No. 24-

IN THE

Supreme Court of the United States

RICARDO DEVENGOECHEA,

Petitioner,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED (CIRCUIT CONFLICT, MANDATE STAYED)

Title 28 U.S.C. § 1610(a)(1) of the Foreign Sovereign Immunities Act provides that a foreign country which suffers a judgment against it may waive its immunity against execution on its property either explicitly or "by implication."

In an action to enforce a judgment against a foreign country under the Foreign Sovereign Immunities Act:

1. Is the standard for determining the foreign country's implied waiver of its execution immunity under § 1610(a)(1) an ***objective standard or subjective standard*** — where the ***objective standard*** focuses on the reasonable objective appearance given by the foreign country's conduct, in accord with the ordinary meaning of "implied waver" and *Black's Law Dictionary* — while the ***subjective standard*** focuses solely on the foreign country's subjective "intent"? (Circuit Conflict)

2. Is the property of a foreign country which is subject to judgment-execution defined by the judgment-execution statute or by court rulings which depart from the statute — where the judgment-execution statute allows execution against all "[t]he property in the United States of [the] foreign state … used for a commercial activity in the United States" (28 U.S.C. § 1610(a)) — while court rulings in some Circuits restrict judgment-execution to the few items directly related to a plaintiff's claim? (Circuit Conflict)

3. Are the equities of the case relevant to whether a foreign country has impliedly waived its execution immunity, or must a trial court totally disregard the equities in making a determination of implied waiver?

II. PARTIES TO THIS PROCEEDING

As stated in the caption, Plaintiff-Petitioner Ricardo Devengoechea and Defendant-Respondent Bolivarian Republic of Venezuela are the only parties to this proceeding.

III. CORPORATE DISCLOSURE STATEMENT

Neither party is a corporation or other business entity, so Rule 29.6 does not apply.

IV. RELATED PROCEEDINGS AND CITATIONS

There are two sets of proceedings related to this case, only the second of which is now before this Court.

1. First Set of Proceedings: Florida and Eleventh Circuit (Underlying Judgment)

The first set of proceedings arises from the Southern District of Florida and Eleventh Circuit. It concerns the merits of Plaintiff's claim and District Court's subject matter jurisdiction and resulted in final judgment in favor of Plaintiff after trial. The first set of proceedings is not before this Court. These proceedings are:

- *Devengoechea v. Bolivarian Republic of Venezuela,* S.D.Fla. case no. 12-CV-23743, 2023 WL 9184570 (S.D.Fla. 2023) (Pet.App.31a-46a & 51a-52a) (FFCL and Final Judgment entered Dec. 4, 2023 in favor of Plaintiff after trial, expressly upholding subject-matter jurisdiction under all three jurisdictional clauses in 28 U.S.C. § 1605(a)(2));

- *Devengoechea v. Bolivarian Republic of Venezuela,* 889 F.3d 1213 (11th Cir. May 10, 2018) (earlier interlocutory immunity appeal which upheld jurisdiction under 28 U.S.C. § 1605(a)(2));

- *Devengoechea v. Bolivarian Republic of Venezuela,* 11th Circuit case no. 24-10029 (pending appeal by Venezuela from above-mentioned Final Judgment on the merits after trial).

2. Second Set of Proceedings: Delaware and Third Circuit (Judgment Enforcement)

The second set of proceedings arises from the Delaware District Court and Third Circuit, which has stayed its mandate, and concerns Plaintiff's attempt to enforce the above-mentioned Florida judgment. These proceedings, now before this Court, are:

- *Devengoechea v. Bolivarian Republic of Venezuela,* 2024 WL 640378 (D.Del. 2024) (Pet.App.10a-23a & 24a-30a), D.Del. case no. 23-mc-609 (Final Judgment entered Feb. 15, 2024, and rehearing denied March 14, 2024, denying Plaintiff's motion for Writ of Attachment and denying Plaintiff's assertion of Venezuela's implied waiver of execution immunity on its ownership of shares of stock in Citgo Oil Corp.);

- *Devengoechea v. Bolivarian Republic of Venezuela,* 2024 WL 3342424 (3d Cir. July 9, 2024) (Pet. App.1a-9a) (Third Circuit decision affirming the above-mentioned D.Del. final judgment denying Plaintiff's motion for Writ of Attachment and denying Plaintiff's assertion of Venezuela's implied waiver of execution immunity on its ownership of shares of stock in Citgo Oil Corp.);

- *Devengoechea v. Bolivarian Republic of Venezuela* (Third Circuit Order staying mandate July 31, 2024) (Pet.App.53a).

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The citations of the relevant official and unofficial reports of the opinions and orders are set forth in section IV at pp.iii-iv *supra* which addresses the related cases.

IX. BASIS FOR JURISDICTION IN THIS COURT

The date of the judgment and opinion of the Third Circuit of which Petitioner seeks review is July 9, 2024 (Pet.App.1a-9a; 2024 WL 3342424). This Petition is timely under Sup.Ct.R. 13.1. This Court has jurisdiction to review the Third Circuit's judgment and opinion by Writ of Certiorari pursuant to 28 U.S.C. § 1254(1).

X. STATUTORY PROVISION AT ISSUE

Title 28 U.S.C. § 1610(a)(1) provides:

> (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,

XI. STATEMENT OF THE CASE

1. Bases for Jurisdiction in the District Courts

The Florida District Court which rendered judgment for Plaintiff after trial on the merits had subject matter jurisdiction pursuant to 28 U.S.C. §§ 1330(a) & 1605(a)(2). After trial on the merits and on jurisdiction, and based upon the evidence, the Florida District Court expressly found jurisdiction under all three jurisdictional clauses in 28 U.S.C. § 1605(a)(2) even though one jurisdictional basis was sufficient (FFCL at Pet.App.41a-44a; 2023 WL 9184570 at **5-6). In a prior interlocutory immunity appeal, the Eleventh Circuit upheld jurisdiction under the third jurisdictional clause in 28 U.S.C. § 1605(a)(2), expressly declining to address as unnecessary the first two clauses in § 1605(a)(2). *Devengoechea v. Bolivarian Republic of Venezuela, supra,* 889 F.3d at 1220 (11th Cir. 2018) ("we need consider only the third clause").

The Delaware District Court, where Plaintiff seeks to enforce the Florida judgment, has subject matter jurisdiction pursuant to 28 U.S.C. § 1963 which authorizes the registration and enforcement of federal-court judgments from other Districts. The Third Circuit recognized this basis for jurisdiction of the Delaware District Court. *Devengoechea v. Bolivarian Republic of Venezuela, supra,* 2024 WL 3342424 at *1n.3 (3d Cir. July 9, 2024) (Pet.App.3a n.3).[1]

1. The Delaware District Court also had jurisdiction under 28 U.S.C. §§ 1330(a) & 1331, in addition to 28 U.S.C. § 1963.

2. Material Facts

The Third Circuit summarized the material facts by describing Defendant-Venezuela's conduct as "appalling" and "deceitful":

> "The facts of the dispute between Plaintiff and Defendant are, in a word, ***appalling***.... Defendant, the Bolivarian Republic of Venezuela, ***deceived Plaintiff*** into parting with an irreplaceable collection of documents, artifacts and memorabilia once belonging to Simón Bolívar. This collection had passed down in Plaintiff's family for generations. Defendant's agents visited Plaintiff at his home in Florida and convinced him to gather his collection, travel with it to Venezuela, and leave it there so that Defendant could evaluate its authenticity. Defendant promised to either purchase the collection or return it after it had been evaluated, but that promise proved to be illusory. When Plaintiff realized the collection was not going to be returned to him and that he would not be compensated, he sued Defendant in Florida and obtained a judgment for $17 million."

Devengoechea v. Bolivarian Republic of Venezuela, supra, 2024 WL 3342424 at *1 (3d Cir. July 9, 2024) (Pet. App.2a).

The factual basis of Plaintiff's action was Venezuela's breach of the parties' agreement concerning Plaintiff's valuable collection of documents, artifacts, and memorabilia

once belonging to the famous South American General Simon Bolivar. Bolivar, known as the "Liberator" and as the George Washington of South America, became famous by leading five South American countries in successful revolutions against Spanish colonial rule (FFCL at Pet. App.32a-33a; 2023 WL 9184570 at *1). The items in Plaintiff's collection included:

> "thousands of historic documents including correspondence and writings of Simon Bolivar, both personal and official/governmental, many with Bolivar's signature, medals, epaulets of General Napoleon Bonaparte of France (where Simon Bolivar had resided for a time), Simon Bolivar's one-of-a-kind Liberation Medal of Peru, and a DNA sample (hair locket) (the "collection")."

(FFCL at Pet.App.33a; 2023 WL 9184570 at *1).

Plaintiff obtained the collection through family inheritance. Bolivar gifted the items to Plaintiff's great-great grandfather Joaquin deMier who was Bolivar's close friend and business associate. The collection was handed down from generation-to-generation in Plaintiff's family. Plaintiff acquired it in 2005 upon the passing of his mother (FFCL at Pet.App.33a; 2023 WL 9184570 at *1). (Family Tree and Plaintiff's relationship to deMier in the book *"La Carta"* [*"The Letter"*] at D.Del. record 23-mc-609 at ECF 4 exh.B, and at S.D.Fla. record 12-CV-23743 at ECF 264-1).

In 2007 Defendant Venezuela became aware of Plaintiff's collection and sent several high governmental officials in a private jet to Florida specifically to target

Plaintiff and obtain his collection. These officials included Ms. Delcy Rodriguez who then was Coordinator General of the Office of Venezuela's Vice-President and who today is herself Vice-President of Venezuela. Venezuela's officials, after meeting with Plaintiff, and wining-and-dining him near his home in Orlando, Florida, reached the following agreement with Plaintiff in Florida – that Plaintiff would renew his passport, gather his collection, and bring it with him onboard their private jet to Venezuela where its experts would "examine" the collection, after which Venezuela would either pay an agreed price for the collection or return it at Plaintiff's home in Orlando, Florida (FFCL at Pet.App.33a-36a; 2023 WL 9184570 at **2-3).

Plaintiff complied. Defendant did not. At Defendant's instance, Plaintiff renewed his passport, gathered his valuable collection, and boarded Defendant's private jet with its officers and his collection enroute to Venezuela. Once in Venezuela, its "experts" examined the collection, and Plaintiff was instructed to take the collection to the home of Venezuelan President Chavez, which Plaintiff did (FFCL at Pet.App.36a-37a; 2023 WL 9184570 at *3). That is the last time Plaintiff saw his collection. Venezuela kept the collection and never paid for it (FFCL at Pet.App.38a-39a; 2023 WL 9184570 at *4).

Pictures of Plaintiff, items in his collection, and of Venezuela's officials at the Orlando, Florida airport and in their private jet enroute to Venezuela and in Venezuela itself, are in S.D.Fla. trial record 12-CV-23743 at ECF 317-5.

After returning to the United States, Plaintiff inquired about his collection repeatedly over the next 2-3 years. Each time Venezuelan officials assured Plaintiff that its experts needed more time to examine and authenticate the collection because of its large size (FFCL at Pet.App.38a; 2023 WL 9184570 at *4).

In July 2010 newspaper articles reported that Venezuelan President Chavez had ordered the exhumation of Bolivar's body. Although not mentioned in the news articles, it became clear to Plaintiff that Chavez ordered the exhumation to test for a DNA match with the authenticated locket of Bolivar's hair in Plaintiff's collection (FFCL at Pet.App.38a; 2023 WL 9184570 at *4; news articles in S.D.Fla. record 12-CV-23743 at ECF 317-2).

After the exhumation, Plaintiff's calls to Venezuela went unanswered. Plaintiff retained counsel who unsuccessfully sought return of the collection or payment for it (FFCL at Pet.App.39a; 2023 WL 9184570 at *4; letters in S.D.Fla. record 12-CV-23743 at ECF 317-3). Plaintiff then sued in the Southern District of Florida.

3. Procedural History in Florida and Delaware

The Southern District of Florida upheld its subject matter jurisdiction in response to two pretrial dismissal motions (S.D.Fla. record 12-CV-23743 at ECF 165 & 270). The Eleventh Circuit upheld jurisdiction in an interlocutory immunity appeal. *Devengoechea v. Bolivarian Republic of Venezuela, supra,* 889 F.3d 1213 (11th Cir. 2018).

After losing the interlocutory immunity appeal, Venezuela's counsel withdrew, leaving Venezuela as defendant pro se, as permitted under the Foreign Sovereign Immunities Act. Venezuela declined to attend the trial despite receiving repeated notices of it. The Florida District Court ruled that it "did not hold Defendant in default but treated the trial as a full trial on the merits where Plaintiff bore all evidentiary burdens" (S.D.Fla. record 12-CV-23743 at ECF 299 p.1).

