary interests," in both the USD Brady Collateral and DMK Brady Collateral, *see* App. at 15a–16a, diverges from other circuits' understanding of what qualifies as "use."

The D.C. Circuit has held that "aberrational" use is insufficient under Section 1610(a). *TIG Ins. Co., v. Republic of Argentina*, 967 F.3d 778, 785–88 (D.C. Cir. 2020) ("[D]istrict courts examining the totality of the circumstances should avoid finding speculative or aberrational commercial uses, or uses in the distant past, sufficient to satisfy the 'used for a commercial activity' requirement."); *see also Bainbridge Fund Ltd. v. Republic of Argentina*, 102 F.4th 464, 469 (D.C. Cir. 2024) ("We must avoid 'an artificially narrow lens' that would 'allow[] one-time or aberrational uses to dictate the fate of the property.'). The Fifth Circuit has similarly held that a totality of the circumstances approach is required and, under such an approach, "evidence of a single commercial use in the past [does] not, by itself, render the property in question now and forever subject to garnishment." *Af-Cap Inc.*, 383 F.3d at 368. Here, the Second Circuit has effectively endorsed the opposite view because it cited only two purported instances of "use" of the reversionary interest: the 2005 and 2010 Exchanges. *See* App. at 16a–18a. Even assuming these Exchanges constituted actual "use" under the statute—which they did not, as described below—any such use was aberrational at best.

The Second Circuit's opinion also departs from both the Second Circuit's own precedent, and from that of other circuits, in finding that hypothetical—rather than active—use was sufficient under Section 1610(a). The D.C. and Ninth Circuits hold that the use of property must be actual, not speculative or hypothetical, to qualify as use for the purposes of Section 1610(a). *See Bainbridge*,102 F.4th at 469 ("future or speculative uses cannot satisfy the 'commercial activity' requirement"); *Af-Cap*, 475 F.3d at 1087 ("[t]he phrase 'used for' in § 1610(a) is not a mere syntactical infelicity that permits courts to look beyond the 'use' of property, and instead try to find any kind of nexus or connection to a commercial activity in the United States.").

The Second Circuit previously expressed agreement with this view. *See Exp.-Imp. Bank of the Republic of China v. Grenada*, 768 F.3d 75, 89–90 (2d Cir. 2014) (agreeing with the Ninth Circuits' interpretation of the Section 1610(a)); *Aurelius Cap. Partners, LP, v. Republic of Argentina*, 584 F.3d 120, 130-31 (2d Cir. 2009) ("Section 1610(a) does not say that the property in the United States of a foreign state that 'will be used' or 'could potentially be used' for a commercial activity in the United States is not immune from attachment or execution." (emphasis in original)); *EM Ltd. v. Republic of Argentina*, 473 F.3d 463, 484–85 (2d Cir. 2007) ("The plain language of the [FSIA] suggests that the standard is actual, not hypothetical, use.").

Here, however, the Second Circuit appears to have reversed course since it allowed hypothetical or contemplated use to be sufficient when it held that the 2005 and 2010 Exchanges constituted "use" of the Republic's

reversionary interest, *see* App. at 16a–18a. The so-called reversionary interest is nothing but a passive contractual right, the mere maintenance of which is not active "use." *See NML Cap., Ltd. v. Space Expl. Techs. Corp.*, 2015 WL 1334291, at *7 (C.D. Cal. Mar. 6, 2015) (citing *Af-Cap*, 475 F.3d at 1091). In the 2005 Exchange, the Republic entered into an agreement with Brady bondholders that extended the security interest in the collateral for any tendered bonds through liquidation and transfer of the collateral. The agreement provided that "all rights with respect to such Principal Collateral shall not revert to Argentina but shall be subject to a continuous lien in favor of the [FRBNY] for the ratable benefit of the bondholders." *See* App. at 17a. The Republic never received any collateral and therefore the Republic did not "use" any "right to receive" the collateral. *See* App. at 18a–20a. The 2010 Exchange was not even open to Brady bondholders.

Moreover, the reversionary interest that was actually used was different than the reversionary interest plaintiffs sought to attach. The Exchanges purportedly "used" the reversionary interest embodied in Section 6.01 of the CPA, App. at 16a–18a, yet the reversionary interest that Respondents sought to attach was the reversionary interest under Section 3.03 of the CPA, which did not apply to either Exchange Offer. *See* App. at 13a–14a. The Second Circuit erroneously conflated these reversionary interests in its use analysis, despite acknowledging the distinction between them in a prior case. *See* App. at 16a–18a; *CVI*, 652 F.3d at 270 ("The Collateral Pledge Agreement gives Argentina at least two such reversionary interests. First, Argentina will receive the collateral in 2023 if it pays the Brady bondholders in full. See Collateral Pledge Agreement § 3.03(a)(ii). . . . Argentina also has a second

reversionary interest: even before 2023, Section 6.01 gives it the collateral if it 'redeems . . . or exchanges or causes to be purchased or exchanged' any of the bonds. . . . The modification to the attachments that Argentina requested and received would destroy this second reversionary interest with respect to the exchanged bonds.").

The Republic did not "use" its reversionary interest in the USD or DMK Brady Collateral within the meaning of the FSIA. This Court should take the opportunity to clarify the important federal question of the meaning of "use" under the FSIA.

CONCLUSION

For the reasons set forth above, a writ of certiorari should be granted.

Respectfully submitted,

Carmine D. Boccuzzi, Jr.
Counsel of Record
Cleary Gottlieb Steen &
Hamilton LLP
One Liberty Plaza
New York, NY 10006
(212) 225-2000
cboccuzzi@cgsh.com

Counsel for Petitioner

December 11, 2024

APPENDIX

TABLE OF APPENDICES

Table of Appendices

Page

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED NOVEMBER 21, 2024

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Nos: 22-2301(L), 22-2198 (Con), 22-2231(Con), 22- 2274(Con), 22-2282(Con), 22-2295(Con), 22-2296(Con), 22-2312(Con), 22-2313(Con), 22-2316(Con), 22-2325(Con), 22-2328(Con), 22-2330(Con), 22-2331(Con), 22-2332(Con), 23-516(Con), 23-524(Con), 23-528(Con), 23-538(Con), 23-539(Con), 23-551(Con), 23-552(Con), 23-553(Con), 23-554(Con), 23-555(Con), 23-556(Con), 23-558(Con), 23-559(Con), 23-560(Con), 23-564(Con)

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of November, two thousand twenty-four.

ATTESTOR MASTER VALUE FUND LP, TRINITY INVESTMENTS LIMITED, BISON BEE LLC, BYBROOK CAPITAL MASTER FUND LP, BYBROOK CAPITAL HAZELTON MASTER FUND LP, WHITE HAWTHORNE, LLC, WHITE HAWTHORNE II, LLC,

Plaintiffs-Appellees,

v.

Appendix A

REPUBLIC OF ARGENTINA,

Defendant-Appellant.

Present:

Pierre N. Leval,
Michael H. Park,
Eunice C. Lee,
Circuit Judges.

ORDER

Appellant seeks a stay of the Court's mandate. Appellee opposes the motion. We grant the motion to stay the mandate until further order of this Court or the Supreme Court or the denial of Appellant's petition for certiorari, on the condition that Appellant has filed its petition within 20 days of this order and so notifies the circuit clerk in writing. See Fed. R. App. P. 41(d)(2)(B)(ii).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

/s/

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED OCTOBER 2, 2024

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Nos: 22-2301(L), 22-2198 (Con), 22-2231(Con), 22- 2274(Con), 22-2282(Con), 22-2295(Con), 22-2296(Con), 22-2312(Con), 22-2313(Con), 22-2316(Con), 22-2325(Con), 22-2328(Con), 22-2330(Con), 22-2331(Con), 22-2332(Con), 23-516(Con), 23-524(Con), 23-528(Con), 23-538(Con), 23-539(Con), 23-551(Con), 23-552(Con), 23-553(Con), 23-554(Con), 23-555(Con), 23-556(Con), 23-558(Con), 23-559(Con), 23-560(Con), 23-564(Con)

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 2nd day of October, two thousand twenty-four.

ATTESTOR MASTER VALUE FUND LP, TRINITY INVESTMENTS LIMITED, BISON BEE LLC, BYBROOK CAPITAL MASTER FUND LP, BYBROOK CAPITAL HAZELTON MASTER FUND LP, WHITE HAWTHORNE, LLC, WHITE HAWTHORNE II, LLC,

Plaintiffs-Appellees,

v.

Appendix B

REPUBLIC OF ARGENTINA,

Defendant-Appellant.

ORDER

Appellant, Republic of Argentina, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

/s/

APPENDIX C — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED AUGUST 21, 2024

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 22-2301(L), 22-2198, 22-2231, 22-2274, 22-2282, 22-2295, 22-2296, 22-2312, 22-2313, 22-2316, 22-2325, 22-2328, 22-2330, 22-2331, 22-2332, 23-516(L), 23-524, 23-528, 23-538, 23-539, 23-551, 23-552, 23-553, 23-554, 23-555, 23-556, 23-558, 23-559, 23-560, 23-564

ATTESTOR MASTER VALUE FUND LP, TRINITY INVESTMENTS LIMITED, BISON BEE LLC, BYBROOK CAPITAL MASTER FUND LP, BYBROOK CAPITAL HAZELTON MASTER FUND LP, WHITE HAWTHORNE, LLC, WHITE HAWTHRONE II, LLC,

Plaintiffs-Appellees,

v.

THE REPUBLIC OF ARGENTINA,

Defendant-Appellant.

February 2, 2024, Argued
August 21, 2024, Decided

Appeals from the United States District Court for the Southern District of New York. Nos. 14-cv-5849, 14-cv-10016, 18-cv-3446, 15-cv-2369, 15-cv-7367, 16-cv-1192,

Appendix C

21-cv-2060, 16-cv-1042, 15-cv-1588, 15-cv-5886, 15-cv-2611, 15-cv-9982, 16-cv-1436, 15-cv-4767, 15-cv-9601, 14-cv-5849, 18-cv-3446, 15-cv-2369, 15-cv-7367, 16-cv-1192, 21-cv-2060, 14-cv-10016, 15-cv-1588, 15-cv-2611, 15-cv-5886, 15-cv-9982, 16-cv-1436, 15-cv-4767, 15-cv-9601 & 16-cv-1042,
Loretta A. Preska, *Judge*.

Before: LEVAL, PARK, and LEE, *Circuit Judges*.

In the early 1990s, the Republic of Argentina issued collateralized bonds as part of a sovereign-debt-relief plan organized by then U.S. Treasury Secretary Nicholas F. Brady. Argentina kept reversionary interests in the collateral, allowing it to regain possession of the collateral if it paid off the bonds in full.

But in 2001, Argentina defaulted on the bonds. Two decades later, holders of other defaulted Argentine bonds ("Appellees") tried to attach the reversionary interests to satisfy judgments stemming from Argentina's default on their bonds. Although the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-11, generally protects the property of foreign sovereigns from attachment, Appellees argued that the reversionary interests fell under an exception to that rule because Argentina had used them for commercial activity in the United States.

The district court granted the attachment, and Argentina appealed. During that appeal, the collateralized bonds matured, and the district court granted turnover of the reversionary interests to Appellees. Argentina appealed again, leading to this consolidated appeal.

We affirm the district court's attachment orders because Argentina's reversionary interests are not protected by the Foreign Sovereign Immunities Act. Argentina used the interests in commercial activity in the United States, rendering them subject to attachment. And Argentina's arguments that its attached assets are not amenable to turnover under New York law are meritless, so we affirm the turnover order too. Finally, the reasons for sealing this case are no longer compelling, so we order the parties to resubmit their briefs and appendices within thirty days with narrow redactions that comply with this Court's orders.

We **AFFIRM** the orders of the district court, **DENY** the motion to supplement the record, and **GRANT** the motion to limit the scope of sealing.

OPINION

PARK, *Circuit Judge*:

In the early 1990s, the Republic of Argentina issued collateralized bonds as part of a sovereign-debt-relief plan organized by then U.S. Treasury Secretary Nicholas F. Brady. Argentina kept reversionary interests in the collateral, allowing it to regain possession of the collateral if it paid off the bonds in full.

But in 2001, Argentina defaulted on the bonds. Two decades later, holders of other defaulted Argentine bonds ("Appellees") tried to attach the reversionary interests to satisfy judgments stemming from Argentina's default on their bonds. Although the Foreign Sovereign Immunities

Act, 28 U.S.C. §§ 1602-11, generally protects the property of foreign sovereigns from attachment, Appellees argued that the reversionary interests fell under an exception to that rule because Argentina had used them for commercial activity in the United States.

The district court granted the attachment, and Argentina appealed. During that appeal, the collateralized bonds matured, and the district court granted turnover of the reversionary interests to Appellees. Argentina appealed again, leading to this consolidated appeal.

We affirm the district court's attachment orders because Argentina's reversionary interests are not protected by the Foreign Sovereign Immunities Act. Argentina used the interests in commercial activity in the United States, rendering them subject to attachment. And Argentina's arguments that its attached assets are not amenable to turnover under New York law are meritless, so we affirm the turnover order too. Finally, the reasons for sealing this case are no longer compelling, so we order the parties to resubmit their briefs and appendices within thirty days with narrow redactions that comply with this Court's orders.

We affirm the orders of the district court, deny the motion to supplement the record, and grant the motion to limit the scope of sealing.

Appendix C

I. BACKGROUND

A. Factual Background

Appellees are seven investment funds[1] that purchased Argentine bonds issued in 1994. They became pre-and post-judgment creditors after Argentina defaulted on $400 million in bonds in 2001. To satisfy those judgments and claims, they sought to attach assets in the United States belonging to Argentina, including certain reversionary interests Argentina held in collateral that it used to back an earlier bond issuance. We begin by explaining the creation and nature of those reversionary interests.

1. Argentina's Debt Crisis and the Brady Plan

Argentina renegotiated much of its debt in the early 1990s under a debt-relief program known as the Brady Plan, instituted by then Treasury Secretary Nicholas F. Brady in response to the Latin American debt crises of the 1980s. The plan involved an exchange of nearly $30 billion in unsecured commercial bonds for two groups of collateralized bonds due in 2023 ("Brady Bonds"). These new collateralized bonds would move bad debt off of bank balance sheets and would allow Argentina's sovereign debt to trade in the secondary market.

---

1. Attestor Master Value Fund LP, Trinity Investments Limited, Bison Bee LLC, Bybrook Capital Master Fund LP, Bybrook Capital Hazelton Master Fund LP, White Hawthorne, LLC, and White Hawthrone II, LLC.

