No. 26-

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 ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(CIRCUIT CONFLICT, 2-1 VOTE WITH DISSENT)

Fed.R.Civ.P.55 Issues

1. Does Fed.R.Civ.P.55 – which governs entry of default judgments for failure to respond to a complaint – also apply in the post-pleading stages where there are different post-pleading rules already in place that provide for default judgments arising from post-pleading transgressions?

2. May a trial judge proceed with trial in the absence of a defendant who has intentionally disregarded notice of the trial schedule after appearing and litigating in the case? – ***OR*** when a defendant fails to appear at trial, is the trial judge required to cancel the trial at the last minute and delay the case by switching to separate "default" procedures under Fed.R.Civ.P.55?

Party Presentation Issue

3. Did the Eleventh Circuit violate the time-honored Rule of Party Presentation – which this Court enforced three times in the past six years – by vacating the District Court's judgment *sua sponte* on an entirely new ground never before raised by any party at any stage nor in any party's appellate brief or oral argument?

PARTIES TO THIS PROCEEDING

As stated in the caption, Plaintiff-Petitioner Ricardo Devengoechea and Defendant-Respondent Bolivarian Republic of Venezuela are the only parties in this proceeding. The parties have remained unchanged at every stage of this litigation.

CORPORATE DISCLOSURE STATEMENT

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

RELATED PROCEEDINGS AND CITATIONS

There are two sets of proceedings related to this case, only the first of which is before this Court on the present Petition.

1. Present Case: Florida and Eleventh Circuit (2-1 Vote) (Vacatur of Judgment After Trial; Now Before This Court)

The present case, now before this Court, arises from the Southern District of Florida and Eleventh Circuit and concerns the final judgment after trial, which the Eleventh Circuit vacated by a 2-1 vote:

- *Devengoechea v. Bolivarian Republic of Venezuela,* 187 F.4th 1353 (11th Cir. Aug. 18, 2026) (2-1 vote) (Pet.App.1a-31a) (vacating judgment after trial on the ground that, under Fed.R.Civ.P.55, the District Court had no authority to proceed with trial in Defendant's absence despite undisputed notice to Defendant of the Trial Schedule, holding that Defendant's

failure to attend trial or file two trial-related documents shortly before trial required the District Court to cancel the trial at the last minute and switch to "default" procedures under Fed.R.Civ.P.55);

- *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,* S.D.Fla. case no. 12-CV-23743, 2023 WL 9184570 (S.D.Fla. 2023) (Pet.App.47a-62a) (Findings of Fact and Conclusions of Law ["FFCL"] and Final Judgment for Plaintiff after trial when Defendant, who had notice of the Trial Schedule, intentionally failed to attend trial or file two trial-related papers shortly before trial).

2. Related Case: Delaware and Third Circuit (Judgment Enforcement) (Not Before This Court)

The related case, not before this Court, arose from the Delaware District Court and Third Circuit. It involved Plaintiff's attempt to enforce his judgment against Defendant-Venezuela's assets held by the Delaware District Court:

- *Devengoechea v. Bolivarian Republic of Venezuela,* 2024 WL 3342424 (3d Cir. 2024) (Defendant Venezuela had immunity to

execution against its assets held by the Delaware District Court), *cert. denied,* 145 S.Ct. 592 (2024);

- *Devengoechea v. Bolivarian Republic of Venezuela,* 2024 WL 640378 (D.Del. 2024) (Defendant Venezuela had immunity to execution against its assets held by the Delaware District Court).

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CITATIONS OF OPINIONS AND ORDERS

The citations of the relevant official and unofficial reports of the opinions and orders are set forth at pp.ii-iv *supra.*

BASIS FOR JURISDICTION IN THIS COURT

The date of the judgment and opinion of the Eleventh Circuit of which Petitioner seeks review is August 18, 2026 with dissent included (Pet.App.1a-39a). This Petition is timely under Sup.Ct.R. 13.1. This Court has jurisdiction to review the Eleventh Circuit's judgment and opinion by Writ of Certiorari pursuant to 28 U.S.C. § 1254(1).