After trial on the merits and subject matter jurisdiction, the Florida District Court filed detailed Findings and Conclusions (FFCL at Pet.App.31a-46a; 2023 WL 9184570), entered Judgment for Plaintiff (Pet. App.51a-52a), and permitted immediate registration and enforcement of the judgment in Delaware where Venezuela has commercial assets (S.D.Fla. record 12-CV-23743 at ECF 294 & 299).

Plaintiff promptly registered the judgment in Delaware pursuant to 28 U.S.C. § 1963 and sought a Writ of Attachment against Venezuela's shares of stock in Citgo Oil Corp., a Delaware corporation (D.Del. case 23-mc-609). Plaintiff sought to join other judgment-creditors who were enforcing their own judgments against Venezuela totaling approximately $22 billion, consolidated in *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela,* D.Del. case 17-mc-151. Plaintiff's judgment of $17 million (Pet.App.51a-52a) is a mere 0.08% of the total $22 billion in judgments registered against Venezuela in Delaware.

4. The Third Circuit's Decision – Rejecting an Objective Standard For Implied Waiver and Requiring Asset-Specific Waiver

The Delaware District Court recognized that "the equities here … overwhelmingly favor [Plaintiff] Mr. Devengoechea" (2024 WL 325133 at *7). The Third Circuit vilified Venezuela's horrendous conduct as "appalling" and "deceitful" (p.3 *supra*) and emphasized it was "repulsed by Defendant's behavior" and "sympathetic to Plaintiff's claim" (Pet.App.2a-3a; 2024 WL 3342424 at *1). However, the Third Circuit, affirming the Delaware District Court, denied Plaintiff's request for a Writ of Attachment, holding that Venezuela had execution immunity concerning its shares of stock in Citgo Oil (Pet.App.4a-9a; 2024 WL 3342424 at **3-4). The Third Circuit rejected Plaintiff's claim that Venezuela had impliedly waived its execution immunity under 28 U.S.C. § 1610(a)(1). *Id.*

The Third Circuit rejected Plaintiff's argument that implied waiver must be measured by an objective standard. Plaintiff consistently asserted an objective standard for implied waiver in accord with the ordinary meaning of "implied waiver" and *Black's Law Dictionary* – a standard which measures the reasonable implication and appearance which follow from a foreign country's intentional conduct.

Instead, the Third Circuit posited a purely subjective standard for implied waiver. The Third Circuit required proof of Venezuela's actual "intent" to impliedly waive immunity (Pet.App.6a; 2024 WL 3342424 at **2&3: requiring that "the foreign state ***intended*** to waive the immunity" and that "Defendant ***intended*** such a waiver";

emp. added) – an anomalous concept requiring that "implied" waiver must be "intended" – which does not make sense, conflates implied and express waivers, and is inconsistent with the statutory language.

The Third Circuit also rejected Plaintiff's use of the statutory standard to identify the recoverable property of a foreign country. Plaintiff asserted that the scope of property recoverable upon a foreign country's execution-waiver is defined by the express language of the recovery statute, 28 U.S.C. § 1610(a). This section makes recoverable all "[t]he property in the United States of a foreign state … used for a commercial activity in the United States." By contrast, the Third Circuit rejected this statutory standard and instead narrowly confined the scope of recoverable property to the few items that were directly related to Plaintiff's claim (Pet.App.5a & 6a; 2024 WL 3342424 at **2&3: "Attachment immunity … requires a property-specific inquiry.… There is absolutely no connection between Defendant's conduct and the Shares [to be attached]"). The Third Circuit's approach is contrary to the statute and legislative history, is counterproductive, and unduly encourages asset concealment.

Finally, the Third Circuit rejected Plaintiff's assertion that the equities of the case may have some bearing on an implied waiver (Pet.App.8a-9a; 2024 WL 3342424 at *4).[2]

2. Other judgment-creditors pursuing their judgments against Venezuela in the consolidated Delaware action did not need to rely on the implied-waiver exception to execution immunity. The other judgment-creditors either were seeking to enforce arbitration awards which is a separate exception to execution immunity under 28 U.S.C § 1610(a)(6) or were relying on express waivers of immunity under § 1610(a)(1) in lending or

XII. REASONS FOR GRANTING CERTIORARI

In the 48 years since enactment of the Foreign Sovereign Immunities Act in 1976, this Court has never addressed the standards which govern an implied waiver of execution immunity under 28 U.S.C. § 1610(a)(1). Yet the Courts of Appeals have addressed these standards in scores of inconsistent decisions and are all over the place in attempting to define what constitutes an implied waiver. Some Circuits have used an objective standard, while others have used a subjective standard like the Third Circuit here.

On the issue of judgment-execution, some Circuits have followed the statutory language which expressly permits judgment-execution against any commercial property in the United States, while others follow the Third Circuit's asset-specific approach which narrowly confines judgment-execution to the few items related to a judgment-creditor's claim.

This Court's guidance and resolution of these inter-Circuit conflicts is long overdue.

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finance agreements, typical of bank and other lending agreements. Present Plaintiff had neither an arbitration award nor an express waiver and thus asserted implied waiver under § 1610(a)(1) based on Venezuela's "appalling" conduct in dispatching its officials onto U.S. soil specifically to target and "deceive" Plaintiff (Pet.App.2a; 2024 WL 3342424 at *1) into removing to Venezuela his valuable Bolivarian collection from the security of his home in the United States (pp.3-6 *supra*).

1. Objective Standard vs. Subjective Standard for Implied Waiver (Circuit Conflict)[3]

In the present case, the Third Circuit took the position that the implied-waiver exception to execution immunity under 28 U.S.C. § 1610(a)(1) required a foreign nation's subjective "intent." The Third Circuit focused on whether "the foreign state ***intended*** to waive the immunity," holding that "the implied waiver exception turns on evidence of the foreign state's ***intent***" (Pet.App.6a & 9a; 2024 WL 3342424 at **2&4; emp.added). Some other Circuits have agreed and have used this subjective standard. *Bainbridge Fund, Ltd. v. Republic of Argentina,* 102 F.4th 464, 471 (D.C.Cir. 2024) ("Implied waiver under the FSIA … requires that the foreign state intended to waive its immunity").

By contrast, other Circuits have used an objective approach. Under this approach, implied waiver depends upon the reasonable inference that follows from a foreign country's intentional conduct, irrespective of its subjective intent to waive immunity as such. For example, some Circuits hold that an implied waiver follows by implication from a foreign country's contractual agreement to apply U.S. law in resolving disputes irrespective of

3. Both the Legislative History and case law indicate that the standard for waiver of execution immunity under § 1610(a)(1) is the same as the standard for waiver of jurisdictional immunity under § 1605(a)(1). H.R.Rep. 94-1487; 1976 U.S.C.C.A.N. 6604, 6627 ("Paragraph (1) [§ 1610(a)(1)] relates to explicit and implied waivers [of execution immunity] and is governed by the same principles that apply to waivers of immunity from jurisdiction under section 1605(a)(1)"); *Walters v. Industrial and Commercial Bank of China, Ltd.,* 651 F.3d 280, 296 (2d Cir. 2011) ("waivers of execution immunity under § 1610(a)(1) are governed by the same principles that apply to waivers of immunity from jurisdiction under section 1605(a)(1)").

the foreign nation's subjective intent to waive (or not waive) immunity. *Eckert Int'l, Inc. v. Gov't of Sovereign Democratic Republic of Fiji,* 32 F.3d 77, 79-82 (4th Cir. 1994) (immunity impliedly waived by "an agreement to look to Virginia law," citing numerous cases); *Frovola v. Union of Soviet Socialist Republics,* 761 F.3d 370, 377 (7th Cir. 1985) ("Courts have found an implicit waiver … where another nation stipulated that American law should govern any contractual disputes"). Waiver of immunity is implied from such a contractual agreement irrespective of the foreign nation's subjective "intent" to preserve it. Even if the foreign nation had "intended" to preserve its immunity, still under this objective standard its contractual agreement to apply U.S. law would trigger an implied waiver of immunity regardless of its subjective intent. *Id.*

The Second Circuit has addressed the difference between an objective and subjective standard without resolving it. In *Smith v. Socialist People's Libyan Arab Jamahiriya,* 101 F.3d 239 (2d Cir. 1996), the Second Circuit recognized that, under an objective standard, "waiver will be implied from conduct that objectively demonstrates and intention to waive." *Id.,* at 243. However, the Second Circuit in *Smith* never decided the issue because it was "an issue we need not decide." *Id.*

The Second Circuit in *Smith* cited three cases which it described as suggesting a subjective standard for implied waiver, *id.,* at 243n.2, but none of the three cases actually did. In *Princz v. Federal Republic of Germany,* 26 F.3d 1166 (D.C.Cir. 1994), the Court merely held that "an implied waiver depends upon the foreign government's having at some point indicated its amenability to suit [and] … a willingness to waive immunity." *Id.,* at 1174. However,

the Court in *Princz* never articulated whether this "amenability to suit" or "willingness to waive immunity" needed to be shown by objective or subjective standards. Similarly, in *Drexel Burnham Lambert Group, Inc. v. Committee of Receivers,* 12 F.3d 317, 327 (2d Cir. 1993), the Court quoted *Frovola v. Union of Soviet Socialist Republics, supra,* 761 F.2d at 378 (7th Cir. 1985), which held that implied waiver requires a "conscious decision to take part in the litigation," but again there was no indication that the "conscious decision" to litigate needed to be supplemented by actual subjective intent to waive immunity as such.[4]

a. The Objective Standard is the Correct Standard

The correct approach is the objective one. In the common use of language, and as a matter of common sense, the implied-waiver exception requires an objective inquiry based upon an objective view of the circumstances which the foreign nation created. This focuses on whether these circumstances objectively create a reasonable inference of waiver. This distinguishes implied waiver from express waiver, reflects a common-sense view of the concept of "implied waiver," and is in accord with the standard legal definition of implied waiver. *Black's Law Dictionary* defines an implied waiver objectively as a:

4. Contrary to the logic discussed in the text below, the D.C. Circuit appears to require actual subjective intent to waive as an element of an implied waiver of immunity. *Creighton Limited v. Government of the State of Qatar,* 181 F.3d 118, 122 (D.C.Cir. 1999). The D.C. Circuit's decision further underscores the conflict among the Circuits, in addition to its failure to address the sound policy, textual and fairness considerations which compel an objective approach to implied waiver, discussed at pp. 13-17 *infra*.

> "waiver evidenced by a party's decisive unequivocal conduct ***reasonably inferring an intent to waive***…. [Implied] waiver ***may be inferred*** from conduct or acts putting one off his guard and ***leading him to believe*** that a right has been waived."

Black's Law Dictionary, "Waiver" (11th ed. 2019; emp. added). By contrast, it is ***express*** waiver which Black's Law Dictionary defines in terms of intent – as a "voluntary and intentional waiver." *Id.*

This objective standard should control the statute's meaning. Words in a statute, such as "implied waiver" (the statute uses the equivalent term waiver "by implication"), must be interpreted in accord with their ordinary meaning. *Niz-Chavez v. Garland,* 593 U.S. 155, 160, 163, 171 (2021) ("When called on to resolve a dispute over a statute's meaning, this Court normally seeks to afford the law's terms their ***ordinary meaning***…. [A]ffected individuals and courts alike are entitled to assume statutory terms bear their ***ordinary meaning***…. Our only job today is to give the law's terms their ***ordinary meaning***"; emp. added). The "ordinary meaning" of implied waiver is an objective one which looks to "unequivocal conduct reasonably inferring an intent to waive," in accord with its legal definition in *Black's Law Dictionary,* which is different from subjective "intent."

It is not logical to base an "implied" waiver upon a subjective "intent" to waive. It is difficult to comprehend how a waiver can be "implied" if it must be "intended." An intent to waive immunity bespeaks a waiver which is express, not implied. To require an "intent" to "impliedly"

waive immunity is incongruous and improperly conflates express and implied waivers.

Congressional intent – and fundamental fairness – require an objective standard under which "waiver will be implied from conduct that objectively demonstrates an intention to waive." *Smith, supra,* 101 F.3d at 243. This is necessary to protect public reliance. Otherwise, foreign nations too easily could mislead people by intentionally engaging in conduct which objectively indicates an implied waiver of immunity and then evade responsibility for their actions by disclaiming a subjective "intent" to waive it.