One set of Brady Bonds ("Dollar Brady Bonds") was secured by non-marketable zero-coupon U.S. Treasury bonds ("Dollar Collateral") specially issued by the Treasury solely to collateralize the Dollar Brady Bonds. The other set of Brady Bonds ("DMK Brady Bonds") was secured by Deutsche Mark—denominated non-marketable zero-coupon bonds ("DMK Collateral") issued by the Kreditanstalt für Wiederaufbau, a German development bank.

2. The Agreements Governing the Brady Bonds

After Argentina acquired the Dollar Collateral, it entered into two "fiscal agency agreements" with Citibank governing, among other things, the handling of payments on the Dollar Brady Bonds and the DMK Brady Bonds. Both fiscal agency agreements required Argentina and Citibank to enter into other agreements that would govern the Dollar and DMK Collateral (together, "Brady Collateral").

Among these other agreements, the "collateral pledge agreements" ("Dollar CPA" and "DMK CPA") required the Federal Reserve Bank of New York ("N.Y. Fed") to hold the collateral as the agent. The N.Y. Fed held the Dollar Collateral in accounts at its New York branch and held the DMK Collateral in accounts at the Bundesbank in Germany and the Bank for International Settlements in Switzerland.

The CPAs created the reversionary interests at issue here. The Dollar CPA, for example, (1) granted the first-priority security interest in the Dollar Collateral to the N.Y. Fed on behalf of the Dollar Brady Bond holders; and (2) created mechanisms to terminate that interest and stated that upon such termination "all rights with respect [to the Dollar Collateral] shall revert to Argentina." Joint App'x at 384-85.[2] It is this right—to regain the collateral free and clear of the security interest under certain conditions—that Appellees sought to attach.

Over the past twenty years, we have twice approved the attachment of these same reversionary interests by creditors. *See Cap. Ventures Int'l v. Republic of Argentina*, 443 F.3d 214, 223 (2d Cir. 2006); *Cap. Ventures Int'l v. Republic of Argentina*, 652 F.3d 266, 270 (2d Cir. 2011).

B. Procedural History

In June 2021, Appellees obtained an *ex parte* order attaching Argentina's reversionary interests "in certain collateral accounts and collateral held in the custody of [the N.Y. Fed] arising out of Argentina's issuance of the Brady Bonds." Joint App'x at 183.[3] In August 2022, the district court confirmed orders of attachment and restraint against Argentina's reversionary interests in the Dollar Collateral. Argentina appealed. Appellees

2. The DMK CPA contains similar provisions.

3. All cites to the joint appendix throughout this opinion refer to the appendix submitted in Argentina's appeal of the district court's March 28, 2023 order.

then discovered that the DMK Collateral was held in N.Y. Fed accounts in Germany and Switzerland. So they first sought to clarify that their order of attachment on the Dollar Collateral applied to the DMK Collateral before eventually moving for a new order of attachment on the DMK Collateral. The district court granted that order of attachment on the DMK Collateral in March 2023.

The Brady Bonds and the bonds making up the Dollar and DMK Collateral also matured in March 2023. The N.Y. Fed liquidated the collateral and used the proceeds to pay the outstanding principal amounts owed to the Brady Bond holders. Argentina's reversionary interests entitle it to whatever remains of the collateral. The district court granted turnover of the reversionary interests to Appellees but stayed that order pending these appeals.

II. STANDARD OF REVIEW

"We review *de novo* legal conclusions denying [Foreign Sovereign Immunities Act ("FSIA")] immunity to a foreign sovereign or its property." *NML Cap., Ltd. v. Republic of Argentina*, 680 F.3d 254, 256-57 (2d Cir. 2012). But we otherwise review a district court's ruling on a request for an order of attachment under the FSIA for abuse of discretion. *Id.* at 257. "A district court is said to have abused its discretion if it has (1) based its ruling on an erroneous view of the law, (2) made a clearly erroneous assessment of the evidence, or (3) rendered a decision that cannot be located within the range of permissible decisions." *Id.* (cleaned up).

We similarly review a district court's turnover order for abuse of discretion. *See Levinson v. Kuwait Fin. House (Malaysia) Berhad*, 44 F.4th 91, 95 (2d Cir. 2022).

III. DISCUSSION

Argentina argues that attachment of the reversionary interests was improper because (1) it does not own the reversionary interests and (2) even if it does own them, they are immune from attachment under the FSIA. Neither argument has merit.

A. Argentina Owns the Reversionary Interests

First, Argentina argues that it does not own the reversionary interests because they belong to its central bank, the Banco Central de la República Argentina ("BCRA"). Although we have twice concluded that these reversionary interests belong to Argentina, *see Cap. Ventures Int'l*, 443 F.3d at 223; *Cap. Ventures Int'l*, 652 F.3d at 270, Argentina seeks to relitigate the issue nearly twenty years after it was first decided. In any event, its argument remains meritless.

Argentina argues as follows: Section 3.03 of the Dollar CPA, which governs the distribution of the Dollar Collateral on the maturity date of the Dollar Brady Bonds,[4] provides that, if Argentina has fully paid the principal amount of the bonds, it must deliver to the

4. Argentina makes this argument only for the Dollar Collateral, but the terms of the DMK CPA are identical.

N.Y. Fed a "Notice of Full Payment." Joint App'x at 384. The Dollar CPA defines "Notice of Full Payment" as "a duly completed notice from Argentina . . . stating that the principal of [the Dollar Brady Bonds] has been paid in full, *substantially in the form of Schedule K*." *Id.* at 375 (emphasis added). Schedule K is a form letter from Argentina to the N.Y. Fed informing the bank that the principal has been paid in full and directing it to transfer the Collateral "to account no. ___ of BCRA." *Id.* at 510. Argentina thus claims that (1) Schedule K directs payment to BCRA, and (2) the payment is owed on account of the reversionary interests, so (3) the reversionary interests that create entitlement to that payment must belong to BCRA.

There are two flaws in Argentina's reasoning. First, Schedule K is only a form notice. The actual "Notice of Full Payment" need only be "substantially in the form of Schedule K." *Id.* at 375. This formulation leaves flexibility to alter the recipient of the funds from BCRA to Argentina. Second, Argentina's interpretation of Schedule K is inconsistent with the agreement itself, which repeatedly states that "all rights" in the Collateral "shall revert to Argentina." *See id.* at 385. It would not make sense to read a single reference in a form schedule to override the language of the CPA.

We thus conclude that the reversionary interests belong to Argentina, not BCRA.

B. Attachment Under the Foreign Sovereign Immunities Act

Argentina next argues that even if it does own the reversionary interests, they are immune from attachment under the FSIA. We disagree because Argentina's reversionary interests fall within the "commercial activity" exception to the immunity provided by the FSIA.

The property of a foreign state held within the United States is generally immune from attachment under the FSIA. *See* 28 U.S.C. § 1609. But that immunity is subject to several exceptions. Relevant here, section 1610(a) states that "[t]he property in the United States of a foreign state, as defined in section 1603(a) of this chapter, *used for a commercial activity in the United States*, shall not be immune from attachment . . . if . . . the foreign state has waived its immunity from attachment." *Id.* at § 1610(a) (emphasis added). There is no dispute that Argentina has waived its immunity. Argentina has long acknowledged it has waived immunity from suit in connection with the bonds held by Appellees. *See NML Cap., Ltd. v. Banco Central de la República Argentina*, 652 F.3d 172, 176 n.3 (2d Cir. 2011) ("The Republic concedes that in the Fiscal Agency Agreement governing the debt instruments owned by plaintiffs it clearly and unambiguously waived its right to assert its sovereign immunity from suit in claims regarding those instruments.").

So Argentina argues instead that it did not "use" the reversionary interest, that any use was not for a "commercial activity," and, with respect to the DMK

Collateral only, that any commercial activity was not "in the United States." We disagree.

1. Argentina Used the Reversionary Interests in Commercial Activity

Argentina used the reversionary interests in commercial activity at least twice before their current attachment. It argues that it never "used" the interests and that any use was not in commercial activity, but neither assertion has merit.

We have held that the word "used" in the text of section 1610(a) "require[s] not merely that the property at issue relate to commercial activity in the United States, but that the sovereign actively *utilize* that property in service of that commercial activity." *Exp.-Imp. Bank of the Rep. of China v. Grenada*, 768 F.3d 75, 90 (2d Cir. 2014). The inquiry focuses on use at the time the writ of attachment or execution is issued. *Id.* at 84. (citing *Aurelius Cap. Partners, LP v. Republic of Argentina*, 584 F.3d 120, 130 (2d Cir. 2009)). But the property need not be actively utilized at the moment of attachment. Instead, it "must *have been used* for a commercial activity at the time the writ of attachment or execution is issued." *Aurelius Cap. Partners*, 584 F.3d at 130 (quotation marks omitted) (emphasis altered).

Here, after a 2001 default, Argentina offered to exchange the defaulted Brady Bonds and other defaulted bonds for "proceeds of the collateral securing them plus new debt that Argentina would issue." *Cap. Ventures*

Int'l, 652 F.3d at 268. To do so, Argentina relied on a provision in the CPAs that allowed it to "receive the collateral, liquidate it, and pay its proceeds to the Brady bondholders." *Id.* Its receipt of that collateral would be through the reversionary interests in the Dollar and DMK Collateral.

So to avoid attachment of the proceeds from the collateral right after it was liquidated but before it was transferred to bondholders, Argentina entered into a new "Continuation of Collateral Pledge Agreement." *See id.* at 268-69; *see also* Joint App'x at 182-93, *Cap. Ventures Int'l v. Republic of Argentina*, No. 10-4520 (2d Cir. Nov. 17, 2010), ECF No. 56-3 ("CVI Joint App'x"). That agreement required Argentina to file a Request for Release of Principal Collateral with the N.Y. Fed. But the Continuation of Collateral Pledge Agreement provided that "all rights with respect to such Principal Collateral shall not revert to Argentina but shall be subject to a continuous lien in favor of the [N.Y. Fed] for the ratable benefit of" the bondholders. CVI Joint App'x at 184. While Argentina thus retained its ability under the CPAs to liquidate the collateral by redeeming or exchanging the Brady Bonds, it would not receive the proceeds of that liquidation. Instead, once the collateral was liquidated, the proceeds transferred to the Brady Bond holders rather than to Argentina. *See id.* Roughly $62.3 billion in bonds were exchanged, including $2.8 billion in Brady Bonds, as part of this offer. *Cap. Ventures Int'l*, 652 F.3d at 269.[5]

5. Although the Continuation of Collateral Pledge Agreement prevented attachments that would impede the exchange offer, a creditor, Capital Ventures International, successfully attached

In short, the Continuation of Collateral Pledge Agreement reflects the fact that Argentina's reversionary interests were part of the exchange offer that was valuable to bondholders, as was Argentina's offer to modify them.

Second, Argentina made another exchange offer in 2010 for roughly $100 million. Brady Bond holders were initially excluded, but Argentina tried to modify the prior attachment of its reversionary interests to include the Brady Bonds in the offer. It sought permission to transfer a pro rata share of the Brady Collateral directly to tendering bondholders. *See Cap. Ventures Int'l*, 652 F.3d at 269. This Court rejected that effort because the existing attachment of the reversionary interests prohibited the exchange from going forward with respect to Brady Bond holders. *See id.* at 273. Argentina thus offered to alter its reversionary interests to include Brady Bond holders in the exchange. And the reversionary interests ultimately forced Argentina to alter the terms of its exchange offer.

The reversionary interests gave Argentina rights in the collateral that were valuable to both its creditors and its bondholders. Argentina twice offered to alter or extinguish the reversionary interests to incentivize bondholders to participate in its exchange offers. Thus Argentina used the reversionary interests in these transactions.[6]

---

the reversionary interests after the exchange offer concluded. *See Cap. Ventures Int'l*, 443 F.3d at 223.

6. Argentina also argues that the reversionary interests cannot be attached while the Brady Bonds are in default because

Argentina argues that these uses were not for commercial activity because the Brady Bonds were issued as part of the Brady Plan, which was open only to sovereigns, and that it participated in the Plan only to further "intergovernmental policy objectives." We are unpersuaded. Although the Brady Collateral was available only to sovereigns, once Argentina obtained that collateral, it issued ordinary collateralized bonds on the open market. The 2005 and 2010 exchange offers likewise were commercial bond offerings, and the fact that they were made by Argentina does not convert them into sovereign activity.

The FSIA provides that "[t]he commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose." 28 U.S.C. § 1603(d). "[A] foreign state engages in commercial activity 'when a foreign government acts, not as a regulator of a market, but in the manner of a private player within it.'" *Anglo-Iberia Underwriting Mgmt. v. P.T. Jamsostek*,

---

Argentina itself cannot exercise the interests. It cites our decision in *Capital Ventures International v. Republic of Argentina*, which held that a judgment creditor could not obtain excess collateral for the Brady Bonds in part because the CPA barred Argentina from receiving the collateral while the bonds were in default. 280 F. App'x 14, 15-16 (2d Cir. 2008) (summary order). This argument confuses the reversionary interests with the collateral itself. Whether Argentina can *exercise* the reversionary interests and gain access to excess collateral is separate from the question whether a creditor can attach those interests. The interests may be "used" and attached without being exercised.

600 F.3d 171, 176 (2d Cir. 2010) (quoting *Republic of Argentina v. Weltover*, 504 U.S. 607, 614 (1992)). As this Court has explained, "a state engages in commercial activity under the FSIA where it exercises only those powers that can also be exercised by private citizens, as distinct from those powers peculiar to sovereigns. Put differently, a foreign state engages in commercial activity for purposes of the FSIA only where it acts in the manner of a private player within the market." *Id.* at 176-77 (cleaned up) (quoting *Saudi Arabia v. Nelson*, 507 U.S. 349, 360 (1993)). It is thus the nature of the act, not its purpose, that matters in evaluating commercial character. "[T]o determine the nature of a sovereign's act, we ask not whether the foreign government is acting with a profit motive or instead with the aim of fulfilling uniquely sovereign objectives but rather whether the particular actions that the foreign state performs (whatever the motive behind them) are the type of actions by which a private party engages in 'trade and traffic or commerce.'" *Id.* (cleaned up) (quoting *Weltover*, 504 U.S. at 614).