RULE AND STATUTE AT ISSUE

Rule 55 of the Federal Rules of Civil Procedure provides:

> "(a) ENTERING A DEFAULT. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.
>
> "(b) ENTERING A DEFAULT JUDGMENT.
>
> "(1) …
>
> "(2) *By the Court.*… In all other cases [*i.e.,* where damages are unliquidated and not a sum certain], the party must apply to the court for a

> default judgment…. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings...."

Title 28 United States Code section 1608(e) provides:

> "(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section [*i.e.,* by international agreement, via foreign ministry, diplomatic channels, etc.]."

STATEMENT OF THE CASE

1. Bases for Jurisdiction in the District Court

The Florida District Court had subject matter jurisdiction pursuant to 28 U.S.C. §§ 1330(a) & 1605(a)(2). After trial on the merits and jurisdiction, the Florida District Court expressly found jurisdiction under all three jurisdictional clauses in 28 U.S.C. § 1605(a)(2) even though one was sufficient (FFCL at Pet.App.56a-60a; 2023 WL 9184570 **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), declining to address the first two clauses in § 1605(a)(2) as unnecessary. *Devengoechea v. Bolivarian Republic of Venezuela, supra,* 889 F.3d at 1220 (11th Cir. 2018) ("we need consider only the third clause").

2. Material Underlying Facts

In the related judgment-enforcement case, the Third Circuit accurately described 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. 2024) (emp.added).

The FFCL of the Florida District Court in the present case confirms the Third Circuit's criticism of Venezuela's conduct as "deceitful" and "appalling." With a promise of payment that never came, Venezuela deceived Plaintiff into parting with his valuable collection of documents, artifacts and memorabilia once belonging to the famous South American leader Simon Bolivar. Bolivar, known as the "Liberator," became famous by leading five South American countries in successful revolutions against Spanish colonial rule (FFCL at Pet.App.47a-48a; 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.49a; 2023 WL 9184570 at *1).

Plaintiff obtained his 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.49a; 2023 WL 9184570 at *1). *See* Family Tree showing Plaintiff's relationship to deMier in the book *"La Carta"* [*"The Letter"*] in S.D.Fla. record 12-CV-23743 at ECF 264-1.

In 2007 Venezuela became aware of Plaintiff's collection and sent several high governmental officials in a private jet to Florida to target Plaintiff and obtain his collection. These officials included Delcy Rodriguez who then was Coordinator General of the Office of Venezuela's Vice-President and who today is herself President of Venezuela. Venezuela's officials, after meeting with Plaintiff, and wining-and-dining him near his home in Orlando, Florida, induced Plaintiff into the following agreement: 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.49a-52a; 2023 WL 9184570 **2-3).

Plaintiff complied. Defendant-Venezuela 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 deliver the collection to the home of Venezuelan President Hugo Chavez, which Plaintiff did (FFCL at Pet.App.52a-53a; 2023 WL 9184570 at *3). That is the last Plaintiff saw of his collection. Venezuela kept the collection and never paid for it (FFCL at Pet.App.54a-55a; 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. record 12-CV-23743 at ECF 317-5.

Plaintiff's efforts to regain his collection or payment for it failed including the unsuccessful efforts of Plaintiff's counsel prior to suit (FFCL at Pet.App.55a; 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 the Southern District of Florida

a. Venezuela's Vigorous Defense for Several Years

Venezuela vigorously defended the lawsuit for several years:

Venezuela twice moved to dismiss Plaintiff's claim. Both times, the Florida District Court denied Venezuela's motions and upheld its subject matter jurisdiction under 28 U.S.C. § 1605(a)(2) (S.D.Fla. record 12-CV-23743 at ECF 165 & 270; 2016 WL 11552419 & 2023 WL 5625653).

Venezuela took an interlocutory immunity appeal to the Eleventh Circuit which also upheld jurisdiction under § 1605(a)(2). *Devengoechea v. Bolivarian Republic of Venezuela, supra,* 889 F.3d 1213 (11th Cir. 2018).

Venezuela filed an Answer to Plaintiff's Second Amended Complaint and thereby avoided a default (Answer in S.D.Fla. record 12-CV-23743 at ECF 185).