This is exactly what Congress intended to avoid. Congress intended that once a foreign nation waived its immunity and created public reliance on its waiver, the foreign nation may not unilaterally withdraw it:

> "[A] foreign state which has induced a private person into a contract by promising not to invoke its immunity cannot, when a dispute arises, go back on its promise."

H.R.Rep. 94-1487; 1976 U.S.C.C.A.N. 6604, 6617.

There is no way to protect the public's reliance on a foreign nation's waiver if the waiver is concealed in the foreign nation's hidden subjective "intent." This is exactly the danger created by Venezuela's actions here – an alleged "intent" not to waive, concealed under circumstances which objectively indicate a waiver. An objective approach is the only way to protect public reliance on the objective indications of waiver and to prevent the deceptive concealment Congress intended to avoid.

An objective approach also is needed to prevent the type of abuse which Venezuela perpetrated here. Under a subjective standard of implied waiver, foreign nations too easily could repeat the same abuse – by dispatching agents onto U.S. soil to deceive and exploit U.S. citizens with "appalling" and "deceptive" conduct (Pet.App.2a; 2024 WL 3342424 at *1) and then hide behind immunity by asserting they did not "intend" to waive it. The only way to prevent the type of abuse which Venezuela perpetrated here is to use an objective standard for implied waiver which accords with the common understanding of the word "implied." An objective standard fairly attributes to the foreign country the waiver which reasonably appears from its actions, irrespective of its subjective intent.

From an objective standpoint, implied waiver is a reasonable and foreseeable consequence of Venezuela's intentional actions. Venezuela's intentional dispatch of its officials onto U.S. soil to deceive Plaintiff into bringing his collection to Venezuela, from which his collection would never return, must have ***some*** legal consequence. Venezuela cannot reasonably expect there would be no legal consequence flowing from its actions in entering the U.S. to perpetrate its deceptive scheme against Plaintiff on U.S. soil. From an objective standpoint, it is reasonable and fair that Venezuela's actions trigger an implied waiver of immunity commensurate with the value of Plaintiff's property Venezuela improperly gained.

Venezuela may argue that an objective standard is too lenient and may increase legal proceedings against foreign nations. This is not accurate and, in any event, is Congress's intent. Only an objective standard reflects the common-sense, ordinary meaning of "implied waiver" and

effectuates the Congressional intent "to afford the law's terms their ordinary meaning." *Niz-Chavez v. Garland, supra,* 593 U.S. at 160 (2021) (pp. 13-14 *supra*).

2. Statutory Standard vs. Non-Statutory Standard for Judgment-Execution (Circuit Conflict)

The Circuits are in conflict over the types of property against which a judgment may be executed. Most Circuits follow the language of the judgment-execution statute in 28 U.S.C. § 1610(a) and authorize judgment-execution against any "property in the United States of a foreign state … used for a commercial activity in the United States." *Connecticut Bank of Commerce v. Republic of Congo,* 307 F.3d 240, 247 (5th Cir. 2002) ("if a foreign sovereign waives its immunity from execution, U.S. courts may execute against 'property in the United States … used for a commercial activity in the United States,' " quoting 28 U.S.C. § 1610(a)); *EM Ltd. v. Republic of Argentina,* 473 F.3d 463, 481n.19 (2d Cir. 2007) (same); *Walker Intl Holdings Ltd. v. Republic of Congo,* 395 F.3d 229, 234 (5th Cir. 2004) ("a waiver of [execution] immunity … applies against property … in the United States and used for a commercial activity in the United States," quoting 28 U.S.C. § 1610(a)).

By contrast, the Third Circuit departs from the statutory language and narrowly limits judgment-execution to the specific property at issue. The Third Circuit holds that "[a]ttachment immunity focuses on specific property and requires a property-specific inquiry…. There is absolutely no connection between Defendant's conduct and the Shares [of stock Plaintiff seeks to attach]" (Pet.App.5a & 6a; 2024 WL 3342424 at **2&3).

a. The Statutory Standard is the Correct Standard

The Third Circuit's asset-specific approach is misplaced. It disregards the statutory language which defines the scope of recoverable property. The statute provides that once a waiver of execution immunity is shown, the property to be attached need not be related to Plaintiff's claim but extends to "property in the United States of a foreign state … used for a commercial activity in the United States" (28 U.S.C. § 1610(a)). This is the general recovery provision which governs all exceptions to execution immunity in paragraphs (1)-(7) of § 1610(a) – including waiver of immunity in § 1610(a)(1) – and applies here, given the absence of any contrary statutory limitation or requirement. *Niz-Chavez v. Garland, supra,* 593 U.S. at 160 (2021) ("afford the law's terms their ordinary meaning").

In compliance with the statutory language and its "ordinary meaning," this Court should follow those Circuits which track the language of § 1610(a) and permit execution against any "property in the United States of a foreign state … used for a commercial activity in the United States." *Connecticut Bank of Commerce, supra,* 307 F.3d at 247; *EM Ltd., supra,* 473 F.3d at 481n.19; *Walker Intl Holdings, supra,* 395 F.3d at 234.

The Legislative History rejects the Third Circuit's requirement for asset-specific waiver. The Legislative History expressly confirms that ***any*** of Venezuela's "property in the United States … used for a commercial activity in the United States" (28 U.S.C. § 1610(a)) may be

attached once an exception to immunity is shown under ***any*** of paragraphs (1)-(5) (now (1)-(7)) in § 1610(a):

> "The property in question must be used for a commercial activity in the United States. If so, attachment in aid of execution, and execution, upon judgments entered by Federal or State courts against the foreign state would be permitted in ***any of the circumstances set forth in paragraphs (1)-(5) of section 1610(a).***"

(H.R.Rep. 94-1487; 1976 U.S.C.C.A.N. 6604, 6627; emp. added).

In another respect as well, both the Legislative History and case law further refute the need to show waiver as to specific property. Given that the waiver standards are the same for both jurisdictional immunity under § 1605(a)(1) and execution immunity under § 1610(a)(1) (p. 11 n.3 *supra*), the obvious lack of need to show specific-property waiver for the former (jurisdiction) indicates the same lack of need to show specific-property waiver for the latter (execution).

A textual comparison with other subsections in § 1610(a) also refutes the need to show waiver as to specific property. In ***other*** sub-sections of § 1610(a), Congress did impose a relatedness requirement that the specific property to be attached must relate to the underlying claim and must be "used for the commercial activity upon which the claim is based" (28 U.S.C. § 1610(a)(2)). ***But*** there is no such requirement concerning property to be attached under § 1610(a)(1) dealing with waivers. The absence of a specific-property requirement in the latter subsection

concerning waivers, but its inclusion in other subsections of the same statute, indicates Congress intended none for waivers. *Collins v. Yellen,* 594 U.S. 220, 248 (2021) ("[W]hen Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion").

The situation here is analogous to that in *Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134 (2014). In *NML Capital* this Court held that the general post-judgment discovery provisions in Fed.R.Civ.P. 69(a)(2) governed post-judgment discovery of assets against foreign nations because the FSIA lacks specific restrictions on post-judgment discovery. *Id.,* at 142-143. This is analogous to the situation here. Here the general provision governing the scope of recoverable assets in 28 U.S.C. § 1610(a) – any "property in the United States of a foreign state … used for a commercial activity in the United States" – governs because, in cases of immunity waiver, the FSIA lacks any specific restriction on the scope of recoverable property beyond the text of § 1610(a). Indeed, the Legislative History expressly applies the general provision governing recovery in § 1610(a) to "***any*** of the circumstances set forth in paragraphs (1)-(5) [now (1)-(7)] of section 1610(a)" (quoted in full at p. 19 *supra*; emp.added).

The Third Circuit's asset-specific approach unduly encourages asset concealment. By limiting judgment-execution to the few items related to a Plaintiff's claim, the Third Circuit unduly encourages asset concealment by focusing concealment efforts on those limited items. The more general approach, in accord with the statute

– permitting recovery of ***any*** of Venezuela's "property in the United States … used for a commercial activity in the United States" (28 U.S.C. § 1610(a)) – makes asset concealment more difficult and less attractive by broadening the scope of property against which recovery may be made.

In short, there is no requirement in the text of 28 U.S.C. § 1610(a)(1) nor in its Legislative History nor in public policy to support the Third Circuit's requirement that implied waiver must be directed to specific property related to Plaintiff's claim. Both the statutory language and Legislative History, as well as predominant case law, expressly show the contrary – that ***any*** "property in the United States of [the] foreign state … used for a commercial activity in the United States" (28 U.S.C. § 1610(a)), such as the Citgo shares of stock owned by Venezuela, may be attached once an implied waiver of execution immunity is shown.

3. Equities as Part of Implied Waiver

The Third Circuit held that the implied-waiver exception to execution immunity in 28 U.S.C. § 1610(a)(1) is an absolute bar against consideration of the equities of the case or the fairness to a judgment-creditor (Pet.App.8a; 2024 WL 3342424 at *4: "We recognize that Plaintiff argues that fairness and equity should be considerations *within* the implied waiver exception. But nothing in the text of the FSIA or its legislative history supports such an expansion of the exception"; emp.in orig.).

To the contrary, the concept of "implied waiver" is not a rigid and inflexible bar against any and all consideration of fairness and equity. Indeed, fairness and equity are

intrinsic to the implied-waiver inquiry of whether "conduct reasonably infer[s] an intent to waive … [or whether] waiver may be inferred from conduct … [that] lead[s] [a person] to believe that a right has been waived." *Black's Law Dictionary, supra*, "Waiver" (11th ed. 2019; emp. added; quoted more fully at p. 14 *supra*).

The Third Circuit repeatedly underscored the equities in Plaintiff's favor – that Defendant's conduct was "appalling" and showed that "Defendant … deceived Plaintiff" (Pet.App.2a; 2024 WL 3342424 at *1), that "we are repulsed by Defendant's behavior" (Pet.App.3a; 2024 WL 3342424 at *1), that "we agree that public policy and fairness interests (as well as common sense) weigh in Plaintiff's favor" (Pet.App.7a; 2024 WL 3342424 at *3), and we recognize this "foreign state's efforts to defraud [Plaintiff]" (Pet.App.9a; 2024 WL 3342424 at *4). The Delaware District Court agreed that "the equities here … overwhelmingly favor [Plaintiff] Devengoechea" (2024 WL 325133 at *7).

This consistent and repeated recognition of the equities in Plaintiff's favor, by both the Third Circuit and Delaware District Court, warranted some consideration in the analysis of implied waiver. At a minimum, it was legal error to exclude as a matter of law any consideration of the equities or fairness which "overwhelmingly favor [Plaintiff] Devengoechea." *Id.*

XIII. CONCLUSION

This Court should grant this Petition for a Writ of Certiorari, should reverse the Order and Judgment of the Third Circuit, should remand this cause with directions to enter a Writ of Attachment in Plaintiff's favor against the shares of stock in Citgo Oil Corp. owned by Respondent Venezuela, and should direct all further relief in favor of Plaintiff as is just and reasonable.

Respectfully submitted,

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED JULY 9, 2024

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1518

RICARDO DEVENGOECHEA,

Appellant

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,
A FOREIGN STATE

On Appeal from the United States District Court
For the District of Delaware
(D.C. No. 1-23-mc-00609)
District Judge: Honorable Leonard P. Stark

June 24, 2024, Submitted Under Third Circuit
L.A.R. 34.1(a); July 9, 2024, Filed

Before: JORDAN, McKEE, and AMBJO, *Circuit Judges*.

OPINION*

McKEE, *Circuit Judge*.

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Appendix A

The facts of the dispute between Plaintiff and Defendant are, in a word, appalling. They have been discussed in detail by other courts.[1] Accordingly, we need only briefly summarize them here.

Defendant, the Bolivarian Republic of Venezuela, deceived Plaintiff into parting with an irreplaceable collection of documents, artifacts and memorabilia once belonging to Simón Bolívar. This collection had passed down in Plaintiff's family for generations. Defendant's agents visited Plaintiff at his home in Florida and convinced him to gather his collection, travel with it to Venezuela, and leave it there so that Defendant could evaluate its authenticity. Defendant promised to either purchase the collection or return it after it had been evaluated, but that promise proved to be illusory. When Plaintiff realized the collection was not going to be returned to him and that he would not be compensated, he sued Defendant in Florida and obtained a judgment for $17 million.

This appeal concerns Plaintiff's attempt to execute his judgment against shares held by one of Defendant's alter egos (the "Shares").[2] The Shares will soon be liquidated in proceedings being administered by the District Court of

1. *See*, *e.g.*, *Devengoechea v. Bolivarian Republic of Venezuela*, 889 F.3d 1213, 1216-19 (11th Cir. 2018).