To determine whether property is "used for a commercial activity," we adopt a totality-of-the-circumstances approach. *See, e.g., TIG Ins. Co. v. Republic of Argentina*, 967 F.3d 778, 785-88 (D.C. Cir. 2020) (discussing the approaches used by the Third, Fifth, and Ninth Circuits and adopting a similar approach). We examine "the uses of the property in the past as well as all facts related to its present use, with an eye toward determining whether the commercial use of the property, if any, is so exceptional that it is an out

of character use for that property." *Id.* at 786 (quoting *Af-Cap Inc. v. Republic of Congo*, 383 F.3d 361, 369 (5th Cir. 2004)); *see also Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 932 F.3d 126, 150 (3d Cir. 2019) (adopting the same test). As relevant here, the totality-of-the-circumstances inquiry prevents a judgment creditor from attaching sovereign property by pointing to sporadic commercial uses inconsistent with the typical uses of the property. But it also prevents a sovereign from defeating attachment by using property in occasional non-commercial activity. *See TIG Ins.*, 967 F.3d at 786 ("[A]n artificially narrow lens allows onetime or aberrational uses to dictate the fate of the property.").

It does not matter, and we do not decide, whether Argentina's purchase of the Brady Collateral was a sovereign, rather than commercial, activity because Argentina's acquisition of the Brady Collateral is not the transaction at issue. The focus of our inquiry is not the Brady Collateral itself, but Argentina's reversionary interests in that collateral. Those reversionary interests did not exist when Argentina bought the collateral, so they could not have been "used" in that transaction. It follows that the commercial or sovereign nature of Argentina's use of the reversionary interests cannot depend on the characteristics of a deal that closed before they existed.

Argentina tries to elide this distinction by collapsing two separate transactions into one. In the first, Argentina bought bonds from the Treasury and the Kreditanstalt für

Wiederaufbau, an arguably sovereign activity.[7] But in the second, it used those bonds to collateralize its own Brady Bonds in the same way any other market participant would create a collateralized bond. How Argentina came to acquire that collateral in this specific instance has no bearing on the nature of the second transaction.[8]

---

7. In *EM Ltd. v. Republic of Argentina*, we held that the FSIA did not allow Argentina's creditors to attach certain funds held in a N.Y. Fed account just because they could be used to repay Argentina's debt to the International Monetary Fund ("IMF"). 473 F.3d 463, 481-85 (2d Cir. 2007). Argentina's relationship with the IMF wasn't "commercial" for several reasons. First, "when [Argentina] borrows from the IMF, it exercises powers peculiar to sovereigns." *Id.* at 482 (cleaned up). Second, Argentina's "borrowing relationship with the IMF is regulatory in nature" because borrowing from the IMF "generally requires regulatory action." *Id.* at 483. Third, "the terms and conditions of [Argentina's] borrowing relationship with the IMF are not governed by a garden-variety debt instrument, but instead by [its] treaty obligations to the international organization, as supplemented by the terms and conditions contained in agreements associated with individual loans." *Id.* at 483-84 (cleaned up). And fourth, "IMF loans are structured in a manner unique to the international organization, and are not available in the commercial market." *Id.* at 484. Argentina's receipt of the Brady Collateral—which only a sovereign could obtain—thus bears some resemblance to its receipt of IMF funds. But again, that transaction is not the focus of our inquiry here.

8. Nor did the collateralization of the Brady Bonds necessarily depend on the specific bonds used as Brady Collateral. Sections 6.03 and 6.04 of the CPAs allowed Argentina to substitute the Brady Collateral for other collateral and then exercise the reversionary interest. So the CPAs did not require the Brady Bonds to be collateralized by the Brady Collateral.

That second transaction—Argentina's issuance of sovereign bonds—involved "garden-variety debt instruments" that "may be held by private parties; . . . are negotiable and may be traded on the international market . . . ; and . . . promise a future stream of cash income." *Weltover*, 504 U.S. at 615. It was thus commercial activity under the FSIA. *Id.* And if that transaction was commercial, so too were the 2005 and 2010 exchange offers. Neither exchange offer depended on the fact that the underlying collateral was a special Treasury bond available only to sovereigns. Both involved an offer to exchange old debt for new, as any non-sovereign entity might do.

Under the totality of the circumstances here, Argentina's uses of the reversionary interests have been commercial in nature. And in light of the history of these reversionary interests—including this Court's rejection in 2011 of Argentina's attempted use in *Capital Ventures International*, 652 F.3d at 270—we conclude that they are attachable.

2. The Commercial Activity Was in the United States

Argentina's next argument against attachment concerns only the reversionary interests in the DMK Collateral. It argues that no use of a reversionary interest occurred "in the United States" because the DMK Collateral is in Germany and no transaction involving that collateral occurred in the United States. Appellees respond that the relevant inquiry is where the reversionary

interests—not the DMK Collateral—are located. And an intangible property interest, they argue, is located where the party from which performance is required is located. That party here is the N.Y. Fed. in New York. Finally, they point to the 2005 and 2010 exchange offers as uses of the interest in the United States, though they maintain that the relevant inquiry is only the location of the reversionary interests.

The FSIA requires that the attached property be in the United States *and* that the use of that property in commercial activity occur in the United States. *See* 28 U.S.C. § 1610(a) (permitting attachment of "[t]he property *in the United States* of a foreign state . . . used for a commercial activity *in the United States*." (emphases added)); *see also Exp.-Imp. Bank of the Rep. of China*, 768 F.3d at 79 ("[U]nder some circumstances, the FSIA permits a creditor to execute a judgment against assets of a foreign sovereign if the assets are in the United States when attached *and* are used for a commercial activity in the United States." (quotation marks omitted) (emphasis added)). Both requirements are satisfied here.

First, Argentina's argument focuses on the wrong property interest. The question is where Argentina's reversionary interests in the DMK Collateral are located, not the collateral itself. The parties agree that the default rule is that the relevant location of intangible property is the situs of the property. For a contractual right like the reversionary interests, the situs is the location of the party "upon whom rests the obligation of performance." *ABKCO Indus., Inc. v. Apple Films,*

Inc., 39 N.Y.2d 670, 675 (1976).[9] Here, that party is the N.Y. Fed as collateral agent, which is tasked with returning any excess Brady Collateral to Argentina upon the exercise of the reversionary interests. Argentina responds that there is an exception to the general rule for the location of intangible property where "'intangibles are deemed to have become embodied in formal paper writings, e.g., negotiable instruments' at which point 'attachment depends on the *physical presence of the written instrument* within the attaching jurisdiction.'" Appellant's Br. II at 28 (quoting *ABKCO Indus.*, 39 N.Y.2d at 675). And here, the DMK Collateral consists of negotiable instruments—bearer bonds—located outside New York. But this argument again confuses the object of attachment—the reversionary interests in the collateral, not the collateral itself. The reversionary interests were created by the CPAs. *See ABKCO Indus.*, 39 N.Y.2d at 675 ("No fact of physical location or concept of embodiment applies, however, to intangible property in an ordinary

9. We assume that New York law—not federal law—provides the relevant test for locating the situs of the reversionary interests because they are creatures of contracts governed by New York law. *See Calderon-Cardona v. Bank of N.Y. Mellon*, 770 F.3d 993, 1001 (2d Cir. 2014) (stating that the FSIA takes property interests as it finds them—defined by state law). *But see Af-Cap Inc.*, 383 F.3d at 371-72 (employing a situs test not tied to the law of any one state when analyzing property's location under the FSIA). We need not resolve this question because the result is the same either way. The situs of the reversionary interests is New York. *See Af-Cap Inc.*, 383 F.3d at 371 (applying a "common sense appraisal of the requirements of justice and convenience" to determine that the situs of intangible tax and royalty obligations was the location of the garnishee).

contract, written or oral."). The location of the collateral thus does not determine the location of the reversionary interests. Instead, the reversionary interests are located within the United States—in New York State—where the N.Y. Fed is located.

Second, the commercial activity in which Argentina used the reversionary interests took place at least in part in the United States. Both the 2005 and 2010 exchange offers were made in the United States and registered with the Securities and Exchange Commission.

* * *

Argentina used the reversionary interests as part of its exchange offers in 2005 and 2010. That use was commercial activity in the United States. The reversionary interests thus are not immune from attachment under the FSIA, and we affirm the district court's orders of attachment.

C. Turnover

Argentina next argues that its reversionary interests are not subject to turnover. New York law allows for the turnover of property in the possession or custody of someone other than the judgment-debtor "where it is shown that the judgment debtor is entitled to the possession of such property." N.Y. C.P.L.R. 5225(b). The district court granted Appellees' motion for turnover of Argentina's reversionary interests in the Dollar and DMK Collateral but stayed the turnover pending this appeal.

Argentina makes three main points. First, the reversionary interests cannot be turned over because they were improperly attached. Having affirmed the attachment of the reversionary interests, we reject this argument. Second, the reversionary interests in the DMK Collateral cannot be turned over because the N.Y. Fed does not have "possession or custody" of the DMK Collateral. This argument again elides the differences between Argentina's reversionary interest in the DMK Collateral and the DMK Collateral itself.

Third, Argentina argues that it is not a "judgment debtor" for purposes of C.P.L.R. 5225. New York law defines that term as "a person . . . against whom a money judgment is entered." C.P.L.R. 105(m). Argentina argues that it is not a "person" and so not a "judgment debtor" because there is a presumption under New York law that the term "person" does not include sovereigns. *See In re Fox*, 52 N.Y. 530, 535 (1873) ("The word person does not, in its ordinary or legal signification, embrace a State or government[.]").

But that is an oversimplification. New York law does not always use "person" so narrowly, and the term is sometimes used "in its enlarged sense" to encompass sovereigns. *Republic of Honduras v. Soto*, 112 N.Y. 310, 312-13 (1889) (holding that a sovereign was a "person" under a former procedural statute). The appropriate usage depends on "the objects [the statute] had in view, the evils intended to be remedied, and the benefits expected to be derived from it." *Id.* at 313.

It would make little sense if the term "person" excluded sovereigns in this context. The C.P.L.R. often refers to "persons" in procedural rules that apply to all parties, including sovereign entities. *See, e.g.*, C.P.L.R. 1001-1002 (necessary and permissive joinder); C.P.L.R. 1013 (permissive intervention); *see also Swezey v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 19 N.Y.3d 543, 550-52 (2012) (holding that the Republic of the Philippines was a necessary party under C.P.L.R. 1001(a)). Interpreting "person" to exclude sovereigns here would cut them out of a normal part of civil litigation—judgment enforcement—because the C.P.L.R. also defines a "judgment creditor" using the term. C.P.L.R. 105(*l*) (defining "judgment creditor" as "a person in whose favor a money judgment is entered or a person who becomes entitled to enforce it"); *see also Commonwealth of Northern Mariana Islands v. Canadian Imperial Bank of Comm.*, 21 N.Y.3d 55 (2013) (interpreting C.P.L.R. 5225(b) after a foreign government initiated turnover proceedings under that section). Argentina points to no authority indicating that New York has sought to bar foreign sovereigns from enforcing judgments in its courts or any plausible reason for doing so.

We affirm the district court's turnover orders.

D. Motions

Lastly, there are two outstanding motions before this Court. First, Argentina moved to supplement the record of the first appeal to include proceedings related to the DMK Collateral that occurred after that appeal was filed.

Those materials entered the record in the second appeal. The motion is now moot, so we deny it.

Second is a motion filed by intervenor Bainbridge Fund Ltd seeking greater access to the myriad sealed and redacted filings in this case. On January 4, 2023, we entered an order requiring that "[a]ny sealings and redactions made by the parties . . . be 'narrowly tailored to achieve' the purpose of sealing, as to documents subject to the First Amendment right of access, and . . . reflect a weighing of the presumption in favor of access 'against countervailing interests favoring secrecy[,]' as to documents to which only the common law right of access applies." Dkt. 145 at 2 (quoting *Newsday LLC v. Cnty. of Nassau*, 730 F.3d 156, 165 (2d Cir. 2013)). Bainbridge moves to enforce the terms of that order, arguing that the parties' sealing is not narrowly tailored. That motion is granted.

Two rights of access can apply to materials in a civil action. The first, under the First Amendment, "applies to civil trials and to their related proceedings and records." *Newsday LLC*, 730 F.3d at 163 (quotation marks omitted). That includes "among other things, [the] summary judgment motions and documents relied upon in adjudicating them, pretrial motions and written documents submitted in connection with them, and docket sheets." *Id.* at 164 (citations omitted). The First Amendment creates a presumptive right of access that can be "overcome by specific, on-the-record findings that sealing is necessary to preserve higher values and only

if the sealing order is narrowly tailored to achieve that aim." *Id.* at 165 (quotation marks omitted).

When the First Amendment protection doesn't apply to court records, the second, common-law right "attaches with different weight depending on two factors: (a) the role of the material at issue in the exercise of Article III judicial power and (b) the resultant value of such information to those monitoring the federal courts." *Id.* (quotation marks omitted). The right is "balanced against countervailing interests favoring secrecy." *Id.* Thus, under either analysis, parties must have a valid reason to seal materials.

Appellees sought to seal the case below "to protect against . . . another creditor finding out what we're doing and then trying to jump the line ahead of us if for some reason there were a delay in the marshal's effecting service of the attachment order." Joint App'x at 918-19. The district court then granted the parties' joint sealing motion "because of the sensitivity of the financial information and the [settlement] negotiations." *Id.* at 923.

At oral argument, the parties confirmed that they had not been engaged in settlement negotiations for some time. Those negotiations no longer provide a reason to seal materials here. Moreover, any interest that Appellees had in preserving the secrecy of their efforts to attach the assets at issue has waned because the orders of attachment—and turnover—have already issued. As Appellees told the district court, "there would be no need . . . to maintain the seal and the documents could become

part of the public record" "once the levy is established." *Id.* at 918.

That leaves only any sensitive financial information. It is unclear which information, if any, should remain sealed on this basis. For that reason, the parties shall refile their sealed materials within thirty days, redacting *only* material containing sensitive financial information.

IV. CONCLUSION

Argentina used its reversionary interests for commercial activity in the United States just like any other commercial actor. It cannot now invoke the FSIA to avoid the consequences of that decision. The reversionary interests are both attachable and subject to turnover.

The orders of the district court are affirmed, the motion to supplement the record is denied as moot, and the motion to unseal is granted.