Venezuela took extensive discovery including 2 depositions, interrogatories, admission requests, and document requests (S.D.Fla. record 12-CV-23743 without limitation at ECF 222-1, 222-3, 222-7, 222-11 & 222-12).

Venezuela moved for summary judgment which the District Court also denied (S.D.Fla. record 12-CV-23743 at ECF 270; 2023 WL 5625653).

Following this extensive multi-year defense, Venezuela's counsel-of-record withdrew, leaving Venezuela as defendant *pro se* (S.D.Fla. record 12-CV-23743 at ECF 253 & 255) which is permitted for foreign nations.[1]

---

[1] This Court has approved *pro se* litigation by foreign nations because it "makes for better international relations, conforms to diplomatic usage in other matters, accords to the Executive Department the respect rightly due to it, and tends to promote harmony of action and uniformity of decision." *In re Muir,* 254 U.S. 522, 532-533 (1921); *Berizzi Bros. Co. v. The Pesaro,* 271 U.S. 562, 570 (1926) (Ambassador's appearance); *Gul Djemal,* 264 U.S. 90, 94 (1924) (quoting *Muir*); *The Anne,* 16 U.S. 435, 446 (1818) (nation may authorize consul's appearance).

Similarly, under the Foreign Sovereign Immunities Act, Courts uniformly permit foreign nations to represent themselves *pro se. Aquamar S.A. v. Del Monte Fresh Produce N.A.,* 179 F.3d 1279, 1297 (11th Cir. 1999) ("It has been recognized that diplomatic agents of one state, while in another, may commence and maintain actions on behalf of their state," citing cases); *Gerritsen v. Escobar y Cordova,* 688 F.Supp. 556, 559 (C.D.Calif. 1988) ("The United States claims that allowing foreign states to represent themselves will further this purpose [of the Foreign Sovereign Immunities Act]…. [T]he policies of the FSIA are best served by allowing pro se status, [so] this Court will allow the UMS [Mexico] to represent itself in this proceeding."); *Velasquez v. General Consulate of Mexico,* 1993 WL 69493 at *3 (N.D.Calif. 1993) ("defendant [Mexico] may proceed pro se").

b. Repeated Notices to Venezuela and its Off-the-Record Counsel After Withdrawal of Venezuela's Counsel of Record

After withdrawal of Venezuela's counsel of record, *id.,* Plaintiff repeatedly gave prompt notice of all proceedings ***both*** to Venezuela directly ***and*** to Venezuela's separate off-the-record counsel who monitored the case from the sidelines. *See* numerous Certificates of Service in Plaintiff's (1) Notice of the Trial Schedule and Order denying Venezuela's motion for summary judgment (Pet.App.73a-76a; S.D.Fla. record 12-CV-23743 at ECF 271 & 280), (2) Notice of Plaintiff's Trial Evidence and Witness and Exhibit Lists, *id.,* at ECF 281, (3) Notice of Plaintiff's election to use Zoom testimony for expert witness at trial and related Court Order, *id.,* at ECF 283-284, (4) Notice of Plaintiff's Proposed FFCL, *id.,* at ECF 288, (5) Notice of Plaintiff's Pre-Trial Statement, *id.,* at ECF 289, (6) further Notice of the Trial Schedule, *id.,* at ECF 291, and (7) additional hand-served Notice of the Trial Schedule, as well as hand-served Notice of Plaintiff's Pre-Trial Statement and Proposed FFCL. *Id.,* at ECF 292.

The Eleventh Circuit majority acknowledged that "the record indicates that Devengoechea notified Venezuela of the trial date" (Pet.App.10a; 187 F.4th at 1359). This cursory reference by the majority to "notified" is an under-statement – the dissent accurately points out that Plaintiff served ***many*** Notices on Venezuela by "first-class U.S. mail, DHL Express, U.S. Air Mail, and email" (Pet.App.38a; 187

F.4th at 1371). *See* numerous Notices to Venezuela at p.9 *supra.*

c. Venezuela Intentionally Declines to Attend Trial Despite Repeated Notices to it of the Trial Schedule and Declines to File Two Trial-Related Papers – Plaintiff Proves His Case at Trial

Venezuela chose not to appear at trial despite these repeated Notices of the Trial Schedule and pretrial proceedings to both Venezuela directly and its off-the-record counsel who monitored the case from the sidelines. *Id.* The two trial-related papers which Venezuela declined to file shortly before trial – apparently because it decided not to attend trial anyway – were a pretrial stipulation and proposed FFCL (FFCL at Pet.App.48a; 2023 WL 9184570 *1).