2. Specifically, Plaintiff seeks to execute his judgment against a Venezuelan state-owned oil company's shares in a holding company that indirectly owns CITGO Petroleum Corp. We have previously determined that this state-owned oil company is Defendant's alter ego. *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 932 F.3d 126, 152 (3d Cir. 2019).

Delaware. Plaintiff registered his judgment in that court and moved for a writ of attachment. The District Court denied Plaintiff's motion, concluding that the Shares are immune from attachment for the purpose of satisfying Plaintiff's judgment.

We are as sympathetic to Plaintiff's claim as we are repulsed by Defendant's behavior. Nevertheless, for the reasons that follow, we have no alternative but to affirm the District Court's decision.

I.[3]

Because the Shares are the property of a foreign state, the Foreign Sovereign Immunities Act ("FSIA") determines the extent to which they can be attached to execute on a judgment.[4] Under the FSIA, a foreign state's property is presumptively immune from attachment unless one of the statute's exceptions is satisfied.[5]

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3. The District Court had subject matter jurisdiction under 28 U.S.C. § 1963. We have appellate jurisdiction under 28 U.S.C. § 1291. When reviewing the adjudication of a petition for attachment or execution under the Foreign Sovereign Immunities Act, we review factual findings for clear error and questions of law de novo. *Crystallex*, 932 F.3d at 136.

4. *See* 28 U.S.C. §§ 1602-11.

5. 28 U.S.C. § 1609 (providing attachment immunity to all of a foreign state's property in the United States); 28 U.S.C. § 1610 (identifying circumstances in which attachment immunity is withdrawn); *see also Permanent Mission of India to the United Nations v. City of New York*, 551 U.S. 193, 197, 127 S. Ct. 2352, 168 L. Ed. 2d 85 (2007) ("Under the FSIA, a foreign state

Plaintiff argues that the waiver exception divests the Shares of their immunity from attachment here.[6] Under that exception, a foreign state's property that is "in the United States" and is "used for commercial activity" is no longer immune from attachment once "the foreign state has waived" the immunity "either explicitly or by implication."[7] It is undisputed that Defendant never *explicitly* waived immunity from attachment. However, Plaintiff argues that Defendant's actions amount to an *implied* waiver in two ways.

First, Plaintiff argues that Defendant's conduct in the United States was "functionally equivalent" to adopting a choice of law clause selecting the application of Florida law, and that such a choice of law clause would, in turn, constitute an implied waiver of attachment immunity.[8] Second, Plaintiff argues that Defendant's conduct in the United States was so egregious that it should be understood as an implied waiver as a matter of public policy and fairness. Unfortunately, both arguments are unavailing.

The first argument relies on the principle that a foreign state impliedly waives its immunity from the jurisdiction of American courts in three circumstances:

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is presumptively immune from suit unless a specific exception applies.").

6. 28 U.S.C. § 1610(a)(1).

7. *Id.*

8. Appellant Br. at 31-32.

when it responds to a complaint without asserting immunity, when it expressly agrees to arbitrate disputes in the United States, and when it expressly agrees to a choice of law clause selecting the application of American law.[9] While it is well-settled that these circumstances amount to a waiver of *jurisdictional* immunity under 28 U.S.C. § 1605(a)(1), we have never determined whether they amount to a waiver of *attachment* immunity under 28 U.S.C. § 1610(a)(1). Plaintiff asks us not only to take that step in this case but also to take a step further and conclude that a foreign state can impliedly waive attachment immunity by merely engaging in conduct that would strongly support the application of American law under ordinary conflict of law principles.

We need not make these jurisprudential leaps, however, because the facts of this case present a more fundamental problem for Plaintiff. Attachment immunity focuses on specific property and requires a property-specific inquiry.[10] Accordingly, we ask not whether the foreign state is entitled to immunity, but whether the property at issue is entitled to immunity.[11] And when

9. *Aldossari ex rel. Aldossari v. Ripp*, 49 F.4th 236, 251 n.23 (3d Cir. 2022).

10. *Crystallex*, 932 F.3d at 149 ("Crystallex must also show that the particular property at issue in the attachment action – the PDVH stock – is not immune from attachment under the Sovereign Immunities Act.").

11. 28 U.S.C. § 1609 ("*[P]roperty* in the United States of a foreign state shall be immune from attachment") (emphasis added); *id.* § 1610(a) (identifying circumstances in which "*property* . . . shall not be immune") (emphasis added).

a plaintiff relies on the waiver exception to attachment immunity, the plaintiff must come forward with evidence that the foreign state intended to waive the immunity of the specific property plaintiff seeks to attach.[12]

Here, even if Defendant's actions could be construed as an implied waiver of attachment immunity, there is simply no evidence that Defendant intended such a waiver to reach these Shares. There is absolutely no connection between Defendant's conduct and the Shares, and none is even argued.[13] In the context of jurisdictional immunity,

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12. *See Aldossari*, 49 F.4th at 250 ("The text of the FSIA does not specify the standard for identifying a waiver, but we join the virtually unanimous precedent from our sister circuits that construes the waiver exception strictly and requires strong evidence – in the form of clear and unambiguous language or conduct – that the foreign state intended to waive its sovereign immunity." (quotation marks and citations omitted)); *Walters v. Indus. & Com. Bank of China, Ltd.*, 651 F.3d 280, 289 (2d Cir. 2011) ("[A] plaintiff who prevails against the sovereign [on a claim for which the sovereign waived jurisdictional immunity] can generally execute the judgment only upon assets with respect to which the foreign state has waived immunity."); *FG Hemisphere Assocs., LLC v. Republique du Congo*, 455 F.3d 575, 591 (5th Cir. 2006) (reasoning that a district court would have jurisdiction over an "action to garnish [a state-owned company's] working interest share only if the [foreign state] has waived its immunity from execution against [that] working interest").

13. Rather than identify a connection between Defendant's conduct and the Shares, Plaintiff argues that there need not be a connection because, under the FSIA, *any* waiver should effect a waiver of attachment immunity as to *all* a foreign state's commercial property in the United States. In other words, Plaintiff argues that attachment immunity waivers are an all-or-nothing

when a foreign state expressly agrees to have American law applied to a dispute, we may naturally infer that the foreign state intended an American court to apply that law and, therefore, that the foreign state intended to waive its immunity from the jurisdiction of American courts.[14] But we see nothing in Defendant's interactions with Plaintiff that would similarly support an inference that Defendant intended to make the Shares available to attachment by Plaintiff should Defendant's conduct result in a lawsuit.

As for Plaintiff's second argument, although we agree that public policy and fairness interests (as well as common sense) weigh in Plaintiff's favor, those considerations are irrelevant to our analysis under the FSIA. The exceptions to immunity enumerated in the FSIA are comprehensive and exclusive – we have no authority to recognize exceptions beyond those reflected in the statute.[15] The FSIA does not

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proposition and that a foreign state may not limit the scope of its waiver.

We cannot accept Plaintiff's interpretation, as it would be inconsistent with the precedents of this and other courts recognizing that the scope of a waiver under the FSIA is delimited by evidence of the foreign state's intent. *See supra* note 12.

14. *See Eckert Int'l, Inc. v. Gov't of Sovereign Democratic Republic of Fiji*, 32 F.3d 77, 80-82 (4th Cir. 1994) (reasoning that because the foreign state "made an agreement to look to Virginia law," it would "fl[y] in the face of logic" to infer that the foreign state "expect[ed] to find that guidance in the courts of another country").

15. *Republic of Argentina v. NML Cap., Ltd.*, 573 U.S. 134, 141, 134 S. Ct. 2250, 189 L. Ed. 2d 234 (2014) ("Congress abated the bedlam in 1976, replacing the old executive-driven, factor-

provide an exception to attachment immunity based on a foreign state's inequitable conduct.[16] Because the FSIA does not invite us to pierce attachment immunity for the purpose of balancing equities or advancing public policy, we simply have no authority to do so.

We recognize that Plaintiff argues that fairness and equity should be considerations *within* the implied waiver exception. But nothing in the text of the FSIA or its legislative history supports such an expansion of the exception. Further, as discussed above, the implied waiver

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intensive, loosely common-law-based immunity regime with the Foreign Sovereign Immunities Act's 'comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state.' The key word there . . . is *comprehensive*." (quoting *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 488, 103 S. Ct. 1962, 76 L. Ed. 2d 81 (1983))); *see also Belhas v. Ya'alon*, 515 F.3d 1279, 1287, 380 U.S. App. D.C. 56 (D.C. Cir. 2008) (recognizing that courts are "prohibit[ed]" from "creating new exceptions to the FSIA").

16. *Cf. Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 718-19 (9th Cir. 1992) (refusing to recognize an exception to jurisdictional immunity for a foreign state's acts of torture because the only FSIA exception to expressly address violations of international law, § 1605(a)(3), is limited to acts that involve the taking of property connected to the United States); *Belhas*, 515 F.3d at 1287 ("[A]lthough 'it is doubtful that any state has ever violated *jus cogens* norms on a scale rivaling that of the Third Reich,' even violations of that magnitude do not create an exception to the FSIA where Congress has created none." (quoting *Princz v. Fed. Republic of Germany*, 26 F.3d 1166, 1174, 307 U.S. App. D.C. 102 (D.C. Cir. 1994))).

exception turns on evidence of the foreign state's intent.[17] We see no basis to infer from a foreign state's efforts to defraud an individual of his valuables that the foreign state also intended to make its own assets in the victim's home country available for the victim's recompense.

II.

We recognize that a right that cannot be enforced through an available remedy is worthless stuff indeed. Yet, given the balance struck by Congress in the FSIA, there will be circumstances in which a plaintiff has a right to relief but no remedy.[18] Regrettably, this is precisely such a circumstance. Accordingly, we must affirm the District Court's orders.

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17. *Ivanenko v. Yanukovich*, 995 F.3d 232, 240, 452 U.S. App. D.C. 76 (D.C. Cir. 2021) (reasoning that "the touchstone of the waiver exception" is whether "the foreign state . . . *intended* to waive its sovereign immunity" (citation omitted)).

18. *Exp.-Imp. Bank of the Republic of China v. Grenada*, 768 F.3d 75, 84 (2d Cir. 2014) ("The limitations of [the exceptions to attachment immunity can], in some cases, still render the grant of jurisdiction under the FSIA entirely ineffectual, essentially providing a 'right without a remedy.' The potential for this anomaly was recognized and tolerated by Congress, however, in enacting the FSIA and so cannot bear heavily on our analysis." (citations omitted)); *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1128 (9th Cir. 2010) ("Congress fully intended to create rights without remedies, aware that plaintiffs would often have to rely on foreign states to voluntarily comply with U.S. court judgments.").

APPENDIX B — MEMORANDUM ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, FILED FEBRUARY 15, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Misc. Nos. 17-151-LPS, 23-609-LPS

CRYSTALLEX INTERNATIONAL CORP.,

Plaintiff,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,

Defendant.

RICARDO DEVENGOECHEA,

Plaintiff,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,

Defendant.

February 15, 2024, Filed

STARK, *District Judge.*

Appendix B

MEMORANDUM ORDER

WHEREAS, on December 29, 2023, the plaintiff in Misc. No. 23-609 (the "*Devengoechea* Action"), Ricardo Devengoechea ("Devengoechea"), filed a motion pursuant to Federal Rule of Civil Procedure 69(a)(1), 8 *Del. C.* § 324, and 10 *Del. C.* § 5031, seeking an order authorizing the issuance of a writ of attachment *fieri facias* on the shares of PDV Holding, Inc. ("PDVH") owned by Petróleos de Venezuela, S.A. ("PDVSA") (Misc. No. 23-609 D.I. 4);[1]

WHEREAS, the Court heard argument on the motion on January 22, 2024 and ordered supplemental briefing (*see* Misc. No. 23-609 D.I. 28 at 13);

WHEREAS, the Court received supplemental briefing on January 23, 2024 (Misc. No. 23-609 D.I. 22, 23);

WHEREAS, on January 24, 2024, during a teleconference, the Court denied the motion without prejudice to Devengoechea filing a renewed motion (Misc. No. 23-609 D.I. 24, 28);

WHEREAS, on February 2, 2024, Devengoechea filed a renewed motion for a writ of attachment (Misc. No. 23-609 D.I. 38);

WHEREAS, the Court has reviewed the materials filed by Devengoechea and the Bolivarian Republic of

1. For simplicity, unless otherwise indicated, the Court cites only to the filings in Misc. No. 23-609, even though parallel filings were also made in Misc. No. 17-151.