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, DATED MARCH 28, 2023

16 Civ. 1042 (LAP)

WHITE HAWTHORNE, LLC AND
WHITE HAWTHORNE II, LLC,

Plaintiffs,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

---

18 Civ. 3446 (LAP)

BISON BEE LLC,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

[PROPOSED] ORDER

WHEREAS, on June 29, 2021, the Court granted an *ex parte* motion filed by plaintiffs Attestor Master Value

Fund LP, Trinity Investments Limited, Bybrook Capital Master Fund LP, Bybrook Capital Hazelton Master Fund LP, White Hawthorne, LLC, White Hawthorne II, LLC, and Bison Bee LLC (together, **"Plaintiffs")** to attach the reversionary interest of defendant the Republic of Argentina (the **"Republic,"** and together with Plaintiffs, the **"Parties")** in certain collateral accounts and collateral held in the custody of the Federal Reserve Bank of New York (the **"FRBNY")** arising out of the Republic's issuance of so-called Brady Bonds in 1993 (the **"Attachment Order");**

WHEREAS, the Attachment Order levied on certain "Subject Property," which "consist[ed] of [the Republic's] reversionary interest in all assets in the 'Principal Collateral Accounts,' 'Interest Collateral Accounts,' and 'Distribution Accounts' currently held, or that in the future may be held by the FRBNY pursuant to (i) the Collateral Pledge Agreement (USD Series) among [the Republic], the FRBNY and Citibank, N.A., dated as of April 7, 1993" **("USD Collateral"),** and "(ii) the Collateral Pledge Agreement (DMK Series) between [the Republic], The Federal Reserve Bank and Citibank, N.A., dated as of April 7, 1993" **("DMK Collateral,"** and, collectively with the USD Collateral, the **"Brady Collateral");**

WHEREAS, each of the USD and DMK Collateral consists of both Principal Collateral and Interest Collateral;

WHEREAS, the Attachment Order ordered "that to avoid and prevent any actions that would frustrate the purpose and effect of this Order, the FRBNY, its officers,

agents, attorneys, representatives, employees, servants, and affiliates, and all other persons acting on its behalf, and all persons in possession of the Subject Property, and all persons acting in concert or participation with any of the foregoing, and all persons who receive actual notice of this Order by personal service or otherwise, are hereby ENJOINED AND RESTRAINED ... until further order of this Court, from directly or indirectly transferring or removing any Subject Property and/or taking any action to frustrate or undermine the effectiveness of this Order;"

WHEREAS, on July 9, 2021, the FRBNY was served with the Attachment Order;

WHEREAS, on July 14, 2021, the FRBNY served a garnishee statement **("FRBNY Garnishee Statement")** on Plaintiffs and the Republic, pursuant to CPLR 6219;

WHEREAS, at the time the FRBNY was served with the Attachment Order it had possession and custody of certain USD Collateral and certain DMK Collateral, with the DMK Principal Collateral held in an account in the name of the FRBNY at the Deutsche Bundesbank and the DMK Interest Collateral held in an account in the name of the FRBNY at the Bank for International Settlements;

WHEREAS, the FRBNY did not identify the DMK Collateral held in its overseas accounts in the FRBNY Garnishee Statement, based on the FRBNY' s position that it did not have possession or custody of the DMK Collateral held in its overseas accounts;

WHEREAS, on July 23, 2021, Plaintiffs moved the Court to confirm the Attachment Order (the **"Motion to Confirm");**

WHEREAS, on August 13, 2021, the Republic filed its opposition to Plaintiffs' Motion to Confirm and also moved to vacate the Attachment Order (the **"Motion to Vacate");**

WHEREAS, on August 22, 2022, the Court **"ORDERED** that ... the Motion to Confirm is GRANTED and the Motion to Vacate is DENIED" **("Confirmation Order");**

WHEREAS, the Confirmation Order **"ORDERED** that any levy by Plaintiffs established by service of the Attachment Order shall remain in effect for 30 days following the issuance of the mandate by the Court of Appeals in any appeal from this Order and/or the Attachment Order;"

WHEREAS, the Confirmation Order **"ORDERED,** that on or before March 24, 2023, the Republic shall cause the FRBNY to inform Plaintiffs, through their counsel in these proceedings, of the principal amount of Brady Bonds outstanding as of that date (the **'Brady Principal Amount');"**

WHEREAS, the Confirmation Order **"ORDERED,** upon maturity of the Brady Bonds, the FRBNY, as Collateral Agent, may remit to Citibank N.A., as Fiscal Agent an amount equal to and not to exceed the Brady Principal Amount from the Principal Collateral (as defined in the Collateral Pledge Agreement) for the purpose of

paying the principal amounts outstanding on such Brady Bonds. The FRBNY shall continue to hold any remaining Principal Collateral pursuant to the Attachment Order;"

WHEREAS, on December 21, 2022, in response to discovery served by Plaintiffs, the Republic disclosed that the FRBNY held the DMK Principal Collateral in an account at the Deutsche Bundesbank;

WHEREAS, on January 4, 2023, the FRBNY wrote to Plaintiffs and confirmed that it holds the DMK Principal Collateral in its account at the Deutsche Bundesbank and disclosed its position that it does not have possession or custody of that collateral;

WHEREAS, on January 31, 2023, Plaintiffs moved for an order (1) expressly attaching the Republic's reversionary interest in the DMK Collateral, (2) expressly attaching the Republic's reversionary interest in the Interest Collateral, and (3) directing turnover of the Republic's reversionary interest in the USD Collateral and the DMK Collateral **("DMK Collateral and Turnover Motion");**

WHEREAS, a hearing on the DMK Collateral and Turnover Motion was held on March 15, 2023 in a closed Courtroom;

WHEREAS, at the conclusion of the March 15, 2023 hearing, the Court issued an oral ruling on the DMK Collateral and Turnover Motion and directed the parties to submit a proposed order to effectuate its ruling;

WHEREAS, in its oral ruling the Court affirmed that, on or after the maturity of the Brady Bonds, the FRBNY, as Collateral Agent, may remit to Citibank N.A. as Fiscal Agent amounts up to the total outstanding interest on such Brady Bonds from the DMK and USD Interest Collateral, and hold any remainder;

WHEREAS, the Republic has appealed from the Attachment and Confirmation Orders to the United States Court of Appeals for the Second Circuit, Case No. 22-2301; and

WHEREAS, the Republic plans to file an appeal from this Order.

NOW, THEREFORE, it is hereby:

ORDERED that, for the reasons stated on the record at the March 15, 2023 oral argument, Plaintiffs' DMK Collateral and Turnover Motion is GRANTED;

ORDERED that the FRBNY shall serve an amended FRBNY Garnishee Statement on Plaintiffs and the Republic reflecting the DMK Collateral held in its accounts at the Deutsche Bundesbank and the Bank for International Settlements;

ORDERED that the reversionary interest arising out of the DMK Collateral held in the FRBNY's accounts at the Deutsche Bundesbank and the Bank for International Settlements was levied in favor of Plaintiffs upon service of the Attachment Order on the FRBNY and remains so, pursuant to the term of the Confirmation Order;

~~**ORDERED,** that by operation of CPLR 5234(b), the Plaintiffs' levies resulting from service of the Attachment Order on the FRBNY are senior to any levy subsequently effected on the Subject Property;~~ /s/ LAP

ORDERED, that to avoid and prevent any actions that would frustrate the purpose and effect of this Order, the FRBNY, the Republic, and any paying agent or fiscal agent for the Brady Bonds; and any one of the foregoing's officers, agents, attorneys, representatives, employees, servants, and affiliates; and all other persons acting on those entities' behalf; and all persons in possession of the Subject Property; and all persons acting in concert or participation with any of the foregoing; and all persons who receive actual notice of this Order by personal service or otherwise; are hereby ENJOINED AND RESTRAINED from (i) directly or indirectly transferring or removing any Subject Property (as defined in the Attachment Order) other than as permitted by the Attachment Order, the Confirmation Order and/or this Order, and/or (ii) taking any action to frustrate or undermine the effectiveness of this Order;

ORDERED, that nothing in this Order shall be construed to in any away affect any obligations on the Brady Bonds including, without limitation, any obligation to make payments of principal and interest on such Brady Bonds, and nothing herein or therein shall attach, enjoin, restrain or otherwise interrupt payments of principal and interest on such Brady Bonds pursuant to their terms;

ORDERED, that FRBNY is directed, pursuant to CPLR 5225(b), to turn over to Plaintiffs the Republic's

reversionary interest in the USD Collateral and DMK Collateral, except that this paragraph of this Order, and only this paragraph, shall be stayed pending further Order of this Court following the issuance of the mandate by the Court of Appeals in any appeal from this Order: ~~and~~

~~**ORDERED,** from and after March 31, 2023, the FRBNY will invest any funds in the Distribution Account for a Series of Brady Bonds in, in the case of USD Series Brady bonds, senior direct obligations of the United States Treasury backed by the full faith and credit of the United States with a maturity term of 12 months or, in the case of DMK Series Brady Bonds, senior direct obligations of the Federal Republic of Germany, Kreditanstalt für Wiederaufbau, or the Federal Post Office with a maturity term of 12 months. Such obligations shall thereafter be Pledged Securities (as defined in the applicable Collateral Pledge Agreement), which the FRBNY shall hold in the relevant Principal Collateral Account and not release or transfer to any party unless and until directed to do so by a further Court order, excerpt that any such Pledged Security that matures shall be redeemed and the proceeds reinvested and maintained in the manner prescribed in this paragraph.~~ /s/ LAP

SO ORDERED:

/s/_____
Hon. Loretta A. Preska
United States District Judge
Dated: March 28, 2023

APPENDIX E — EXCERPT OF TRANSCRIPT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, DATED MARCH 15, 2023

***

[28]clear that what he's asking for, and it's consistent with the fact that no one disputes a turnover as to anything wasn't being asked for the first time for a new order here, and that whatever is going to happen is not just -- and I think they also abandoned in their reply that they're asking for a clarification.

The only reason why I raise that is because if we were to go with their original conception that all we're doing is clarifying the initial order, I don't know if that raises appellate concerns to the extent, in my view, really, a second order and decision has been issued by the Court.

THE COURT: Thank you. Anything else?

MR. REED: Unless your Honor has further questions, I think we've covered it.

THE COURT: Would you give me a couple of minutes, please, counsel.

(Recess)

THE COURT: In the late 1980s, after a number of Latin American nations defaulted on their external debt, then United States Treasury Secretary Nicholas F. Brady developed a debt relief program known as the Brady Plan. Under its auspices, the Republic of

Argentina ("Argentina") or ("the Republic") negotiated the restructuring of much of its medium and long-term commercial debt in April of 1992, exchanging an estimated $28.5 billion in unsecured commercial bonds for a [29] series of collateralized bonds due in 2023 (the "Brady Bonds"). The Brady Bonds were secured, pursuant to a Collateral Pledge Agreement, by United States Treasury bonds, which I will refer to as the USD Collateral, and by German government bonds, which I will refer to as the DMK Collateral, all of which were owned by Argentina and held by the Federal Reserve Bank of New York ("FRBNY'). *CVI v. Argentina*, 443 F.3d, 214, 216 (2d Cir. 2006). Collectively, I refer to the USD Collateral and the DMK Collateral as the Brady Collateral.

The USD Principal and Interest Collateral is held in two accounts owned by FRBNY and located at FRBNY. (FRBNY July 14, 2021 Garnishee Statement, Ex. O to Third Hranitzky Decl.). The DMK Collateral also consists of Principal Collateral and Interest Collateral. The DMK Principal Collateral is held in an FRBNY account at Deutsche Bundesbank, which is Germany's central bank, in Frankfurt, Germany. (January 4, 2023 Letter from FRBNY to Plaintiffs, Fourth Hranitzky Decl., Ex. C at 1; Argentina's Responses and Objections to Plaintiffs' First Set of Interrogatories, Fourth Hranitzky Decl., Ex. D at 7.). The DMK Interest Collateral is held in an FRBNY account at the Bank for International Settlements in Basel, Switzerland. (FRBNY Resp. at 2-3.)

On June 22, 2021, Plaintiffs moved the Court *ex parte* for an order of attachment, which the Court granted on June 29, 2021. The Court's attachment order authorized

a levy of both [30]the USD Collateral and the DMK Collateral, including:

> Argentina's reversionary interest in all assets in the "Principal Collateral Accounts," "Interest Collateral Accounts," and "Distribution Accounts" currently held, or that in the future may be held by the [Federal Reserve Bank of New York ("FRBNY")] pursuant to (i) the Collateral Pledge Agreement (USD Series) among Argentina, the FRBNY and Citibank, N.A., dated as of April 7, 1993; and (ii) the Collateral Pledge Agreement (DMK Series) among Argentina, The Federal Reserve Bank and Citibank, N.A., dated as of April 7, 1993... including without limitation any amounts in the "Interest Collateral."

(Attachment Order 5-6.)

Plaintiffs then moved to confirm the attachment, and Argentina opposed and cross-moved to vacate the attachment. After hearing both motions at a July 20, 2022 hearing, the Court granted Plaintiffs' motion to confirm the attachment and denied Argentina's motion to vacate. On August 22, 2022, the Court confirmed the attachment order via order and further ordered that "upon maturity of the Brady Bonds, the FRBNY, as Collateral Agent, may remit to Citibank N.A., as Fiscal Agent, an amount equal to and not to exceed the Brady Principal Amount from the principal Collateral (as defined in the Collateral Pledge Agreement) for the purpose of paying the principal amounts outstanding on such Brady Bonds. The FRBNY shall continue to hold any remaining Principal Collateral

pursuant to [31]the Attachment Order." (Confirmation Order at 5.)

Plaintiffs here are judgment creditors and pre-judgment plaintiffs asking that the Court clarify that its prior orders authorized attachment of the USD Interest Collateral and the DMK Collateral. As counsel pointed out during argument, plaintiffs have withdrawn their request for clarification and taken the position that the original order included both the USD Interest Collateral and the DMK Collateral. Plaintiffs also seek injunctive relief and turnover of Argentina's reversionary interest in the USD and DMK collateral pursuant to CPLR 5225. Plaintiffs requested this relief via order to show cause on January 31, 2023. Argentina opposed on February 23, 2023. The FRBNY submitted a response on the same date and plaintiffs filed their reply on March 9, 2023.

The instant dispute arises primarily because the FRBNY has taken the position that "certain language in the orders suggests that they may not apply to the DMK" Collateral, namely that the orders referred to collateral in the FRBNY's "custody." (January 4, 2023 letter from FRBNY to plaintiffs, Fourth Hranitzky Dec., Ex. C at 1-2 (citing the Attachment Order at 3 (describing property subject to attachment as Argentina's reversionary interest "in certain collateral accounts and the corresponding collateral held in the custody of the Federal Reserve Bank of New York") and Confirmation [32]Order at 2.)