The District Court exercised its discretion to proceed with trial in defendant's absence and, after hearing Plaintiff's evidence, "conclude[d] that it has jurisdiction under the FSIA and that Plaintiff has proved his case on the merits" (FFCL at Pet.App.48a; 2023 WL 9184570 at *1). The District Court repeated that, after Venezuela's vigorous defense for many years, it "did not hold Defendant in default but treated the trial as a full trial on the merits where Plaintiff bore all evidentiary burdens" (Pet.App.43a; Order in 12-CV-23743 record at ECF 299 p.1).

The District Court's FFCL appears at Pet.App.47a-62a, 2023 WL 9184570, its Final Judgment at Pet.App.67a-68a.

Immediately after trial, Plaintiff served Notice both on Venezuela directly and on its monitoring off-the-record counsel of the District Court's FFCL, Final Judgment, and related Trial Order (Pet.App.69a-72a; Notice in S.D.Fla. record 12-CV-23743 at ECF 297).

Venezuela re-emerged after trial with counsel of record and appealed to the Eleventh Circuit (S.D.Fla. record 12-CV-23743 at ECF 301, 305, 307).

d. The Eleventh Circuit, With a Dissent, Vacates the Judgment on a Ground Never Raised by Any Party at Any Stage Nor in Appellate Briefs

Rather than addressing the arguments of the parties in their appellate briefs, the Eleventh Circuit reached out *sua sponte* and contrived a new ground for its decision never raised by any party at any stage nor in any party's appellate briefs. The Eleventh Circuit held that Venezuela's failure to show up at trial or file two trial-related papers shortly before trial (pre-trial stip and proposed FFCL) deprived the District Court of authority to proceed with trial and required the District Court to switch to "default" procedures under Rule 55 (Pet.App.10a; 187 F.4th at 1359) – despite undisputed repeated notices to Venezuela of the Trial Schedule which showed Venezuela's intention not to participate in trial anyway. The Eleventh Circuit vacated the judgment on this new ground *sua sponte* (Pet.App.1a-14a; *Devengoechea v. Bolivarian Republic of Venezuela, supra,* 187 F.4th 1353, 1358-59 (11th Cir. 2026)).

It did not matter to the Eleventh Circuit that Plaintiff had served repeated Notices on Venezuela and its off-the-record counsel of the Trial Schedule and trial requirements (p.9 *supra*).

Nor did it matter to the Eleventh Circuit that Venezuela had formally appeared by counsel and vigorously defended the case for several years including its Answer, motions to dismiss, motion for summary judgment, extensive discovery requests including two depositions, interrogatories, and requests for admissions and documents, and its prior interlocutory immunity appeal to the Eleventh Circuit (p.7 *supra*).

The Eleventh Circuit predicated its decision on the default provisions of Fed.R.Civ.P. 55 which it held implemented the default provision of the Foreign Sovereign Immunities Act in 28 U.S.C. § 1608(e) (Pet.App.9a; 187 F.4th at 1358).

Apart from the error in the Eleventh Circuit's opinion, neither party had raised such an argument at any time nor in any appellate brief. The first time this ground was raised was during oral argument in the Eleventh Circuit where the Court *sua sponte* injected it into the colloquy despite neither party's ever raising it at any time nor in any appellate brief.

e. The Dissent in the Eleventh Circuit

Judge Rosenbaum filed a cogent dissent. She pointed out that Venezuela was not in "default" within the meaning of Rule 55 because Rule 55 applies only at the pleading stage when a defendant ***"fails*** to plead

or otherwise defend." Judge Rosenbaum pointed out that ***"fails"*** to defend is different from ***"ceases"*** to defend and that both the text and context of Rule 55 would not make sense if the rule applied when a defendant ***"ceases"*** to defend after the pleading stage (Pet.App.21a; 187 F.4th at 1363-64) (" 'has failed to defend' is not the same thing as 'has ceased to defend' ").