Venezuela ("Venezuela") in connection with the renewed motion[2] (*see*, *e.g.*, Misc. No. 23-609 D.I. 39-41, 44);

NOW, THEREFORE, IT IS HEREBY ORDERED that Devengoechea's renewed motion for a writ of attachment (Misc. No. 23-609 D.I. 38; *see also* Misc. No. 17-151 D.I. 922) is **DENIED**.

BACKGROUND

Devengoechea's allegations about "abuse and deception by Venezuela – perpetrated by its officials on American soil after traveling here to meet Plaintiff – form the backdrop of Venezuela's implied waiver of execution immunity. . . ." (Misc. No. 23-609 D.I. 44 at 2) More particularly, he describes the context for his renewed motion as follows:

> Plaintiff Ricardo Devengoechea inherited a large and valuable collection of documents, artifacts, and memorabilia once belonging to the famous South American General Simon Bolivar. Plaintiff's great-great grandfather

2. The Court had scheduled oral argument on Devengoechea's renewed motion for a writ of attachment in Wilmington, Delaware on February 14, 2024. (*See* Misc. No. 23-609 D.I. 33) Due to inclement weather, on February 13 the Court canceled the February 14 argument (and other related proceedings) and rescheduled it for February 27. During preparation for the February 14 and anticipated February 27 proceedings, the Court determined that it could resolve Devengoechea's renewed motion without oral argument.

Joaquin deMier was a close personal friend and business associate of Bolivar. Bolivar had gifted the items in the collection to deMier. The collection passed down from generation[] to[]generation in Plaintiff's family. Plaintiff acquired the collection as an inheritance upon the passing of his mother in 2005.

Plaintiff's collection was extremely valuable because of Bolivar's role in South American history. In the early 1800's, Bolivar led six South American countries in successful revolutions against Spanish colonial rule. Bolivar often is referred to as the George Washington of South America.

In 2007 Defendant Venezuela became aware of Plaintiff's collection and sent several officials in a private jet to examine it in Orlando, Florida (where Plaintiff resided) with an eye to possibly purchasing the collection. These officials were led by Ms. Delcy Rodriguez, then Coordinator General of the Office of Vice President of Venezuela. In Orlando, Venezuela's officials met with Plaintiff and examined many parts of his large collection. During this examination, Venezuela's official Delcy Rodriguez reached the following agreement with Plaintiff: that he would return to Venezuela with its officials in their private jet and bring his collection, and that in Venezuela Plaintiff would permit Venezuela's experts to examine and evaluate

the collection, after which Venezuela would either purchase the collection for an agreed price to be paid to Plaintiff at his home in Orlando, Florida or would return the collection to him at his home. Defendant Venezuela breached the agreement. Defendant Venezuela neither returned the collection nor paid for it.

After numerous attempts to retrieve his collection, Plaintiff retained counsel who also were unsuccessful in gaining the return of his collection. In 2012 Plaintiff commenced an action against Venezuela under the Foreign Sovereign Immunities Act in the Southern District of Florida (S.D. Fla. case no. 12-CV-23743) ("Florida action").

The Florida action dragged on for many years. . . .

In December 2018 the parties settled the action which required that Plaintiff obtain an OFAC [Office of Foreign Assets Control] license to receive the settlement sum, in light of the sanctions program against Venezuela. The Florida action was stayed pending receipt of the OFAC license. Plaintiff finally received the OFAC license 3 years later, sent a copy to Defendant's counsel, but Defendant reneged and refused to pay the settlement sum. In 2023 the OFAC license expired, and the Florida

> action was reopened and scheduled for trial. The settlement agreement, of course, is no longer operative.
>
> As trial approached, Defendant's counsel withdrew, leaving Defendant Venezuela as defendant pro se. . . .
>
> Defendant declined to appear at trial despite receiving notice of it. The Florida Court . . . held a full trial on the merits on December 4, 2023 – more than 11 years after Plaintiff sued Venezuela in 2012 and more than 16 years after Plaintiff delivered his collection to Venezuela in 2007. On December 4, 2023 the Florida Court entered judgment for Plaintiff in the amount $17,128,630.10 which included $9,500,000.00 principal and $7,628,630.10 mandatory pre-judgment interest under Florida law.
>
> Plaintiff registered his judgment in this Court (D.I. 1 in Misc. 23-609) and pursuant to this Court's leave, now renews his motion for a Writ of Attachment. Plaintiff seeks to collect his judgment from the prospective sale of shares of stock in PDVH owned by Defendant Venezuela's alter ego PDVSA. . . .

(Misc. No. 23-609 D.I. 39 at 1-4)

Appendix B

DISCUSSION

In order to obtain a writ of attachment, Devengoechea is required to show, among other things,[3] "that the specific property on which [he] seeks to execute – PDVSA's shares of stock in Delaware corporation PDVH – are not immune from attachment and execution under" the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1602 *et seq. Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 333 F. Supp. 3d 380, 395 (D. Del. 2018). In connection with his renewed motion for a writ of attachment, the only issue the Court must decide is whether Devengoechea has established an exception to execution immunity under the FSIA, specifically under 28 U.S.C. § 1610, allowing him to attach the shares of PDVH owned by PDVSA (which Devengoechea contends is the alter ego of Defendant Venezuela). Devengoechea relies on § 1610(a)(1) and/or (b)(1). Only § 1610(a) is relevant here.[4] Thus, the Court addresses only Devengoechea's arguments under § 1610(a)(1).

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3. The Court incorporates by reference its reasoning for denying Devengoechea's original motion for a writ of attachment. (*See* Misc. No. 23-609 D.I. 28; *see also* Misc. No. 17-151 D.I. 902)

4. Because Devengoechea's motion for a writ of attachment relies on the alter ego relationship between Venezuela and PDVSA, he "must satisfy the narrower exception to execution immunity applicable to property of foreign states," and not the exception applicable to property of foreign instrumentalities under § 1610(b). *Crystallex*, 333 F. Supp. 3d at 395; *see also Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 932 F.3d 126, 150 n.14 (3d Cir. 2019) ("[O]nly section 1610(a) is relevant because the jurisdictional immunity is overcome for Venezuela, not PDVSA, who only enters the picture as Venezuela's alter ego.").

Appendix B

The exception to execution immunity provided for by § 1610(a)(1) applies when "the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication." 28 U.S.C. § 1610(a)(1). Devengoechea does not contend that Venezuela has explicitly waived execution immunity; his contention, instead, is that Venezuela "has impliedly waived its execution/attachment immunity." (Misc. No. 23-609 D.I. 39 at 1) The Third Circuit has observed that "courts have typically found [implied] waivers only in three scenarios: when the foreign state has entered into a contract with a choice-of-law clause mandating the use of U.S. law, when it has responded to a complaint without asserting immunity, or when it has agreed to arbitrate disputes in the United States." *Aldossari on Behalf of Aldossari v. Ripp*, 49 F.4th 236, 251 n.23 (3d Cir. 2022).[5] Devengoechea acknowledges that none of these three scenarios is literally present: he has no contract with Venezuela containing a choice-of-law provision, Venezuela steadfastly maintained its immunity when contesting Devengoechea's allegations in the Florida federal litigation giving rise to Devengoechea's judgment, and the parties did not agree to arbitrate their disputes in this country. Instead, Devengoechea emphasizes that the

5. The Court rejects Venezuela's effort to limit *Aldossari* to issues of jurisdictional immunity, as set out in § 1605(a). (*See* Misc. No. 23-609 D.I. 40 at 5) While that is the context in which *Aldossari* came to the Third Circuit, the principles set out by *Aldossari* – and particularly the high burden for showing a waiver of foreign sovereign immunity – apply at least as much to issues of execution immunity governed by § 1610(a)(1). Decisions from outside the Third Circuit, as well as the legislative history, support this conclusion. *See Walters v. Indus. & Com. Bank of China, Ltd.*, 651 F.3d 280, 296 (2d Cir. 2011) (citing H.R. Rep. 94-1487, at 28).

list of three "typical" scenarios is not exhaustive of all the circumstances which may give rise to an implied waiver. (*See* Misc. No. 23-609 D.I. 44 at 5) He then advances three theories for why Venezuela has impliedly waived execution immunity in a manner he characterizes as even more clear than would be the case with a contract containing a choice-of-law provision. Assuming without deciding that more than the three "typical scenarios" identified in *Aldossari* are available in the Third Circuit, Devengoechea has, nevertheless, failed to show that Venezuela impliedly waived its immunity to execution.

The Third Circuit "construes the waiver exception strictly and requires strong evidence – in the form of clear and unambiguous language or conduct – that the foreign state intended to waive its sovereign immunity." *Aldossari*, 49 F.4th at 250 (internal quotation marks omitted). It further "require[s] that a waiver be unequivocally expressed." *Id.* (internal quotation marks omitted). Devengoechea does not meet these high burdens under any of his three theories.

First, Devengoechea argues that Venezuela made "a binding commitment to apply Florida law to the parties' dispute (and thus waived immunity) by entering into a Florida-focused contract through its officials who travelled to Florida to negotiate and consummate in Florida an agreement with Plaintiff, a Florida citizen, which provided for performance in Florida." (Misc. No. 23-609 D.I. 39 at 4; *see also id.* at 7 ("[E]verything about the parties' agreement involved Florida law.")) While acknowledging that the verbal agreement between himself

and Venezuelan government officials did not contain a choice-of-law provision, Devengoechea contends that his agreement with Venezuela was "Florida-focused," and hence was "functionally the same as a commitment in a contractual choice-of-law clause." (*Id.* at 5) The alleged Florida "focuses" included: (1) Venezuela sending its officials to Florida to negotiate the agreement; (2) with Devengoechea, a Florida citizen; and (3) the agreement's provision that performance (i.e., return of Devengoechea's inherited collectibles or payment for them) would occur in Florida. (*See id.* at 4) As Venezuela correctly observes, however, "Devengoechea cites no authority to suggest that any court has ever found a sovereign to implicitly waive its attachment immunity merely by entering into a contract with a United States person, or by negotiating or executing that contract within the United States, or by entering into a contract to be performed in the United States." (Misc. No. 23-609 D.I. 40 at 7) The only cases Devengoechea cites to support his theory (in his reply brief, *see* Misc. No. 23-609 D.I. 44 at 5) are readily distinguishable as they require that foreign sovereigns proactively avail themselves of the privileges of U.S. courts, a fact that is absent here. *See Barapind v. Gov't of Republic of India*, 844 F.3d 824, 830 (9th Cir. 2016) (declining to find implied waiver where pertinent documents did not "specify that the law of a particular country should govern that contract, nor [did] they otherwise contemplate adjudication of a dispute by the United States courts") (alteration and internal quotation marks omitted); *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 722 (9th Cir. 1992) (finding implied waiver where foreign sovereign filed letter rogatory in U.S. court, thereby creating "direct connection

between the sovereign's activities in our courts and the plaintiff's claims for relief"). In short, the Florida "focus" does not amount to "strong evidence" unambiguously demonstrating that Venezuela unequivocally expressed an intent to relinquish its sovereign immunity.

Second, Devengoechea argues that Venezuela impliedly waived immunity "by repeatedly invoking Florida law in seven Memoranda of Law as the sole basis for its motions seeking a final judgment of dismissal on the merits" in the Southern District of Florida litigation initiated by Devengoechea. (Misc. No. 23-609 D.I. 39 at 8; *id.* at 11 (describing "Venezuela's seven-fold invocation of Florida law")) As Devengoechea concedes, however, Venezuela's briefs "also included arguments asserting sovereign immunity." (*Id.* at 12) Courts have found that a sovereign defendant's filing of a motion to dismiss does not constitute an implied waiver even when the motion failed to expressly preserve an immunity defense under FSIA. *See*, *e.g.*, *Canadian Overseas Ores Ltd. v. Compania de Acero del Pacifico S.A.*, 727 F.2d 274, 277 (2d Cir. 1984) (refusing to find filing of motion to dismiss automatically waives immunity defense). It would strain credulity to find that Venezuela clearly and unambiguously waived its immunity defenses in the very briefs in which it expressly reserved the right to assert such immunity.[6] To

6. Devengoechea points out that Venezuela asserted only jurisdictional immunity, and not execution immunity, in its various filings in the Florida litigation. This does not alter the Court's view. Given that issues of execution of judgment were utterly unripe at the time – as Devengoechea had not yet established either Venezuela's liability or its refusal to pay a judgment – the Court

the contrary, the Court agrees with Venezuela that "[m]erely litigating the dispute under applicable law is not consent to a contractual choice-of-law clause, much less an implied waiver of attachment immunity. Otherwise, a sovereign could never defend itself in a dispute as to which it is subject to jurisdiction without automatically waiving attachment immunity." (Misc. No. 23-609 D.I. 40 at 8-9)

Finally, Devengoechea argues that Venezuela impliedly waived immunity "by using the U.S. judicial process to gain for itself affirmative relief that delayed Plaintiff's recovery for many years, after which Venezuela failed to appear at trial." (Misc. No. 23-609 D.I. 39 at 4-5) Venezuela counters Devengoechea's description of the Florida litigation, contending that "[t]he record reveals that Devengoechea, not [Venezuela], is responsible for the delay that followed the settlement agreement." (Misc. No. 23-609 D.I. 40 at 10-11; *see also id.* D.I. 41 Exs. 26, 27) The judge presiding over the Florida litigation expressly found that Venezuela's refusal to consummate the settlement agreement "delayed this action for several years and . . . forced [Devengoechea] to proceed to trial on the merits after several years' delay." *Devengoechea v. Bolivarian Republic of Venezuela*, C.A. No. 12-23743 (S.D. Fla.) D.I. 299 at 2. Still, even crediting Devengoechea's contention that Venezuela is responsible for the delay in Florida, Venezuela's conduct does not amount to "strong evidence" that clearly and unambiguously shows that Venezuela unequivocally intended to waive its sovereign immunity.