In the FRBNY's view, the DMK Collateral is not in the FRBNY's "custody" because it is not in the FRBNY's

"actual possession." This position turns on the FRBNY's interpretation of the New York Court of Appeals decision in *Commonwealth of N. Mariana Islands v. Canadian Imperial Bank of Commerce*, 21 N.Y.3d 55, 60-65 (2013), which held that "possession or custody" requires "actual possession," and that constructive possession or control over property is not enough. (Id. at 1.) The FRBNY asserts that its ownership of the Bundesbank account did not give it "possession or custody" over the DMK Collateral because the DMK Collateral "is held in the form of a physical bearer bond at the Deutsche Bundesbank," and thus FRBNY has only "constructive possession or control" over the property, not "actual possession." (Id. at 1-2.) The FRBNY apparently took this undisclosed position in its garnishee statement, which was served prior to the Court's Confirmation Order. Because the Fed denied "custody" of the DMK Collateral prior to the Court's issuing its Confirmation Order, and the order refers to "custody," the FRBNY is of the view that it is not clear that the Court's orders apply to the DMK Collateral.

Argentina happily joins the FRBNY in this view. Argentina also suggests that the Court is divested of jurisdiction to clarify or modify its orders because of Argentina's pending appeal of the Court's Attachment and [33]Confirmation Orders. (Opp. at 3-4.) In response to this argument, plaintiffs withdraw their request that the Court clarify or modify its orders but maintain that no clarification is necessary because the orders, as written, plainly encompass the DMK Collateral. (Reply at 1-2.)

The Court agrees with plaintiffs. The question presented is not what the orders say, which is abundantly clear, it is whether, as a legal and factual matter, the DMK Collateral is in the FRBNY's custody. The FRBNY's, or Argentina's, misapprehensions about whether the DMK Collateral was in FRBNY's custody cannot change what the orders say. Nor does finding that the FRBNY and Argentina are incorrect, and that the DMK Collateral is in the FRBNY's custody, expand or modify the scope of the orders. In other words, if the DMK Collateral is in the FRBNY's custody, it was always subject to the orders, and nothing has changed except that the FRBNY's and Argentina's incorrect understanding of the law, not the orders, has been remedied.

And the FRBNY and Argentina are incorrect. Regardless of what form the DMK Collateral is in, bearer bonds, cash, jewels, or whatever, it is in the FRBNY's account. (Argentina's responses and objections to plaintiffs' first set of interrogatories, Fourth Hranitzky Dec., Ex. D at 7 ("[T]he DMK Brady Principal Collateral [is] in an account of the Federal Reserve Bank of New York, as Collateral Agent pursuant [35]to a Collateral Pledge Agreement, dated as of April 7, 1993, at the Deutsche Bundesbank in Frankfurt, Germany.").) Commonwealth held that a parent did not have actual possession and custody of a subsidiary's assets simply because it functionally had control of the subsidiary, and that CPLR 5225 required actual possession and custody. This had nothing to do with an entity that, as here, holds the property itself in its own bank account. Indeed, Commonwealth expressly approved of Appellate Division

precedents holding that a judgment debtor has "possession or custody" of "his out-of-state bank accounts." 21 N.Y.3d 64 (discussing *Miller v. Doniger*, 28 A.D.3d 405, 405 (1st Dep't 2006); and *Gryphon Domestic VI, LLC v. App Int'I Fin. Co., B.V.*, 41 A.D.3d 25, 31 (1st Dep't 2007). This is common sense. A garnishee has possession and custody over its own bank accounts, regardless of where they are located. *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Burl Negara*, 313 F.3d 70, 86 (2d Cir. 2002) ("When a party holds funds in a bank account, possession [of those funds] is established..."); *EM Ltd. v. Argentina*, 473 F.3d 463, 474 (2d Cir. 2007); *M.L.B. Properties, Inc. v. Corporacion de Television y Microonda Rafa, S.A.*, 2023 WL 405768, at *4 (S.D.N.Y. Jan. 26, 2023) (a judgment debtor has "possession" over its "overseas bank accounts"). The FRBNY thus has, and has had, custody of the DIK Collateral, which is in its bank account, at all relevant times. As such, the orders, which [35]explicitly included "Argentina's reversionary interest in all assets in the 'Principal Collateral Accounts,' 'Interest Collateral Accounts,' and 'Distribution Accounts' currently held" by the FRBNY "pursuant to... the Collateral Pledge Agreement (DMK series) between Argentina, the Federal Reserve Bank and Citibank, N.A., dated as of April 7, 1993," as written clearly apply to the DMK Collateral. This is also true of the DMK Interest Collateral, which was also included and is also in the FRBNY's bank account and therefore its possession and custody. (FRBNY Resp. at 2-3.)

It is also clear Argentina's reversionary interest in the DMK Collateral is located in the United States.

Pursuant to the DMK Collateral Pledge Agreement, the DMK Collateral is held at the Federal Reserve Bank of New York in New York City. (DMK Series Collateral Pledge Agreement § 4's.01; Ex. M to Third Hranitzky Decl. at 63 ("Upon termination of this agreement... the Collateral Agent will.., return to Argentina such of the collateral as shall not have been previously released...").) Argentina's reversionary interest in the DMK Collateral is also located in New York because "[u]nder New York law... the situs of intangible property, such as reversionary interest, is the location of the party of whom performance is required by the terms of the contract." *EM Ltd. v. Republic of Argentina*, 2009 WL 2568433, at *9 (S.D.N.Y. Aug. 18, 2009) affd, 389 F. Appx. 38 (2d Cir. Aug. 3, 2010) [36](summary order).

Argentina also contends that the DMK reversionary interest is not subject to attachment because it is not "used for a commercial activity in the United States" as required by Section 1610 of FSIA. (Opp. 17-18.) In support, Argentina relies on the fact that at the time of issuance, the Brandy Bonds that the DMK Collateral supported could not be offered or sold in the United States (Id.) But the question of whether the reversionary interest in the DMK Collateral is property used for commercial activity in the United States must be decided by reference to how it is being used "at the time the writ of attachment or execution is issued." *Aurelius Capital Partners, LP v. Republic of Argentina*, 584 F.3d 120, 130 (2d Cir. 2009).

Argentina's reversionary interest in the collateral securing those bonds is "used for" "commercial activity."

The word "used" requires "that the sovereign actively utilize that property in service of that commercial activity." *Export-Import Bank of the Republic of China v. Grenada*, 768 F.3d 75, 90 (2d Cir. 2014). Here, Argentina actively utilized its reversionary interest in the collateral in service to its commercial activity because the reversionary interest was, and still is, being used to secure Argentina's ability to recover remaining collateral after the outstanding Brady Bonds are paid. The ongoing use of the reversionary interest in the [37]United States to preserve the value of the collateral for Argentina in the event that all of it is not required to satisfy its obligations under the outstanding Brady Bonds and to provide Argentina the flexibility to use the DMK Collateral to restructure its debt is sufficient to constitute commercial activity. *See, e.g., EM Ltd. v. Republic of Argentina*, 389 F. App'x 38 (2d Cir. 2010) (finding commercial activity in the United States where trustee "of whom performance [was] required [was] located in New York" and Argentina's interest was "used to facilitate the investment and eventual sale of the Securities"); *Crystallex Int'I Corp. v. Bolivarian Republic of Venezuela*, 932 F.3d 126, 151 (3d Cir. 2019) (state-owned enterprise's shares used for a commercial purpose because they "can still be used by [the entity] to run its business as an owner, to appoint directors, approve contracts, and to pledge [the entity's] debts for its own short-term debt"). That use takes place in the United States, where FRBNY, as garnishee, possesses the reversionary interest.

In sum, the Republic issued debt instruments, pledged collateral to secure the instruments, and reserved its right to recover any excess pledged collateral. This

is prototypical commercial activity. Thus, the DMK Collateral, both principal and interest collateral, is subject to the attachment and confirmation orders.

The FRBNY also claims there is ambiguity regarding [38]whether the orders reach the USD interest collateral. The FRBNY claims that it was instructed to "hold' only excess principal collateral." (January 4, 2023 letter from FRBNY to Plaintiffs, Fourth Hranitzky Dec., Ex. C at 2 (citing Aug. 22, 2022 Order at 5). The FRBNY has misread the Court's Confirmation Order. The Court ordered that "upon maturity of the Brady Bonds, the FRBNY, as Collateral Agent, may remit to Citibank N.A. as Fiscal Agent an amount equal to and not to exceed the Brady Principal Amount from the Principal Collateral (as defined in the Collateral Pledge Agreement) for the purpose of paying the principal amounts outstanding on such Brady Bonds. The FRBNY shall continue to hold any remaining Principal Collateral pursuant to the Attachment Order." (Confirmation Order at 5.) Read in context, it's obvious that the Court was simply stating that the FRBNY was permitted to remit an amount sufficient to pay the principal amount outstanding on the Brady Bonds and directing it to hold any remaining USD Principal Collateral. It did not speak to the USD interest collateral in this provision and was not ordering the FRBNY to "only" hold the USD principal collateral.

As to Argentina's argument that it is not subject to CPLR 5225 at all because it's not a person, the Court finds that New York looks past the presumption that the statutory use of "person" does not include a sovereign when it is "essential in order that [the statute's] purpose

may not be frustrated." [39]*Ohio ex rel. Fulton v. Saal*, 239 A.D. 420, 421-22 (2d Dep't 1933); *see also Republic of Honduras v. Soto*, 112 N.Y. 310, 312-13, 19 N.E. 845, 845 (1889) ("The statute must be construed with reference to the objects it had in view, the evils intended to be remedied and the benefits expected to be derived from it..."). CPLR Article 52 must therefore be read based on its purpose, which is to allow judgment creditors to collect their debts from judgment debtors. Thus the Court finds that the use of "person" in CPLR Article 52 extends at least so far as to apply to a sovereign and encompass a sovereign's assets where that sovereign owes a commercial debt and the judgment creditor seeks attachment or execution of an asset used for commercial activity. In such a scenario, the sovereign has behaved like a regular commercial actor, incurred a commercial obligation, and is being asked to pay that obligation with its commercial assets. Its status as a sovereign is merely incidental, and thus interpreting CPLR Article 52 to absolve the sovereign of liability entirely after it has behaved as commercial actor and incurred obligations to others in the marketplace would defeat the purpose of CPLR Article 52. Accordingly, the Court rejects the Republic's argument that it is not subject to CPLR 5225 because it is not a "person" within the meaning of the statute.

With respect to the injunction, counsel, because certain parties are already subject to a similar injunction set [40]forth at paragraphs 12 to 13 of the June 29, 2021 order, there's no reason why, in light of the Court's order today, the injunction ought not to be amended as the Court has the right to do, to include all of the parties who are

relevant. So I'II ask you folks to confer and to present appropriate language.

Secondly, with respect to the turnover order, in the interest of efficiency, having examined counsel as to what the practical arguments are here, it's the Court's decision to issue the turnover order, but to stay it pending the Court of Appeals decision on the pending appeal. And again, I'll ask you folks to confer and to present appropriate language.

Is there anything else today, friends?

MR. REED: Your Honor, the only thing that occurred to us, while your Honor was stepping out, was that if your Honor is going to issue an order for turnover and stay it, there's a possibility we might want to explore whether Argentina should be required to post security. I don't have all those arguments or those considerations in my head right now, but i would just ask for leave to submit a letter on that if we so choose in the next five days.

THE COURT: If you want, certainly.

MR. REED: Thank you.

THE COURT: Anything else?

MR. BOCCUZZI: If it's a letter, we would just follow your Honor's rule, I think it's three business days –

****

APPENDIX F — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED AUGUST 22, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Case No. 14 Civ. 05849 (LAP)

ATTESTOR MASTER VALUE FUND LP,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Case Nos. 14 Civ. 10016 (LAP), 15 Civ. 1588 (LAP),
15 Civ. 2611 (LAP), 15 Civ. 5886 (LAP),
15 Civ. 9982 (LAP), 16 Civ. 1436 (LAP)

TRINITY INVESTMENT LIMITED,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Appendix F

Case Nos. 15 Civ. 2369 (LAP), 15 Civ. 7367 (LAP),
16 Civ. 1192 (LAP), 21 Civ. 2060 (LAP)

BYBROOK CAPITAL MASTER FUND LP,
and BYBROOK CAPITAL
HAZELTON MASTER FUND LP,

Plaintiffs,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Case Nos. 15 Civ. 4767 (LAP), 15 Civ. 9601 (LAP)

WHITE HAWTHORNE, LLC,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Appendix F

Case No. 16 Civ. 1042 (LAP)

WHITE HAWTHORNE, LLC and
WHITE HAWTHORNE II, LLC,

Plaintiffs,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Case No. 18 Civ. 3446 (LAP)

BISON BEE LLC,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Filed August 22, 2022

ORDER

WHEREAS, on June 29, 2021, the Court granted an *ex parte* motion filed by plaintiffs Attestor Master Value Fund LP, Trinity Investments Limited, Bybrook Capital Master Fund LP, Bybrook Capital Hazelton Master Fund

LP, White Hawthorne, LLC, White Hawthorne II, LLC, and Bison Bee LLC (together, "**Plaintiffs**") to attach the reversionary interest of defendant the Republic of Argentina (the "**Republic**," and together with Plaintiffs, the "**Parties**") in certain collateral accounts and collateral held in the custody of the Federal Reserve Bank of New York (the "**FRBNY**") arising out of the Republic's issuance of so-called Brady Bonds in 1993 (the "**Attachment Order**");

WHEREAS, on July 23, 2021, because of the sensitivity of the financial information at issue and negotiations between the Parties, upon joint motion of the Parties, the Court ordered that all filings, submissions, and other papers related to the Attachment Order shall remain under seal and that the Parties were authorized to file under seal a motion to confirm the Attachment Order, any motion to vacate the Attachment Order, and any submissions to be made therewith;

WHEREAS, on July 23, 2021, Plaintiffs moved the Court to confirm the Attachment Order (the "**Motion to Confirm**");

WHEREAS, on August 13, 2021, the Republic filed its opposition to Plaintiffs' Motion to Confirm and also moved to vacate the Attachment Order (the "**Motion to Vacate**");

WHEREAS, briefing on the Motion to Confirm and the Motion to Vacate was completed as of September 30, 2021;

WHEREAS, on November 29, 2021, the Parties filed a stipulation providing that any levy in favor of Plaintiffs established by service of the Attachment Order is extended until 30 days after the resolution of the Motion to Confirm and the Motion to Vacate (the "**Levy Extension Stipulation**");

WHEREAS, on December 13, 2021, the Court so-ordered the Levy Extension Stipulation.

WHEREAS, oral argument on the Motion to Confirm and Motion to Vacate was held on July 20, 2022 in a closed Courtroom.