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will not construe Venezuela's "silence" on execution immunity as waiver of an immunity that was not yet nearly implicated.

Venezuela did not initiate the litigation in the Southern District of Florida, and it affirmatively asserted sovereign immunity throughout that litigation. Devengoechea cites no authority for the proposition that "postpon[ing] its day of reckoning by many years" (Misc. No. 23-609 D.I. 39 at 14) through litigation delay tactics is the type of "invocation of U.S. judicial processes" (*id.* at 15) that could be found to impliedly waive an immunity defense that, at the same time, Venezuela was expressly reserving.

The Court is sympathetic to Devengoechea and his family for the theft of their inheritance. (*See* Misc. No. 23-609 D.I. 44 at 7) ("Venezuela dispatched its officers onto U.S. soil for the specific purpose of targeting a specific uncounseled U.S. citizen and his property with a commercial deal which it finalized in the U.S. and which provided for performance in the U.S. – on which Venezuela later reneged after inducing Plaintiff to depart from the U.S. with his valuable property.") The Court is also mindful of Devengoechea's concern that today's ruling illustrates that foreign nations may "too easily . . . abuse United States' citizens by sending [their] officials to the United States to meet with and consummate agreements here with United States citizens and then hide behind immunity if called upon to honor the agreements they made." (Misc. No. 23-609 D.I. 39 at 8; *see also id.* D.I. 44 at 6 (warning that denial of motion "would permit extreme abuse")) Still, this Court is obligated to follow the law and, in the Court's view, the law compels denial of his motion.

Thus, Devengoechea has failed to show that the specific property he seeks to attach and execute, PDVSA's shares of stock in PDVH, are not immune from attachment and execution by him under the FSIA. Accordingly, his renewed motion for a writ of attachment is **DENIED**.

IT IS FURTHER ORDERED that the oral argument scheduled for February 27 is **CANCELED**.

/s/ Leonard P. Stark
HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT COURT

February 15, 2024
Wilmington, Delaware

APPENDIX C — MEMORANDUM ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, FILED MARCH 14, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Misc. Nos. 17-151-LPS, 23-609-LPS

CRYSTALLEX INTERNATIONAL CORP.,

Plaintiff,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,

Defendant.

RICARDO DEVENGOECHEA,

Plaintiff,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,

Defendant.

March 14, 2024, Filed

STARK, *District Judge.*

Appendix C

MEMORANDUM ORDER

WHEREAS, on December 29, 2023, the plaintiff in Misc. No. 23-609 (the "*Devengoechea* Action"), Ricardo Devengoechea ("Devengoechea"), filed a motion pursuant to Federal Rule of Civil Procedure 69(a)(1), 8 *Del. C.* § 324, and 10 *Del. C.* § 5031, seeking an order authorizing the issuance of a writ of attachment *fieri facias* on the shares of PDV Holding, Inc. ("PDVH") owned by Petróleos de Venezuela, S.A. ("PDVSA") (D.I. 4);[1]

WHEREAS, the Court heard argument on the motion on January 22, 2024 and thereafter ordered supplemental briefing (*see* D.I. 28 at 13);

WHEREAS, the Court received supplemental briefing on January 23, 2024 (D.I. 22, 23);

WHEREAS, on January 24, 2024, during a teleconference, the Court denied the motion without prejudice to Devengoechea filing a renewed motion (D.I. 24, 28);

WHEREAS, on February 2, 2024, Devengoechea filed a renewed motion for a writ of attachment (D.I. 38);

WHEREAS, on February 15, 2024, the Court issued a memorandum order denying the renewed motion (D.I.

1. For simplicity, unless otherwise indicated, the Court cites only to the filings in Misc. No. 23-609. Identical filings were also made in Misc. No. 17-151.

47) ("February Order" or "Feb. Or.");

WHEREAS, on February 25, 2024, Devengoechea filed a motion for reconsideration of the February Order and/or a motion for a "narrow and limited stay" pending appeal (D.I. 49);

WHEREAS, the Court has reviewed the materials filed by Devengoechea and the Bolivarian Republic of Venezuela ("Venezuela") in connection with the pending motion (*see, e.g.*, D.I. 50, 53-55);

NOW, THEREFORE, IT IS HEREBY ORDERED that Devengoechea's motion for reconsideration and/or a motion for a "narrow and limited stay" pending appeal (Misc. No. 23-609 D.I. 49; *see also* Misc. No. 17-151 D.I. 980) is **DENIED**.

1. A motion for reconsideration (or reargument) is governed by Local Rule 7.1.5. *See, e.g., Helios Software, LLC v. Awareness Techs., Inc*, 2014 U.S. Dist. LEXIS 27958, 2014 WL 906346 (D. Del. Mar. 5, 2014). Such a motion "must rely on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Parkell v. Frederick*, 2019 U.S. Dist. LEXIS 55793, 2019 WL 1435884, at *1 (D. Del. Mar. 31, 2019) (internal quotation marks omitted). Reconsideration may be appropriate where "the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the court by the parties, or has made an

error not of reasoning but of apprehension." *Wood v. Galef-Surdo*, 2015 U.S. Dist. LEXIS 8405, 2015 WL 479205, at *1 (D. Del. Jan. 26, 2015) (internal quotation marks omitted). While the decision on a motion for reconsideration is within the discretion of the Court, such motions "should only be granted sparingly and should not be used to rehash arguments already briefed or to allow a never-ending polemic between the litigants and the Court." *Dentsply Int'l, Inc. v. Kerr Mfg. Co.*, 42 F. Supp. 2d 385, 419 (D. Del. 1999) (internal quotation marks omitted).

2. Devengoechea first argues that the Court "overlooked" and "did not address" his "***primary*** argument" that "Venezuela's actions . . . embodied the ***equivalent*** of" a "contractual term" — that is, a choice-of-law clause applying U.S. law — "at the outset of the parties' relationship." (D.I. 50 at 4) The Court did not overlook this argument. In the February Order, the Court expressly discussed Devengoechea's contention that "his agreement with Venezuela was 'Florida-focused,' and hence was 'functionally the same as a commitment in a contractual choice-of-law clause.'" (Feb. Or. at 6) (quoting D.I. 39 at 5) The Court explained that Devengoechea did not cite any authority to support his theory and, relatedly, the Court was not persuaded that the Florida "focus" of the parties' early interactions amounted to "strong evidence" "unambiguously demonstrating that Venezuela unequivocally expressed an intent to relinquish its sovereign immunity." (*Id.* at 7) As should be evident from the February Order — and, to the extent it is unclear, the Court now makes it undeniably explicit — the Court is not persuaded that the parties' Florida "focus" functions

as an "equivalent" to a contractual choice-of-law clause. This is especially so because an election to apply Florida law would typically constitute a waiver of sovereign immunity, but the waiver exception of the Foreign Sovereign Immunities Act ("FSIA") is to be construed strictly and "requires strong evidence — in the form of clear and unambiguous language or conduct — that the foreign state intended to waive its sovereign immunity." *Aldossari on Behalf of Aldossari v. Ripp*, 49 F.4th 236, 250 (3d Cir. 2022) (internal quotation marks omitted). The Court found, and continues to find, that Devengoechea's Florida-focus theory does not satisfy this high burden.

3. Devengoechea also contends that the Court "overlooked governing law" by holding that he "failed to show an implied waiver of immunity ***specifically*** regarding the PDVH shares of stock to be attached." (D.I. 50 at 6) This argument misunderstands the Court's holding. In the February Order, the Court stated: "[i]n order to obtain a writ of attachment, Devengoechea is required to show . . . that the ***specific property*** on which [he] seeks to execute — PDVSA's shares of stock in Delaware corporation PDVH — ***are not immune from attachment and execution*** under the [FSIA]." (Feb. Or. at 4) (emphasis added; internal quotation marks omitted). This articulation is consistent with this Court's and the Third Circuit's previous articulations of the law.[2] In the

2. *See Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 333 F. Supp. 3d 380, 395 (D. Del. 2018) ("In order for the Court to issue the requested writ of attachment, the Court must be satisfied that the ***specific property*** on which Crystallex seeks to execute — PDVSA's shares of stock in Delaware corporation

February Order, the Court found that Devengoechea's theories based on Venezuela's Florida-related business and litigation activities (and interactions directly with him) failed to demonstrate an implied waiver of immunity from attachment under 28 U.S.C. § 1610(a)(1) in general.[3] As Venezuela correctly points out, "[n]othing in this Court's decision relied on some fact unique to the PDVH shares." (D.I. 53 at 5)

4. As an alternative to being granted a writ, Devengoechea requests that the Court at least issue what he calls a "narrow and limited stay" pending appeal.[4] Specifically, he asks for, "pending appeal, a temporary set aside of the amount of Plaintiff Devengoechea's relatively small judgment and its temporary inclusion in the pool of

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PDVH — ***are not immune from attachment and execution*** under the FSIA.") (emphasis added); *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 932 F.3d 126, 149 (3d Cir. 2019) ("Crystallex must also show that the ***particular property*** at issue in the attachment action — the PDVH stock ***is not immune from attachment*** under the Sovereign Immunities Act.") (emphasis added).

3. The Court need not, did not, and does not reach the issue of whether § 1610(a)(1) requires a waiver of immunity specific to the property sought to be attached.

4. To determine whether to grant a stay pending appeal, the Court considers four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009).

judgments to be enforced." (D.I. 50 at 8) While not entirely clear, it appears that Devengoechea is asking that he be treated as an Additional Judgment Creditor (as that term is defined in the Sale Procedures Order, Misc. No. 17-151 D.I. 481 at ¶ 15), and be added to the bottom of the Priority Order (*see* Misc. No. 17-151 D.I. 996), with his judgment to be potentially satisfied by the forthcoming sale. To the extent that is what he seeks, it is tantamount to being granted a writ of attachment, which the Court has denied (repeatedly). To the extent he is seeking some lesser relief, he has not been sufficiently clear as to what it is and, in any event, with him having demonstrated no realistic prospect of prevailing on appeal, and having asked for relief that might potentially interfere with the Court's efforts to implement the Sale Procedures Order in a timely manner, the Court deems it best to exercise its discretion not to grant any type of stay.

The telephonic hearing scheduled for March 18 (*see* D.I. 52) is **CANCELED**.

/s/ Leonard P. Stark
HONORABLE
LEONARD P. STARK
UNITED STATES
DISTRICT COURT

March 14, 2024
Wilmington, Delaware

APPENDIX D — FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FILED DECEMBER 4, 2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:12-cv-23743-PCH

RICARDO DEVENGOECHEA,

Plaintiff,

vs.

BOLIVARIAN REPUBLIC OF VENEZUELA,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came before this Court for trial on December 4, 2023, on Plaintiff's claim under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330 & 1602 *et seq.*, to recover damages caused by Defendant Venezuela's breach of contract and unjust enrichment. Defendant breached its contract with Plaintiff by failing to return to him or pay for Plaintiff's valuable collection of artifacts, documents, and memorabilia once belonging to the famous General Simon Bolivar.

At trial, Plaintiff appeared by counsel and testified in person along with another witness, Plaintiff's former

counsel Marc Ferri. Plaintiff's expert John Reznikoff testified by Zoom videoconference. Defendant did not appear at trial and violated the Court's trial-setting order [ECF No. 269], filed on July 10, 2023, by failing to (a) coordinate with Plaintiff to submit a joint pretrial stipulation and (b) submit its proposed findings of facts and conclusions of law, by their respective deadlines.[1]

After trial on the merits and on jurisdiction under the FSIA, the Court concludes that it has jurisdiction under the FSIA and that Plaintiff has proved his case on the merits. This Court awards Plaintiff the value of his collection as set forth below plus mandatory prejudgment interest under Florida law, and taxable costs.

Background Concerning General Simon Bolivar

It is well known that Simon Bolivar (1783-1830) was the greatest military and political leader in the history of South America. He played an immense role in the liberation and independence of five South American countries. Obviously, artifacts associated with Bolivar are desirable, unique, and valuable.

It is Plaintiff's family relationship to General Bolivar and to numerous items once belonging to Bolivar that forms the backdrop of this action.

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1. This alone would be an appropriate ground for granting a default against Defendant, Bolivarian Republic of Venezuela, and a ruling in favor of Plaintiff, Ricardo Devengoechea, on liability. However, Plaintiff has stated he prefers to prove his case. So the Court allowed the matter to proceed to trial on the merits.

Appendix D

Findings of Fact

Plaintiff Ricardo Devengoechea, an American citizen, acquired an extensive collection of artifacts and memorabilia concerning General Simon Bolivar as a result of family inheritance.

The artifacts in this collection included thousands of historic documents including correspondence and writings of Simon Bolivar, both personal and official/governmental, many with Bolivar's signature, medals, epaulets of General Napoleon Bonaparte of France (where Simon Bolivar had resided for a time), Simon Bolivar's one-of-a-kind Liberation Medal of Peru, and a DNA sample (hair locket) (the "collection"). (Copies of this Liberation Medal of Peru and selected documents from among the thousands of documents in the collection are shown in Plaintiff's Trial Exhibit 3).

The collection was handed down from generation-to-generation in Plaintiff's family. Plaintiff received them from his mother who passed in 2005. Plaintiff lives in Orlando, Florida.

In October 2007 Defendant initiated telephone calls to Plaintiff in the United States concerning his collection.

Defendant initiated these communications through a mutual acquaintance, Jorge Mier Hoffman, who contacted Plaintiff on behalf of the Venezuelan government.

Pursuant to Defendant's request, Plaintiff provided to Hoffman select copies of his collection so Hoffman

could send the copies to Venezuela (which the Venezuelan officials requested).

Shortly thereafter Defendant's officials contacted Plaintiff to arrange to meet him in Orlando, Florida (where Plaintiff lives) to examine and begin negotiations concerning Defendant's acquisition of the collection.

On or about October 14, 2007 Defendant's officials Ms. Delcy Rodriguez, then the Coordinator General of the Office of Vice President of Venezuela, and Mr. Alberto Arvelo and Mr. Hoffman, and other officials sent by the Venezuelan government, flew by private jet from Venezuela to Orlando, Florida to meet Plaintiff and begin negotiations. Ms. Rodriguez introduced herself, identified the office which she held in the Venezuelan government, and introduced the persons with her as officials in the Venezuelan government. Pictures showing these Venezuelan officials and Plaintiff at the Orlando airport and in the plane are Plaintiff's Trial Exhibit 2.[2]

On October 14, 2007 these Venezuelan officials and Plaintiff discussed Plaintiff's collection, his background and family history, how Plaintiff acquired the collection, and Defendant's prospective purchase of the collection.

The following day, October 15, 2007, at the request of these Venezuelan officials, Plaintiff brought his

2. These pictures were taken a couple days later when Plaintiff and these Venezuelan officials departed from the Orlando airport enroute to Venezuela, discussed below.

collection to their hotel in Orlando, Florida, where these officials examined the collection and where Plaintiff had an extensive meeting and negotiations with these same Venezuelan officials concerning Defendant's prospective purchase of the collection.

During this meeting, Defendant's officials requested that Plaintiff travel with them and his collection to Venezuela where Defendant's experts could examine the collection further, as well as test and catalog it, and where negotiations would continue.

Venezuelan officials requested that Plaintiff go to the Passport Office in Miami, Florida the next day to procure a new Passport on an expedited basis so Plaintiff could return to Venezuela with them and bring his collection.

These Venezuelan officials then arranged for another Venezuelan official, Ms. Zueiva Vivas, President of Venezuela's Foundation of National Museums, to email to Plaintiff a letter enlisting Plaintiff's participation in a documentary relating to Bolivar.

These Venezuelan officials gave the letter to Plaintiff and explained to him that, although the letter did not mention the collection, the letter would serve as an entre for Plaintiff to pursue possible further meetings concerning the collection (a copy of the letter in Spanish is Plaintiff's Trial Exhibit 4 and is translated in the Second Amended Complaint, [ECF No. 140 ¶ 30]).

At the request of these Venezuelan officials, Plaintiff telephoned the Passport Office in Miami, Florida, and made an appointment to procure his Passport on an emergency basis the following day.

Plaintiff agreed to do all this with the understanding and agreement by Defendant's official Ms. Delcy Rodriguez that Plaintiff would travel to Venezuela with her and the other Venezuelan officials in their private jet and would bring his collection with him, so Venezuela's officials could examine, test and catalog it in Venezuela, and that after these procedures were completed, either the parties would reach an agreement for an amount to be paid to Plaintiff for the collection or the collection would be returned to Plaintiff at his home in Orlando, Florida. In connection with this agreement, Plaintiff expected and intended that (1) any payment to him, if applicable, would be paid at his home in Orlando, Florida and that (2) the return of the collection to Plaintiff, if applicable, would be returned to him at his home in Orlando, Florida.

Plaintiff never would have flown to Venezuela with his collection without such an agreement and understanding.

On the next day, October 16, 2007, at the request of these Venezuelan officials, Plaintiff drove from Orlando to the Passport Office in Miami, Florida and obtained his Passport. Plaintiff returned to Orlando, brought his collection, and met these same Venezuelan officials at the Orlando airport for travel to Venezuela. At the Orlando airport the negotiations concerning the collection continued.

Appendix D

On October 17, 2007, Plaintiff boarded the private jet and had further negotiations concerning the collection in the plane, both in the United States and enroute to Venezuela (pictures of the plane, Plaintiff, and these Venezuelan officials at the Orlando airport and in the plane are Plaintiff's Trial Exhibit 2).

The negotiations concerning Defendant's acquisition of the collection continued in Venezuela, where Defendant's experts examined, tested and catalogued the collection. Plaintiff met numerous Venezuelan officials while in Venezuela who asked Plaintiff to bring his collection to the residence of then President Hugo Chavez. Plaintiff complied and delivered his collection to a Venezuelan official at Chavez's home. Additional pictures of and by Plaintiff in Venezuela are Plaintiff's Trial Exhibit 8, Appendix C.

While in Venezuela, Plaintiff mentioned that he might have additional artifacts and memorabilia concerning Bolivar at his home in Orlando, Florida.

At the request of Defendant's officials who were examining the collection, and with the express approval of the above-mentioned Ms. Delcy Rodriguez, Plaintiff returned to Orlando, Florida, as Defendant's agent to search for and bring back to Venezuela for Defendant's benefit additional Bolivar artifacts and memorabilia, along with pictures verifying Plaintiff's residence as a child on his family farm in Colombia where his ancestors had been acquaintances of General Bolivar. Plaintiff then returned to the United States on a commercial airline by ticket

paid for by Defendant. This travel to the United States occurred on October 23 through 25, 2007. (Copies of these airline tickets, paid for by Defendant, are Plaintiff's Trail Exhibit 5).

Plaintiff returned to Venezuela on October 25, 2007, and remained there for several days. Defendant's officials told Plaintiff that they needed more time to fully examine and analyze Plaintiff's collection and that they would be in touch with him concerning the purchase of the collection after their examination was completed.

Plaintiff returned to the United States, leaving his collection with Defendant with the understanding and agreement that Defendant needed more time to analyze and examine it and that upon the conclusion of this examination, Defendant would contact Plaintiff about a purchase price for the collection or would return it to him at his home in Orlando.

Plaintiff periodically contacted Defendant over the next two to three years and was told they still needed time to examine and analyze his collection because of its large size.

In July 2010 articles appeared in various newspapers that Venezuela's President Chavez had ordered the exhumation of the body of Simon Bolivar. Although not mentioned in the news articles, it became clear to Plaintiff that one reason for the exhumation was to test the DNA in the hair locket for a match. Copies of these articles are Plaintiff's Trial Exhibit 6.

Plaintiff's further inquiries of Defendant concerning his collection went unanswered after this July 2010 exhumation. Thus, it became clear to Plaintiff that Defendant had decided to retain the benefit of his collection without paying for it, thereby breaching the parties' agreement and unjustly enriching Defendant.

Plaintiff then retained counsel. Plaintiff's counsel wrote several letters to Defendant seeking the return of Plaintiff's collection or reasonable compensation for it. Copies of these letters are Plaintiff's Trial Exhibit 7. When Defendant failed to respond, Plaintiff commenced this action in 2012.

Procedural History

After numerous legal proceedings concerning Plaintiff's Initial Complaint and First Amended Complaint, as well as the entry of a default judgment which Plaintiff agreed to vacate upon Defendant's motion, Plaintiff filed his Second Amended Complaint on March 8, 2016 [ECF No. 140]. Defendant promptly moved to dismiss it, arguing that there was no jurisdiction under the FSIA and that Plaintiff's claim also lacked merit. Plaintiff opposed Defendant's motion. This Court denied Defendant's motion and upheld jurisdiction under the FSIA and the facial merit of Plaintiff's claim [ECF No. 165].

On an interlocutory appeal addressing the sovereign-immunity issue, the Eleventh Circuit affirmed, upholding jurisdiction under the FSIA. *Devengoechea v. Bolivarian*

Republic of Venezuela, 889 F.3d 1213 (11th Cir. 2018). Thereafter, Defendant filed its Answer [ECF No. 185].

The parties engaged in discovery, and Defendant in 2018 moved for a jurisdictional dismissal on the evidence and for summary judgment on the merits [ECF Nos. 221–224].

In December 2018 the parties reached a settlement. But to receive the settlement, Plaintiff needed to obtain a license from the Office of Foreign Assets Control ("OFAC license") of the U.S Treasury Department because of the U.S. sanctions program against Venezuela and numerous Venezuelan officials and industries. It took Plaintiff over two years to obtain the OFAC license, by which time developments had prevented consummation of the parties' settlement.

Meanwhile, Defendant's latest motion in 2018 for a jurisdictional dismissal and for summary judgment had been placed on hold pending the parties' unsuccessful settlement and the drawn-out OFAC license process. After the litigation resumed in 2023, Plaintiff opposed Defendant's 2018 dismissal motion [ECF Nos. 264–266]. This Court denied Defendant's 2018 motion in full [ECF No. 270] and set this case for trial [ECF No. 269].[3]

3. Defendant's counsel also sought leave to withdraw which this Court granted earlier this year [ECF No. 253]. Since then, Defendant has been pro se which is permitted under the FSIA, and Plaintiff has been serving papers on Defendant directly.

Appendix D

Discussion and Conclusions of Law

Plaintiff's claim targets the "commercial activity" of Defendant under the FSIA. For this purpose, a foreign country's "commercial activity" is an activity of the type that is or could be carried on by a private business but happens to be carried on by a sovereign country. The country is not exercising authority peculiar to a sovereign (police, military, law enforcement, etc.) but is acting as if it were a private business in a commercial endeavor or commercial capacity. *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 612–14 (1992); *Devengeochea*, 889 F.3d at 1221– 22. Defendant's actions in connection with its possible purchase of Plaintiff's collection – as if Venezuela were a collectible dealer or seller – is clearly a commercial activity for this purpose. Venezuela, when represented by counsel, conceded as much. *Devengoechea*, 889 F.3d at 1222 n.10 (quoting Venezuela's concession).

The FSIA grants courts jurisdiction over a foreign country in three circumstances involving the foreign country's commercial activities – where the claim is based upon (1) the foreign country's commercial activity within the United States, or upon (2) the foreign country's act within the United States in connection with the foreign country's commercial activities elsewhere, or upon (3) the foreign country's act outside the United States in connection with its commercial activity outside the United States that causes a direct effect within the United States. 28 U.S.C. § 1605(a)(2). This Court concludes that jurisdiction against Venezuela under the FSIA attaches under all three clauses of § 1605(a)(2).