NOW, THEREFORE, it is hereby

ORDERED that, for the reasons stated on the record at the July 20, 2022 oral argument, the Motion to Confirm is GRANTED and the Motion to Vacate is DENIED;

ORDERED that any levy by Plaintiffs established by service of the Attachment Order shall remain in effect for 30 days following the issuance of the mandate by the Court of Appeals in any appeal from this Order and/or the Attachment Order;

ORDERED that, in the event the Court of Appeals concludes that this Order is not otherwise appealable under 28 U.S.C. § 1291 or 28 U.S.C. § 1292(a), this Court finds that the criteria for appeal pursuant to 28 U.S.C. § 1292(b) are met, because an appeal of the Order presents controlling questions of law on which there is a substantial ground for difference of opinion and an immediate appeal

from this Order may materially advance the ultimate termination of the litigation;

ORDERED that, all filings, submissions, and other papers related to the Attachment Order, the Motion to Confirm, the Motion to Vacate, and/or this Order shall remain under seal until 30 days following the resolution of any appeal of this Order, provided, however, that such documents may be shared with the FRBNY;

ORDERED that, for the avoidance of any doubt, nothing in this Order or the Attachment Order shall be construed to in any away affect any obligations on the Brady Bonds including, without limitation, any obligation to make payments of principal and interest on such Brady Bonds, and nothing herein shall attach, enjoin, restrain or otherwise interrupt payments of principal and interest on such Brady Bonds pursuant to their terms;

ORDERED, that on or before March 24, 2023, the Republic shall cause the FRBNY to inform Plaintiffs, through their counsel in these proceedings, of the principal amount of Brady Bonds outstanding as of that date (the "**Brady Principal Amount**");

ORDERED, upon maturity of the Brady Bonds, the FRBNY, as Collateral Agent, may remit to Citibank N.A., as Fiscal Agent an amount equal to and not to exceed the Brady Principal Amount from the Principal Collateral (as defined in the Collateral Pledge Agreement) for the purpose of paying the principal amounts outstanding on such Brady Bonds. The FRBNY shall continue to

hold any remaining Principal Collateral pursuant to the Attachment Order.

SO ORDERED:

/s/ Loretta A. Preska
Hon. Loretta A. Preska
United States District Judge

Dated: August 22, 2022

APPENDIX G — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, DATED JULY 20, 2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

14 Civ. 05849 (LAP)

ATTESTOR MASTER VALUE FUND LP,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

---

14 Civ. 10016 (LAP), 15 Civ. 1588 (LAP),
15 Civ. 2611 (LAP), 15 Civ. 5886 (LAP),
15 Civ. 9982 (LAP), 16 Civ. 1436 (LAP)

TRINITY INVESTMENTS LIMITED,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Appendix G

---

15 Civ. 2369 (LAP), 15 Civ. 7367 (LAP),
16 Civ. 1192 (LAP), 21 Civ. 2060 (LAP)

BYBROOK CAPITAL MASTER FUND LP,
AND BYBROOK CAPITAL HAZELTON
MASTER FUND LP,

Plaintiffs,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

---

15 Civ. 4767 (LAP), 15 Civ. 9601 (LAP)

WHITE HAWTHORNE, LLC,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Appendix G

---

16 Civ. 1042 (LAP)

WHITE HAWTHORNE, LLC AND
WHITE HAWTHORNE II, LLC,

Plaintiffs,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

---

18 Civ. 3446 (LAP)

BISON BEE LLC,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Appendix G

ORDER

On June 29, 2021, the Court granted Plaintiffs' ex parte motion for an order of attachment of Argentina's reversionary interests in the Brady Bonds. (Dkt. no. 99.) On July 23, 2021, Plaintiffs moved to confirm the order of attachment. (Dkt. no. 115.) On August 13, 2021, the Republic opposed the motion to confirm and moved to vacate the order of attachment. (Dkt. no. 103.) For the reasons stated on the record at oral argument on July 20, 2022, the motion to confirm the order of attachment (dkt. no. 115) is granted and the motion to vacate (dkt. no. 103) is denied.

As noted on the record at argument, the parties shall promptly provide the Court any briefing regarding proposed modifications to the attachment order to ensure that the attachment will not intrude upon the Brady Bondholders' right to payment.

SO ORDERED.

Dated: July 20, 2022
New York, New York

/s/ Loretta A. Preska
LORETTA A. PRESKA
Senior United States District Judge

APPENDIX H — EXCERPT OF TRANSCRIPT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, DATED JULY 20, 2022

[1]UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

14 CV 5849 (LAP)

ATTESTOR MASTER VALUE FUND LP,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

New York, N.Y.
July 20, 2022
10:00 a.m.

Before:
HON. LORETTA A. PRESKA,
District Judge

Appearances
QUINN EMANUEL URQUHART & SULLIVAN LLP
Attorneys for Plaintiff
BY: DENNIS HRANITZKY
KEVIN REED
JIANJIAN YE
LAURA SANTOS-BISHOP

Appendix H

CLEARY GOTTLIEB STEEN & HAMILTON LLP
Attorneys for Defendant
BY: CARMINE BOCCUZZI, JR.
RATHNA RAMAMURTH

***

[SEALED] [29]Let me have a couple minutes, please, counsel.

(Recess)

THE COURT: Thank you, counsel. Won't you be seated.

The motions before the Court concern whether the Court should confirm an order of attachment in favor of certain judgment creditors and prejudgment plaintiffs as to Argentina's reversionary interest in what are called "Brady Bonds."

And, counsel, off the record.

(Discussion off the record)

THE COURT: In the late 1980s, after a number of Latin American nations defaulted on their external debt, then United States Treasury Secretary Nicholas F. Brady developed a debt relief program known as the Brady Plan. Under its auspices, the Republic of Argentina ("Argentina") negotiated the restructuring of much of its medium and long-term commercial debt in April of

1992, exchanging an estimated $28.5 billion in unsecured commercial bonds for a series of collateralized bonds due in 2023 (the "Brady Bonds"). The Brady Bonds were secured, pursuant to a [] Collateral Pledge Agreement, by United States Treasury and German government bonds (the "Brady Collateral") owned by Argentina and held by the Federal Reserve Bank of New York ("FRBNY"). The Brady Collateral was divided between two separate accounts, one securing Argentina's payment upon maturity of the principal of the Brady Bonds (the "Principal Collateral") and the other securing interest payments to Brady [30]Bond holders prior to maturity (the "Interest Collateral").

CVI v. Argentina, 443 F.3d 214, 216 (2d Cir. 2006). The Principal Collateral consists of certain dollar-denominated zero-coupon United States Treasury bonds, which mature in 2023 and were pledged "for the sole purpose of securing the payment of the principal" of the USD Brady Bonds upon maturity. Collateral Pledge Agreement (Ex. L (Collateral Pledge Agreement ("CPA")) § 2.01(b).)

The Interest Collateral similarly was pledged "for the sole purpose of securing the payment of all unpaid interest [on the Brady Bonds] . . . not in excess of the Secured Interest Obligations." (CPA § 2.02(b)). Once the Brady Bonds are paid, the pledge agreements require the proceeds from any leftover Principal Collateral and Interest Collateral to revert to Argentina without any lien by the Brady Bond bondholders. (CPA § 3.03)

Appendix H

Plaintiffs are judgment creditors and pre-judgment plaintiffs seeking to confirm the Court's June 29, 2021, order of attachment, which granted the attachment of an estimated $414 million of Argentina's current or future reversionary interest in the principal and interest collateral in the Brady Bonds, currently held at the Federal Reserve Bank of New York ("FRBNY") pursuant to two fiscal agency agreements: (1) the Collateral Pledge Agreement (USD Series) among Argentina, the FRBNY, and Citibank, N.A., dated April 7, 1993; and (2) the [31] Collateral Pledge Agreement (DMK Series) between Argentina, the Federal Reserve Bank and Citibank, N.A., dated April 7, 1993.

On June 22, 2021, plaintiffs moved ex parte for orders of pre-judgment and post-judgment attachment. On June 29, 2021, the Court granted the motions and entered orders of attachment. On July 23, 2021, plaintiffs moved to confirm the attachment order. On August 13, 2021, Argentina opposed the motion to confirm and cross-moved to vacate the attachment order. On September 10, 2021, plaintiffs submitted a reply in further support of their motion to confirm and opposed the Republic's motion to vacate. Finally, on September 30, 2021, the Republic submitted a reply in further support of its motion to vacate the attachment order.

The principal dispute before the Court is whether the subject property — that is, the Republic's reversionary interests in the principal and interest collateral held at the Federal Reserve — is immune from attachment under the Foreign Sovereign Immunities Act. 28 U.S.C.

§ 1609 provides that the property in the United States of a foreign state shall be immune from attachment, arrest and execution except as provided in Sections 1610 and 1611 of this chapter." 28 U.S.C. § 1610 (a) , in turn, provides as an exception to immunity that "[t]he property in the United States of a foreign state . . . used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from [32]execution, upon a judgment . . . if [inter alia] the foreign state has waived its immunity from attachment in aid of execution either explicitly or by implication."

Hence, the reversionary interests are attachable if (1) the Republic has waived its immunity from attachment and (2) the reversionary interest sought to be attached is (a) the property of the Republic (b) located in the United States and (c) used for a commercial activity in the United States.

There is no dispute that the Republic defaulted on the Brady Bonds when it ceased to pay the interest in 2001, and, under the 1994 Fiscal Agency Agreement, has unconditionally and explicitly waived its sovereign immunity from attachment. See, e.g., *Lightwater Corp. Ltd. v. Republic of Argentina*, 2003 WL 1878420, at *4 (S.D.N.Y. Apr. 14, 2003); *Capital Ventures Int'l v. Republic of Argentina*, 2006 WL 1379607, at *1 (S.D.N.Y May 18, 2006).

There is also no serious dispute that the collateral, and the Republic's reversionary interest in the collateral, is the property of the Republic. See *CVI v. Argentina*, 443

F.3d 214, 216 (2d Cir. 2006) (noting that the collateral is "owned by Argentina and held by the Federal Reserve Bank of New York"); see Ex. L, the CPA, 3.03(a) (providing that in the event the Republic has made full payment upon maturity, the Collateral Agent (FRBNY) "shall transfer or cause to be transferred . . . any Pledged Securities then held in the [33]Principal Collateral Account . . . and any Distributions then held in the Distribution Account . . . , whereupon . . . such Pledged Securities and Distributions shall be free of the Lien of this Agreement and all rights with respect thereto shall revert to Argentina."); see also Exhibit L, the CPA § 9.05 (providing that, in the event that the Republic does not make payment upon maturity, pursuant to § 3.03(b), "The Collateral Agent shall take such action, including executing and delivering . . . to Argentina all such documents and instruments as Argentina may reasonably request for the purpose of enabling Argentina to receive and retain the collateral for such [bonds] as shall not have been previously released, sold, or otherwise applied pursuant to the terms of this Agreement free and clear of the Lien of this Agreement.")

Thus, regardless of whether Argentina makes full payments on the bond, the CPA provides that Argentina holds a reversionary interest in any excess collateral. Argentina also relies on Schedule K, the Notice of Full Payment, which the Court will address below.

It is clear that the reversionary interest in the collateral is located in the United States. Pursuant to the CPA, the Brady Collateral is held at the Federal Reserve Bank of New York in New York City. CPA

§ 3.01; Ex. M (DMK Series Collateral Pledge Agreement) § 4.01. Argentina's reversionary interest in the Brady Collateral is also located in New York [34]because "[u]nder New York law, . . the situs of intangible property, such as reversionary interest, is the location of the party of whom performance is required by the terms of the contract." *EM Ltd. v. Republic of Argentina*, 2009 WL 2568433, at *9 (S.D.N.Y. Aug. 18, 2009) (cleaned up), aff'd, 389 F. App'x 38 (2d Cir. Aug. 3, 2010) (summary order).

For Argentina to realize its reversionary interest in the Brady Collateral, the FRBNY has to deliver the remaining Brady Collateral to Argentina, which will necessarily happen in New York, where the Brady Collateral is located. See *id.* The Court rejects Argentina's argument that the situs of the reversionary interest is Washington, D.C. (where the Republic argues it has not waived its sovereign immunity) because it is the U.S. Treasury in Washington that ultimately must make the payment on the bonds. Such a reading is not supported in the documents.

Thus, the only real dispute is whether the Republic's reversionary interest is "used for a commercial activity in the United States." Plaintiffs argue that the Republic is estopped from arguing that its reversionary interest in the Brady Collateral is not used for commercial activity in the United States because, according to plaintiffs, that issue was necessarily decided in *Capital Ventures Int'l v. Republic of Argentina*, 443 F.3d 214 (2d Cir. 2006). In *CVI*, the Court of Appeals held that the same reversionary interest in the same [35]Brady Bonds at issue in these

actions was attachable by bondholder plaintiffs such as the plaintiffs here. *Id.* at 223 ("Given that *CVI* met all the statutory requirements and that there now is no threat of confusion, we conclude that *CVI* is entitled to attach Argentina's reversionary interest in the remaining Principal Collateral."). Although the parties in *CVI* did not brief the precise issue of whether the exception in Section 1610(a) of the FSIA applied and the Court of Appeals did not explicitly address it, plaintiffs argue that given Section 1609's mandatory default presumption that property of a foreign state "shall be immune from attachment," the Court of Appeals' conclusion that the statutory requirements for attachment of the reversionary interests were not met necessarily means that the exception in Section 1610(a) was found to apply.

There is some force to this argument. Indeed, Argentina itself, in a brief submitted to the Court of Appeals in a later appeal in the CVI case, conceded (albeit somewhat indirectly) that its reversionary interest in the Brady Bonds meets Section 1610(a)'s requirements. See Brief of Argentina at 36, *Capital Ventures Intl v. Republic of Argentina*, 652 F.3d 266 (2d Cir. 2011) (Nos. 07-2508, 07-2511) (brief dated October 19, 2007) ("The FSIA renders foreign state property immune from execution or any other enforcement remedy except where such property is located in the territorial limits of the [36]United States and is used for a commercial activity in the United States. See 28 U.S.C. § 1610(a); *EM Ltd.*, 473 F.3d at 481 n.19. By its injunction motion, *CVI* does not seek to attach property of the Republic currently located in the United States and used for commercial activity here (it has, of course,

already attached any reversionary interest the Republic has in the Brady Bond Collateral), but rather seeks to enjoin the Republic from engaging in activities outside of the United States." (emphasis in original)).

But the Court need not reach the question whether plaintiffs may rely on non-mutual offensive collateral estoppel to preclude the Republic from raising immunity here.

On the merits, the question of whether the reversionary interest in the Brady Collateral is property used for commercial activity in the United States must be decided by reference to how it is being used "at the time the writ of attachment or execution is issued" — not by how it will be used or could potentially be used. *Aurelius Capital Partners, LP v. Republic of Argentina*, 584 F.3d at 120, 130 (2d Cir. 2009).