Under the first clause, Plaintiff's claim is clearly based upon Venezuela's commercial activity within the United States. Venezuela's officials travelled to the United States where they repeatedly engaged in extensive negotiations and discussions with Plaintiff concerning his collection and Venezuela's possible purchase of it. Ultimately, still within the United States, Venezuela's officials reached the agreement with Plaintiff under which he would travel to Venezuela with them and bring his collection to Venezuela where its experts would examine and evaluate it, after which Venezuela either would pay an agreed price for the collection or return it to Plaintiff at his home in Orlando, Florida. The ultimate and dispositive contract itself was agreed to by the parties within the United States. The parties actions within the United States were not merely preliminary or introductory discussions but were extensive and multiple serious negotiations which culminated in the ultimate agreement, reached in the United States, which gave rise to Plaintiff's claim. This Court twice indicated its view that the first clause of § 1605(a)(2) provides a basis for FSIA jurisdiction here [ECF No. 270 at 6; ECF No. 165 at 10]. This Court reaffirms its prior conclusion. Jurisdiction clearly exists under the first clause of § 1605(a)(2) based upon Venezuela's commercial activities within the United States.

Under the second clause of § 1605(a)(2), jurisdiction exists because Plaintiff's claim is also based upon Venezuela's acts within the United States in connection with its commercial activity elsewhere. The numerous acts by Venezuela within the United States, during its officials' travel to meet with Plaintiff (discussed above) clearly form

a basis for Plaintiff's claim and are in connection with Venezuela's commercial activity in Venezuela. Venezuela's examination, evaluation and storage of Plaintiffs collection in Venezuela are commercial activities in Venezuela which relate to the acts within the United States upon which Plaintiff's claim is based.

Under the third clause of § 1605(a)(2), jurisdiction exists because Plaintiff's claim satisfies all three sub-elements of the third clause. That is, Plaintiff's claim is based upon Venezuela's act outside the United States in connection with its commercial activity outside the United States which had a direct effect in the United States. The Eleventh Circuit in *Devengoechea* explained precisely how Plaintiff's claim satisfied each of these three sub-elements of the third clause – (1) that the act outside the United States upon which Plaintiff's claim is based was Venezuela's decision not to return or pay for Plaintiff's collection, (2) that the commercial activity outside the United States was Venezuela's negotiation in the private market for the collection, and (3) that the direct effect in the United States was the obligation of Venezuela to return or pay for the collection in the United States upon which Venezuela defaulted. *Devengoechea*, 889 F.3d at 1224–26 (discussing three sub-elements of third clause of 28 U.S.C. § 1605(a)(2)).

The latter sub-element – the "direct effect" within the United States – exists under either of the two contractual alternatives. Under Venezuela's obligation to return the collection to Plaintiff, the direct effect in the United States existed because Venezuela was contractually obligated

to return the collection to him at his home in Orlando, Florida. Under Venezuela's alternative contractual obligation to pay an agreed price for the collection, the direct effect in the United States exists because Venezuela similarly was contractually obligated to pay Plaintiff in the United States. Indeed, under Florida law, payments are due where the creditor is located, and Plaintiff is located in Florida. *Treasure Coast Tractor Serv., Inc. v. JAC Gen. Constr., Inc.*, 8 So.3d 461, 462 (Fla. 4th DCA 2009) ("Generally, where a contract involves the payment of money and no place of payment is specified in the contract, the payment is due where the creditor resides"). By virtue of Florida law, therefore, there was a "direct effect" in the United States caused by Defendant's failure to pay.

In summary, jurisdiction is present for Plaintiff's FSIA claim under each of the three clauses in 28 U.S.C. § 1605(a)(2).

The Expert Testimony and Damages

Under Florida law, the measure of damages is the loss proximately caused by Defendant's breach. Plaintiff's expert John Reznikoff is an experienced expert in dealing with collectibles, artifacts and antiques, such as those in the Bolivar collection. He has extensive experience and has testified in numerous cases where he has been a recognized expert. The Court finds his testimony to be well supported, thorough, and credible. In painstaking detail, he provided his conservative estimate of value as $8,810,746.30, and his fair-market valuation of Plaintiff's collection as being between 8 and 10 million dollars as of

the date of the contractual breach in July 2010. The Court credits his expert testimony, and based on the testimony provided at trial, including all of the relevant factors discussed, finds that the fair-market value of the collection, and thus the principal amount of Plaintiff's recoverable loss is $9,500,000.00, at the time of the contractual breach in July 2010.

Statutory Prejudgment Interest

Plaintiff is entitled to recover prejudgment interest from the date of loss in July 2010 at the statutory rate which, at that time, was 6% per annum simple interest. *Argonaut Ins. Co. v. May Plumbing Co.*, 474 So.2d 212, 215 (Fla. 1985) ("when a verdict liquidates damages on a plaintiff's out-of-pocket, pecuniary losses, plaintiff is entitled, as a matter of law, to prejudgment interest at the statutory rate from the date of that loss"); *Getelman v. Levey*, 481 So.2d 1286, 1290 (Fla. 3 DCA 1985) ("A claim becomes liquidated and susceptible of prejudgment interest when a verdict has the effect of fixing damages as of a prior date") (quoting *Argonaut Ins.*, 474 So.2d at 214 (Fla. 1985)). Once the 6% rate is fixed as of the date of loss, the 6% annual rate carries through the entire prejudgment period until entry of judgment regardless of periodic rate changes for later-accrued losses in other cases. *Regions Bank v. Maroone Chevrolet LLC*, 118 So.3d 251, 258 (Fla. 3d DCA 2013) ("the interest rate established at the time a judgment is obtained shall remain the same until the judgment is paid [citation]. . . . The same should apply to prejudgment interest. Once the rate is obtained on the date of loss, it should remain the same"). Mandatory

prejudgment interest applies to Plaintiff's contract claim, *Chiado v. Rauch*, 497 So.2d 945, 946 (Fla. 1 st DCA 1986) (requiring prejudgment interest on contract claim from date of loss), and to Plaintiff's unjust enrichment claim, *Rohrback v. Dauer*, 528 So.2d 1362, 1363 (Fla. 3 DCA 1988) ("There is error, however, in the trial court's refusal to award prejudgment interest on the plaintiff's quantum meruit recovery").

The Court will enter a judgment which shall include the principal loss, $9,500,000.00, plus statutory prejudgment interest from July 17, 2010 through December 4, 2023, at the rate of 6% per annum, totaling $7,628,630.10, and will reserve jurisdiction to resolve Plaintiff's claim for costs.

Done and ordered in Miami, Florida, on December 4, 2023.

/s/ Paul C. Huck
Paul C. Huck
United States District Judge

APPENDIX E — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, DATED DECEMBER 4, 2023

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA,
MIAMI DIVISION

Case No.: 12-CV-23743-HUCK

RICARDO DEVENGOECHEA,

Plaintiff,

vs.

BOLIVARIAN REPUBLIC OF VENEZUELA,
A FOREIGN STATE,

Defendant.

December 4, 2023, Decided
December 4, 2023, Entered on Docket

ORDER DISPENSING WITH STAY UNDER FED.R.CIV.P. 62(A) AND DISPENSING WITH DELAY IN ENFORCEMENT AND/OR DOMESTICATION UNDER 28 U.S.C. § 1963

This cause came before this Court on motion by the Plaintiff during trial on December 4, 2023 for an order (1) pursuant to Fed.R.Civ.P. 62(a) dispensing with the stay

in enforcement and/or domestication of the judgment in this action under that Rule, and (2) pursuant to 28 U.S.C. § 1963 dispensing with the delay in enforcement and/or domestication of the judgment in this action so that Plaintiff immediately may enforce and domesticate the judgment in this action in the United States District Court for the District of Delaware without delay, and

Plaintiff having alerted this Court and Defendant to the details and reasons for this motion in Plaintiff's Pretrial Statement in this action (ECF 289 at pp.4-5), and

Plaintiff having reported as follows: that because of the extreme difficulties of recovering judgments against foreign countries generally and against Venezuela in particular, the best — and perhaps only — opportunity for Plaintiff to recover moneys in satisfaction of a judgment against Venezuela lies in a case now pending in the United States District Court for the District of Delaware. That case has imminent deadlines. The Delaware Federal Court has ordered the sale of Venezuelan-owned shares in Citgo Oil Co. to satisfy claims against Venezuela by judgment-creditors generally. *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, Misc. Case No. 17-151-LPS (D.Del.) ("*Crystallex*"). Much more than a judgment is required of creditors, and the deadline is imminent. By January 12, 2024, in order to participate in a recovery from the sale of Citgo shares, creditors not only must obtain a judgment or award against Venezuela but also must domesticate the judgment or award in Delaware federal court, and move there for a writ of attachment, and in addition must actually obtain a writ of attachment from

the Delaware federal court — all by January 12, 2024. *See Crystallex* at ECF 738 p.3 (D.Del.) (ordering a January 12, 2024 deadline for judgment-creditors to obtain a writ of attachment in Delaware federal court, to participate in the Citgo recovery). This necessary writ of attachment by January 12, 2024 is "Step 5" in an intricate 7-step process ordered by the Delaware Court. *See Crystallex* at ECF 646 pp.3-8 (D.Del.) (ordering and explaining the 7-step process). Thus Plaintiff in this action seeks immediate enforcement and domestication of the judgment in the Delaware federal court to start the Delaware process to meet its January 12, 2024 deadline.

To make this possible, Plaintiff moves to permit immediate enforcement and domestication of the judgment without the 30-day stay in Fed.R.Civ.P. 62(a) (authorizing this Court to cancel the 30-day stay) and moves to authorize immediate enforcement and domestication of the judgment in Delaware without the 30-day delay in 28 U.S.C. § 1963 (authorizing this Court for good cause to permit immediate enforcement and domestication in another federal court without the 30-day delay in that section).

For good cause shown, to permit Plaintiff to participate timely in the recovery of his judgment sum from the sale of the Citgo shares in Delaware, it is hereby

ORDERED that there shall be no stay in enforcement or domestication of the judgment in this action under Fed.R.Civ.P. 62(a), and that there shall be no delay or stay in Plaintiff's entitlement to enforce and domesticate the

judgment in this action in the United States District Court for the District of Delaware pursuant to 28 U.S.C. § 1963, and that, effective immediately upon entry, Plaintiff may enforce and domesticate the judgment in this action in the United States District Court for the District of Delaware. Nothing in this Order shall impair the control or authority of the United States District Court for the District of Delaware to control and administer the proceedings in its own Court.

Done and ordered in Chambers this 4th day of December 2023 in Miami, Florida.

/s/ Paul C. Huck
Hon. Paul C. Huck
United States District Judge

APPENDIX F — FINAL JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI-DADE DIVISION, DATED DECEMBER 4, 2023

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA,
MIAMI DIVISION

Case No.: 12-CV-23743-HUCK

RICARDO DEVENGOECHEA,

Plaintiff,

vs.

BOLIVARIAN REPUBLIC OF VENEZUELA,
A FOREIGN STATE,

Defendant.

December 4, 2023, Decided;
December 4, 2023, Entered on Docket

FINAL JUDGMENT

This action having come to trial before this Court on this December 4, 2023, and the Court having made Findings of Fact and Conclusions of Law, and the Court having granted Plaintiff's motion to dispense with the stay in enforcement and/or domestication of the judgment pursuant to Fed.R.Civ.P. 62(a) and 28 U.S.C. 1963, it is

ORDERED, ADJUDGED AND DECREED that Plaintiff Ricardo Devengoechea shall recover of the Defendant Bolivarian Republic of Venezuela the sum Nine Million Five Hundred Thousand Dollars ($9,500,000.00) plus mandatory prejudgment interest thereon since July 17, 2010 at the annual rate of six percent (6%) per annum in the sum Seven Million Six Hundred Twenty-Eight Thousand Six Hundred Thirty Dollars and Ten Cents ($7,628,630.10), making in all the total sum Seventeen Million One Hundred Twenty Eight Thousand Six Hundred Thirty Dollars and Ten Cents ($17,128,630.10), plus taxable costs, and that Plaintiff shall have execution therefor immediately and may enforce and domesticate this judgment immediately without any stay or delay under Fed.R.Civ.P. 62(a) and/or 28 U.S.C. 1963.

DONE in Chambers, Miami, Florida, this 4th day of December 2023.

/s/ Paul C. Huck
Hon. Paul C. Huck
United States District Judge

APPENDIX G — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED JULY 31, 2024

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1518
(D. Del. No. 1-23-mc-00609)

RICARDO DEVENGOECHEA,

Appellant

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,
A FOREIGN STATE

Filed July 31, 2024

Present: JORDAN, McKEE and AMBRO, *Circuit Judges*

1. Motion by Appellant to Stay Mandate Pending a Decision of The United States Supreme Court on Plaintiff's Prospective Petition for Writ of Certiorari.

Respectfully,
Clerk/pdb

Appendix G

ORDER

The foregoing motion to stay the mandate is hereby GRANTED.

By the Court,

s/ Kent A. Jordan
Circuit Judge