The Court thus rejects the Republic's various arguments about where its reversionary interest might be directed and what might be done with the funds upon maturity of the Brady Bonds. (See Opp. Br. at 13-19 (arguing that the reversionary interests are immune to attachment because they must be directed to the BCRA and thus are not available to the [37]Republic, that the Republic cannot use the interest until it is actually released to the Republic, etc.).)

The Brady Bonds are "garden-variety debt instruments" as they "may be held by private parties; they are negotiable and may be traded on the international

market . . . and they promise a future stream of cash income." *EM Ltd. v. Republic of Argentina*, 473 F.3d 463, 482 (2d Cir. 2007) (cleaned up). The issuance of the bonds themselves was thus plainly "commercial activity" by Argentina within the meaning of Section 1610 (a). See, e.g. , *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 614 (1992) (holding that "when a foreign government acts . . . in the matter of a private player . . . the foreign sovereign's actions are 'commercial' within the meaning of FSIA" and that the commercial character of an act is determined by whether the sovereign's actions "are the type of actions by which a private party engages in 'trade and traffic or commerce.'" (emphasis in original) (cleaned up)); *Friedman v. Gov't of Abu Dhabi, United Arab Emirates*, 464 F. Supp. 3d 52, 62-63 (D.D.C. 2020) (Abu Dhabi's issuance of a promissory note is a commercial activity, because "the issuance of sovereign debt is a commercial act.") (collecting cases); *Weltover, Inc. v. Republic of Argentina*, 941 F.2d 145, 151 (2d Cir. 1991) ("The nature of this activity — the issuance of debt instrument — is clearly the type of activity that private persons can, and often do, engage in for profit . . . It is [38]self-evident that issuing public debt is a commercial activity [under the FSIA.]") (collecting cases holding sovereigns issuing public debts as commercial activity).

Argentina's reversionary interest in the collateral securing those bonds is also "used for" "commercial activity." The word "used" requires that the sovereign actively utilize that property in service of that commercial activity." *Export-Import Bank of the Republic of China v. Grenada*, 768 F.3d 75, 90 (2d Cir. 2014) (cleaned up). Here,

Argentina actively utilized its reversionary interest in the collateral in service to its commercial activity of issuing the Brady Bonds because the pledge of the collateral was part of the transaction of issuing the Brady Bonds and the reversionary interest was, and still is, being used to secure Argentina's ability to recover remaining collateral after the outstanding Brady Bonds are paid.

In sum, the Republic issued these garden-variety debt instruments, pledged collateral to secure the instruments, and reserved its right to recover any excess pledged collateral. This is prototypical commercial activity. As I noted earlier, the Republic also argues that the reversionary interest is immune from attachment pursuant to the FSIA, 28 U.S.C. § 1611(b) because it must be remitted to the Republic's central bank (BCRA), not to the Republic itself. (Opp. Br. at 10-12.)

[39]The argument goes that because any creditor (here, plaintiffs) stands in the shoes of the debtor (here, the Republic), see *EM Ltd.*, 473 F.3d at 476, plaintiffs would have no right to receive the reversionary interest in the collateral because that interest must go to BCRA, which is immune from attachment under Section 1611(b).

Assuming the Republic pays the outstanding Brady Bonds at maturity, the "Republic shall deliver a Notice of Full Payment" to FRBNY. (CPA § 3.03(a)(i).) In the event of nonpayment, under Section 3.03(b), at some point in time, a Notice of Full Payment will also be issued.

Appendix H

The Form of the Notice of Full Payment, under either scenario, is appended to the CPA as Schedule K, which form directs that "all Pledged Securities now held in the Principal Collateral Account for the Bonds and all Distributions now held in the Distribution Account" be transferred to "account no. _____ of BCRA at _____."

Thus, while the account specifics are left open, the BCRA is identified as the recipient in the form of Notice of Full Payment. Pursuant to Section 1.01 of the CPA, the Notice of Full Payment is "substantially in the form of Schedule K." And FRBNY must transfer the bonds in accordance with the instructions in the Notice of Payment. (CPA § 3.03(a) (ii).) Argentina argues that the contract thus requires FRBNY to transfer the bonds to the BCRA upon maturity and issuance of [40]the Notice of Full Payment.

The Court rejects Argentina's argument that the inclusion of BCRA in the form of Notice of Full Payment means that BCRA is entitled to payment to Argentina's exclusion. It is the language of the CPA, not the form of the Notice of Full Payment, however, that controls. Argentina is the owner of the collateral, and, as such, it may direct the proceeds as it wishes, within the confines of the parties' understandings set forth in the Brady Bonds and the CPA. Indeed, Section 3.03(a) (ii) of the CPA, the same provision that requires FRBYN to transfer the bonds in accordance with the instructions in the Notice of Full Payment, provides that upon transfer "such Pledged Securities and Distributions shall be free of the Lien of this Agreement and all rights with respect thereto shall revert to Argentina," not to the BCRA.

Appendix H

I also note Section 9.05 of the CPA, entitled "Continuing Security Interest," that states, in relevant part, "Upon receipt of a Notice of Full Payment, the Collateral Agent shall take such actions, including executing and delivering, or causing to be executed and delivered, to Argentina all such documents and instruments as Argentina may reasonably request for the purpose of enabling Argentina to receive and retain the collateral . . . as shall not have been previously released, sold or otherwise applied, pursuant to the terms of this agreement, free and clear of the lien of this agreement." This [41]language also supports the conclusion that the reversionary interest was meant to go to Argentina and not the BCRA.

Moreover, there is no provision in the CPA that requires that payment be made to a BCRA account or that prevents the funds from being directed elsewhere. Hence, the Notice of Full Payment may be amended to direct that funds be transferred to a non-BCRA account without running afoul of Section 1.01's statement that the Notice of Full Payment be "substantially in the form of Schedule K." See Substantial, Black's Law Dictionary ("Containing the essence of a thing; conveying the right idea even if not the exact details"). After all, the principal purpose of the Notice of Full Payment is to notify the collateral agent (FRBNY) of the Republic's full payment on the bonds, as confirmed by the fiscal agent (Citibank), such that any reversionary interest may be released to the Republic. And, of course, this is the scenario that relates to full payment. That the notice also includes partially pre-filled instructions on where to transfer the reversionary interest is not binding. And, obviously, for the reasons we noted above, this also applies to the nonpayment scenario.

The Court also notes that the Memorandum of Understanding (MOU) between the United States and Argentina, dated January 13, 1993, provides that the reversionary interest upon maturity of the pledged securities must be paid "to the [42]account of the Argentine Republic or the BCRA at the FRBNY and to the account of the collateral agent of the Argentine Republic or the BCRA at the FRBNY in proportion to the portions of the Zero-Coupon Bonds held in each such account." That the MOU between the United States and Argentina governing the payout upon maturity contemplated payment to the Republic or to BCRA only reinforces that the funds are not required to go to the BCRA. Thus, the pre- and post-judgment creditors, standing in Argentina's shoes, are not precluded from obtaining or attaching Argentina's reversionary interest in the collateral.

The Court rejects the remainder of the arguments against attachment. The motion to confirm the attachment, Docket No. 115 is granted, and the motion to vacate the attachment, Docket No. 103 is denied.

Counsel, so nice to see you today. And may I also compliment the younger lawyers — no offense, boys — for their arguments this morning. You did very well, ladies and gentlemen.

MR. YE: Thank you, your Honor.

THE COURT: Friends, when you put in your new papers providing for payments to the bondholders, would you include language reflecting what was done today;

we'll do the "motion is granted, motion is denied," but whatever you think needs to go in there so that you can appeal immediately.

MR. HRANITZKY: Absolutely, your Honor.

[43]THE COURT: Okay. Thank you, counsel.

Good morning.

MR. BOCCUZZI: Thank you, your Honor.

MR. REED: Thank you, your Honor.

***

APPENDIX I — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED JUNE 29, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Case No. 14 Civ. 05849 (LAP)

ATTESTOR MASTER VALUE FUND LP,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Case Nos. 14 Civ. 10016 (LAP), 15 Civ. 1588 (LAP),
15 Civ. 2611 (LAP), 15 Civ. 5886 (LAP),
15 Civ. 9982 (LAP), 16 Civ. 1436 (LAP)

TRINITY INVESTMENT LIMITED,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Appendix I

Case Nos. 15 Civ. 2369 (LAP), 15 Civ. 7367 (LAP),
16 Civ. 1192 (LAP), 21 Civ. 2060 (LAP)

BYBROOK CAPITAL MASTER FUND LP,
and BYBROOK CAPITAL
HAZELTON MASTER FUND LP,

Plaintiffs,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Case Nos. 15 Civ. 4767 (LAP), 15 Civ. 9601 (LAP)

WHITE HAWTHORNE, LLC,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Appendix I

Case No. 16 Civ. 1042 (LAP)

WHITE HAWTHORNE, LLC and
WHITE HAWTHORNE II, LLC,

Plaintiffs,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Case No. 18 Civ. 3446 (LAP)

BISON BEE LLC,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Filed June 29, 2021

Appendix I

TO:

THE FEDERAL RESERVE BANK OF NEW YORK
33 LIBERTY STREET
NEW YORK, NY 10045

~~[PROPOSED]~~ ORDER OF ATTACHMENT

Plaintiffs/Judgment Creditors Attestor Master Value Fund LP ("**Attestor**"), and Trinity Investments Limited ("**Trinity,**" and together with Attestor, the "**Judgment Creditors**"), together with pre-judgment plaintiffs Bybrook Capital Master Fund LP, Bybrook Capital Hazelton Master Fund LP, White Hawthorne, LLC, White Hawthorne II, LLC, and Bison Bee LLC (the "**Pre-Judgment Plaintiffs**," and together with the Judgment Creditors, "**Plaintiffs**") having moved *ex parte* for orders of pre-judgment attachment (in favor of the Pre-Judgment Plaintiffs) and of post-judgment attachment (in favor of the Judgment Creditors) pursuant to Rules 64 and 69 of the Federal Rule of Civil Procedure ("**Fed. R. Civ. P.**"), Article 62 of the New York Civil Practice Law and Rules ("**N.Y. C.P.L.R.**"), and Section 1610 of the Foreign Sovereign Immunities Act ("**FSIA**"), 28 U.S.C. § 1610; having sought to attach the reversionary interest of the Republic of Argentina ("**Argentina**") in certain collateral accounts and the corresponding collateral held in the custody of the Federal Reserve Bank of New York (the "**FRBNY**") arising out of Argentina's issuance of so-called "**Brady Bonds**" (defined below) in 1993 (such reversionary interest, the "**Subject Property**"), on the

basis of evidence that the Subject Property will, at the time this Order is levied, be in the United States and used by Argentina for commercial activity in the United States; and having requested that each of the Plaintiffs' attachment levies on the Subject Property be established simultaneously with the others such that any recovery the Plaintiffs realize from the Subject Property is distributed to them *pari passu*, and

Upon the Declaration of Dennis H. Hranitzky, dated June 22, 2021 and the exhibits annexed thereto, the accompanying Plaintiffs' Memorandum of Law in Support of *Ex Parte* Motion for Orders of Pre-Judgment and Post-Judgment Attachment, and all prior pleadings and proceedings herein, and it appearing that Plaintiffs have met the criteria for pre- and post-judgment attachment in that:

1. Judgments have been entered against Argentina in seven of the above-captioned cases (the "**Post-Judgment Actions**"):

- *Attestor Master Value Fund LP v. Republic of Argentina,* 14 Civ. 05849 (LAP), in which judgment was entered on July 7, 2020 for $68,093,569.10 with post-judgment interest from that date through June 21, 2021 of $104,173.83, for a total of $68,197,742.93.

- *Trinity Investments Ltd. v. Republic of Argentina,* 14 Civ. 10016 (LAP), , in which judgment was

entered on July 7, 2020 for $21,809,962.38 with post-judgment interest from that date through June 21, 2021 of $33,366.25, for a total of $21,843,328.63.

- *Trinity Investments Ltd. v. Republic of Argentina,* 15 Civ. 1588(LAP), in which judgment was entered on July 7, 2020 for $16,420,514.04 with post-judgment interest from that date through June 21, 2021 of $25,121.14, for a total of $16,445,635.18.

- *Trinity Investments Ltd. v. Republic of Argentina,* 15 Civ. 2611(LAP), in which judgment was entered on July 7, 2020 for $24,041,141.35 with post-judgment interest from that date through June 21, 2021 of $36,779.65, for a total of $24,077,921.00.

- *Trinity Investments Ltd. v. Republic of Argentina,* 16 Civ. 1436 (LAP), No. 05 Civ. 2434, in which judgment was entered on July 7, 2020 for $10,855,461.47 with post-judgment interest from that date through June 21, 2021 of $16,607.37, for a total of $10,872,068.84.

- *Trinity Investments Ltd. v. Republic of Argentina,* 15 Civ. 9982 (LAP), in which judgment was entered on July 7, 2020 for $6,787,511.4 with post-judgment interest from that date through June 21, 2021 of $10,383.96, for a total of $6,797,895.36.

- *Trinity Investments Ltd. v. Republic of Argentina*, 15 Civ. 5886 (LAP), in which judgment was entered on July 7, 2020 for $83,912,386.78 with post-judgment interest from that date through June 21, 2021 of $128,374.46, for a total of $84,040,761.24.

The sum of the outstanding amounts of Judgment Creditors' final judgments in the Post-Judgment Actions, including accrued post-judgment interest through June 21, 2021, is $232,275,353.19.

2. The Pre-Judgment Plaintiffs have asserted causes of action for money judgments but have not yet reduced their claims to judgment in eight of the above-captioned actions (the "**Pre-Judgment Actions**") as follows:

- *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 15 Civ. 2369 (LAP), in which the complaint was filed on March 30, 2015, and in which plaintiffs therein claim $6,099,000.00 in principal plus pre-judgment interest of $13,433,257.57 as of June 21, 2021;

- *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 15 Civ. 7367 (LAP), in which the complaint was filed on September 17, 2015, and in which plaintiffs therein claim $10,094,000.00 in principal plus pre-judgment interest of $20,642,303.38 as of June 21, 2021;

- *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 16 Civ. 1192 (LAP), in which the complaint was filed on February 16, 2016, and in which plaintiffs therein claim $8,098,000.00 in principal plus pre-judgment interest of $15,635,679.39 as of June 21, 2021;

- *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 21 Civ. 2060 (LAP), in which the complaint was filed on March 10, 2021, and in which plaintiffs therein claim $210,000.00 in principal plus pre-judgment interest of $177,289.04 as of June 21, 2021;

- *White Hawthorne, LLC v. The Republic of Argentina*, 15 Civ. 4767 (LAP), in which the complaint was filed on May 18, 2015, and in which plaintiff therein claims $12,433,078.60 in principal plus pre-judgment interest of $27,266,026.17 as of June 21, 2021;

- *White Hawthorne, LLC v. The Republic of Argentina*, 15 Civ. 9601 (LAP), in which the complaint was filed on December 8, 2015, and in which plaintiff therein claims $14,428,243.48 in principal plus pre-judgment interest of $29,952,863.19 as of June 21, 2021;

- *White Hawthorne, LLC and White Hawthorne II, LLC v. The Republic of Argentina*, 16 Civ.

1042 (LAP), in which the complaint was filed on February 10, 2016, and in which plaintiffs therein claim $8,000,000 in principal plus pre-judgment interest of $15,452,518.86 as of June 21, 2021;

- *Bison Bee LLC v. Republic of Argentina*, 18 Civ. 03446 (LAP) in which the complaint was filed on April 19, 2018, and in which plaintiff therein claims $92,617.41 in principal plus pre-judgment interest of $128,864.97 as of June 21, 2021.

The sum of the Pre-Judgment Plaintiffs' remaining claims in the Pre-Judgment Actions, plus pre-judgment interest through June 21, 2021, is at least $182,143,742.07.

3. The Subject Property consists of Argentina's reversionary interest in all assets in the "Principal Collateral Accounts," "Interest Collateral Accounts," and "Distribution Accounts" currently held, or that in the future may be held by the FRBNY pursuant to (i) the Collateral Pledge Agreement (USD Series) among Argentina, the FRBNY and Citibank, N.A., dated as of April 7, 1993; and (ii) the Collateral Pledge Agreement (DMK Series) between Argentina, The Federal Reserve Bank and Citibank, N.A., dated as of April 7, 1993 (collectively, the "**Collateral Pledge Agreements**"), including without limitation any amounts in the "Interest Collateral Accounts" that are at any time in excess of the "Secured Interest Obligations" as defined in the Collateral Pledge Agreements.

4. The Subject Property is attachable under N.Y. C.P.L.R. §§ 6202 and 5201(b).

5. The Subject Property is not immune from attachment because Argentina has waived its immunity of its property from pre- or post-judgment attachment, and the Subject Property is "in the United States" and "used for commercial activity in the United States." 28 U.S.C. § 1610(a).

6. Plaintiffs have demonstrated a statutory ground for attachment under N.Y. C.P.L.R. § 6201 because Argentina, as a foreign state under 28 U.S.C. § 1603, is not domiciled in the State of New York.

7. Argentina has no outstanding counterclaims for damages against Plaintiffs in any of the Pre-Judgment Actions.

8. Plaintiffs are likely to succeed on the merits in the Pre-Judgment Actions.

9. By virtue of the foregoing, Plaintiffs have satisfied the criteria for pre-judgment attachment in the Pre-Judgment Actions. Therefore, pursuant to N.Y. C.P.L.R. §§ 6201(1), 6211(a), and 6212(a), Pre-Judgment Plaintiffs are entitled to an order of attachment in the Pre-Judgment Actions with respect to their claims, including pre-judgment interest.

10. By virtue of the foregoing, Plaintiffs have satisfied the criteria for post-judgment attachment in the Post-Judgment Actions. Therefore, pursuant to N.Y. C.P.L.R. §§ 6205 and 6211(a), Judgment Creditors are entitled to an order of attachment in aid of execution in the Post-Judgment

Actions with respect to their money judgment, including accrued post-judgment interest.

NOW, upon the *ex parte* motion of Plaintiffs through their attorneys Quinn, Emanuel, Urquhart & Sullivan, LLP:

IT IS HEREBY ORDERED that Plaintiffs' *ex parte* motion for Orders of Attachment is granted in its entirety, and this Order shall be effective immediately and shall remain so unless otherwise amended or vacated by this Court;

IT IS FURTHER ORDERED that the amount to be secured by this Order is $414,419,095.26, consisting of

(a) $68,197,742.93 in favor of Plaintiff Attestor, which is the sum of its final judgment plus accrued post-judgment interest as of June 21, 2021, in *Attestor Master Value Fund LP v. Republic of Argentina,* 14 Civ. 05849 (LAP);

(b) $164,077,610.25 in favor of Plaintiff Trinity, which is the sum of its final judgment plus accrued post-judgment interest as of June 21, 2021, in *Trinity Investments Ltd. v. Republic of Argentina*, 14 Civ. 10016 (LAP), *Trinity Investments Ltd. v. Republic of Argentina*, 15 Civ. 1588 (LAP), *Trinity Investments Ltd. v. Republic of Argentina*, 15 Civ. 2611(LAP), *Trinity Investments Ltd. v. Republic of Argentina*, 16 Civ. 1436 (LAP), *Trinity Investments Ltd. v. Republic of Argentina*, 15 Civ. 9982(LAP), and *Trinity Investments Ltd. v. Republic of Argentina*, 15 Civ. 5886 (LAP);

(c) $39,062,319.77 in favor of Plaintiff Bybrook Capital Master Fund LP, which is the sum of its claims plus accrued pre-judgment interest as of June 21, 2021, in *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 15 Civ. 2369 (LAP), *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 15 Civ. 7367 (LAP), *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 16 Civ. 1192 (LAP), and *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 21 Civ. 2060 (LAP);

(d) $35,327,209.61 in favor of Plaintiff Bybrook Capital Hazelton Master Fund LP, which is the sum of its claims plus accrued pre-judgment interest as of June 21, 2021, in *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 15 Civ. 2369 (LAP), *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 15 Civ. 7367 (LAP), *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 16 Civ. 1192 (LAP), and *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 21 Civ. 2060 (LAP);

(e) $84,080,211.44 in favor of Plaintiff White Hawthorne, LLC, which is the sum of its claims plus accrued pre-judgment interest as of June 21, 2021, in *White Hawthorne, LLC v. The Republic of Argentina*, 15 Civ.

4767 (LAP), *White Hawthorne, LLC v. The Republic of Argentina*, 15 Civ. 9601 (LAP), and *White Hawthorne, LLC and White Hawthorne II, LLC v. The Republic of Argentina*, 16 Civ. 1042 (LAP);

(e) $23,452,518.86 in favor of Plaintiff White Hawthorne II, LLC, which is the sum of its claims plus accrued pre-judgment interest as of June 21, 2021, in *White Hawthorne, LLC and White Hawthorne II, LLC v. The Republic of Argentina*, 16 Civ. 1042 (LAP),

(f) $221,482.39 in favor of Plaintiff Bison Bee LLC , which is the sum of its claims plus accrued pre-judgment interest as of June 21, 2021, in *Bison Bee LLC v. Republic of Argentina*, 18 Civ. 3446 (LAP);

IT IS FURTHER ORDERED that the U.S. Marshals Service for the Southern District of New York shall serve this Order as soon as possible upon the FRBNY pursuant to N.Y. C.P.L.R. § 6214 to levy on the Subject Property so as to maintain priority pursuant to N.Y. C.P.L.R. § 5234 in relation to other creditors of Argentina;

IT IS FURTHER ORDERED that in addition to any other permissible method of service of this Order under the applicable rules, service by e-mail of this Order on an officer of the FRBNY shall be good and sufficient service on the FRBNY;

IT IS FURTHER ORDERED that the Order may be served on the FRBNY as many times as necessary to effectuate such service;

IT IS FURTHER ORDERED that the U.S. Marshals Service for the Southern District of New York, and/or any person appointed to act in its place and stead, shall levy upon, but refrain from taking into actual custody pending further order of this Court, the Subject Property, such as will satisfy, free and clear of any other liens, claims or defenses, the above-mentioned sum of $414,419,095.26 owed to the Plaintiffs, consisting of

(a) $68,197,742.93 in favor of Plaintiff Attestor, which is the sum of its final judgment plus accrued post-judgment interest as of June 21, 2021, in *Attestor Master Value Fund LP v. Republic of Argentina,* 14 Civ. 05849 (LAP);

(b) $164,077,610.25 in favor of Plaintiff Trinity, which is the sum of its final judgment plus accrued post-judgment interest as of June 21, 2021, in *Trinity Investments Ltd. v. Republic of Argentina*, 14 Civ. 10016 (LAP), *Trinity Investments Ltd. v. Republic of Argentina*, 15 Civ. 1588 (LAP), *Trinity Investments Ltd. v. Republic of Argentina*, 15 Civ. 2611(LAP), *Trinity Investments Ltd. v. Republic of Argentina*, 16 Civ. 1436 (LAP), *Trinity Investments Ltd. v. Republic of Argentina*, 15 Civ. 9982(LAP), and *Trinity Investments Ltd. v. Republic of Argentina*, 15 Civ. 5886 (LAP);

(c) $39,062,319.77 in favor of Plaintiff Bybrook Capital Master Fund LP, which is the sum of its claims plus accrued pre-judgment interest as of June 21, 2021, in *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 15 Civ. 2369 (LAP), *Bybrook Capital Master Fund LP*,

and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina, 15 Civ. 7367 (LAP), *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 16 Civ. 1192 (LAP), and *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 21 Civ. 2060 (LAP);

(d) $35,327,209.61 in favor of Plaintiff Bybrook Capital Hazelton Master Fund LP, which is the sum of its claims plus accrued pre-judgment interest as of June 21, 2021, in *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 15 Civ. 2369 (LAP), *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 15 Civ. 7367 (LAP), *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 16 Civ. 1192 (LAP), and *Bybrook Capital Master Fund LP, and Bybrook Capital Hazelton Master Fund LP v. The Republic of Argentina*, 21 Civ. 2060 (LAP);

(e) $84,080,211.44 in favor of Plaintiff White Hawthorne, LLC, which is the sum of its claims plus accrued pre-judgment interest as of June 21, 2021, in *White Hawthorne, LLC v. The Republic of Argentina*, 15 Civ. 4767 (LAP), *White Hawthorne, LLC v. The Republic of Argentina*, 15 Civ. 9601 (LAP), and *White Hawthorne, LLC and White Hawthorne II, LLC v. The Republic of Argentina*, 16 Civ. 1042 (LAP);

(e) $23,452,518.86 in favor of Plaintiff White Hawthorne II, LLC, which is the sum of its claims plus accrued

pre-judgment interest as of June 21, 2021, in *White Hawthorne, LLC and White Hawthorne II, LLC v. The Republic of Argentina*, 16 Civ. 1042 (LAP);

(f) $221,482.39 in favor of Plaintiff Bison Bee LLC , which is the sum of its claims plus accrued pre-judgment interest as of June 21, 2021, in *Bison Bee LLC v. Republic of Argentina*, 18 Civ. 3446 (LAP).;

IT IS HEREBY ORDERED that each of the Plaintiffs' attachment levies upon the Subject Property shall be established simultaneously with the others such that those levies are *pari passu* among themselves and any recovery the Plaintiffs realize from the Subject Property shall be distributed among the Plaintiffs *pari passu*;

IT IS FURTHER ORDERED that Plaintiffs shall, as soon as possible after being notified by the U.S. Marshals Service for the Southern District of New York that the attachment levies have been levied on the Subject Property, give notice to Argentina by serving its counsel, Carmine D. Boccuzzi, Esq. of Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, New York, 10006, via first class mail delivery or e-mail at cboccuzzi@cgsh.com, with this Order and Plaintiffs' moving papers for the order of attachment;

IT IS FURTHER ORDERED that the FRBNY shall serve any garnishee statements required by N.Y. C.P.L.R. § 6219 via e-mail and first class mail, within 5 days of service of this Order, upon: Dennis Hranitzky, Quinn Emanuel Urquhart & Sullivan, LLP , 51 Madison Avenue,

22nd Floor, New York, NY 10010 (dennishranitzky@quinnemanuel.com);

IT IS FURTHER ORDERED that Plaintiffs shall, as required by N.Y. C.P.L.R. § 6211(b), (a) move within 10 days after service of this Order on the FRBNY, or upon such other date as the Court may set, for an order confirming this Order (the "**Confirmation Motion**"); (b) give notice of the Motion for Confirmation to Argentina, by serving its counsel, Carmine D. Boccuzzi, Esq. of Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, New York, 10006, via first class mail delivery or e-mail at cboccuzzi@cgsh.com; and (c) give notice of the Confirmation Motion to the FRBNY via first class mail delivery at 33 Liberty Street, New York, NY 10045, or email delivery on an officer of the FRBNY. If no such Confirmation Motion is made within the time period prescribed herein, this Order and any lien created thereby shall have no further effect and shall be vacated on further motion to this Court;

IT IS FURTHER ORDERED that to avoid and prevent any actions that would frustrate the purpose and effect of this Order, the FRBNY, its officers, agents, attorneys, representatives, employees, servants, and affiliates, and all other persons acting on its behalf, and all persons in possession of the Subject Property, and all persons acting in concert or participation with any of the foregoing, and all persons who receive actual notice of this Order by personal service or otherwise, are hereby **ENJOINED AND RESTRAINED,** pending any hearing in accord with this Order and until

further order of this Court, from directly or indirectly transferring or removing any Subject Property and/or taking any action to frustrate or undermine the effectiveness of this Order;

IT IS FURTHER ORDERED that opposing papers, if any, are to be served upon counsel for Plaintiffs at:

Dennis Hranitzky
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
dennishranitzky@quinnemanuel.com

IT IS FURTHER ORDERED that ~~this Court (Preska, J.) will be available to hear any motion concerning this Order at __.m on ____, June __, 2021, and pending the earlier of further court order or _____~~, [/s/ LAP] (i) all filings, submissions or other papers relating to this Order shall be delivered directly to the undersigned's Chambers or via e-mail delivery to PresekaNYSDChambers@nysd.uscourts.gov, and shall not be filed with the Clerk of Court or e-filed, (ii) all applications, motions, petitions or other forms of relief relating to this Order shall be directed exclusively to the undersigned and shall be without notice to any person other than Plaintiffs, and (iii) all hearings relating to this Order shall be closed to the public.

[in order to avoid disclosing these proceedings in advance of the levy, Counsel shall notify the Court as soon as the

attachment is effected so that the papers can be unsealed. /s/ LAP]

IT IS FURTHER ORDERED that no Plaintiff may seek modification of this Order without the consent of all other Plaintiffs.

Dated: New York, New York
June 29, 2021

2:20 P.M.

/s/ Loretta A. Preska
United States District Judge

APPENDIX J — RELEVANT STATUTES

28 U.S.C. §§1610(a), (d)

§1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property—

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposesof maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based.

* * *

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately been tered against the foreign state, and not to obtain jurisdiction.

* * *