Judge Rosenbaum pointed out that Venezuela did not ***"fail"*** to defend but ***"ceased"*** to defend after Venezuela vigorously defended the case for many years through its Answer, dismissal motions, motion for summary judgment, extensive discovery, and interlocutory immunity appeal (*Id.,* & p.9 *supra*).

Judge Rosenbaum reasoned that applying Rule 55 after the pleading stage not only would be contrary to its text and context but also would render superfluous many post-pleading rules which specifically dealt with post-pleading default judgments (Pet.App.24a; 187 F.4th at 1365) ("Rules 37(b)(2)(A)(vi) and 37(d)(3) wouldn't be necessary in their present form").

Judge Rosenbaum further pointed out that the default provision of 28 U.S.C. § 1608(e) is consistent with the textual limitation of Rule 55 to the pleading stage where a defendant completely "fails" to defend as opposed to "ceases" to defend (Pet.App.33a; 187 F.4th at 1369) ("Rule 55 is Rule 55, whether in an FSIA case or any other type of civil case").

Finally, Judge Rosenbaum pointed out that Venezuela received undisputed multiple notices of the

trial which it voluntarily chose not to attend (Pet.App.37a-38a; 187 F.4th at 1371) and that the District Court complied with the evidentiary requirements of a default judgment anyway (assuming they applied) because it required Plaintiff to prove his case at trial with "evidence satisfactory to the Court," 28 U.S.C. § 1608(e) (Pet.App.38a-39a; 187 F.4th at 1371) – that, as Judge Rosenbaum put it, "the District Court entered judgment for Devengoechea only after it found he had proven all the elements of his claims by a preponderance of evidence" (Pet.App.18a; 187 F.4th at 1362).

REASONS FOR GRANTING THE WRIT ON BOTH SETS OF ISSUES

1. The Fed.R.Civ.P.55 Issues:

This Court Should Grant Certiorari to Resolve the Inter-Circuit Conflict Over Whether Fed.R.Civ.P.55 Applies After the Pleading Stage and Over Whether a District Judge Has Authority to Proceed With Trial in the Absence of a Defendant Who Intentionally Disregards Notice of the Trial Schedule – and to Resolve the Proper Interpretation of Rule 55 in Accord with its Text and Context

There are several reasons for granting Certiorari regarding the Rule 55 issues:

First, this Court should resolve the inter-Circuit conflict over whether the default provisions of Rule 55 apply only at the pleading stage and over whether a District Court may proceed to trial in a defendant's absence or, instead, must cancel the trial at the last minute and shift to "default" procedures under Rule 55.

Compare *Solaroll Shade and Shutter Corp. v. Bio-Energy Systems, Inc.,* 803 F.2d 1130, 1134 (11th Cir. 1986) ("[D]efendant has answered the complaint but fails to appear at trial, issue has been joined, and the Court cannot enter a default judgment.... [T]he

Court can proceed with trial."), and *Bass v. Hoagland,* 172 F.2d 205, 210 (5th Cir. 1949) ("When [defendant] filed [an answer] … neither the clerk nor judge could enter a default.… When neither [defendant] nor his attorney appeared at trial, no default was generated."),

with *City of New York v. Mickalis Pawn Shop LLC,* 645 F.3d 114, 129-130 (2d Cir. 2011) (quoting *Au Bon Pain Corp. v. Artect, Inc.,* 653 F.2d 61 (2d Cir. 1981), for the proposition that "a defendant's obstructionist litigation tactics including … failing to appear for trial" supported default under Rule 55); and *Ringgold Corp. v. Worrall,* 880 F.2d 1138, 1141 (9th Cir. 1989) (default under Rule 55 where "a party fails to attend on the first day of trial scheduled months before").

See the extensive inter-Circuit conflict discussed in Cantarino, *Playing by the Rules, FRCP 55(a) and the Circuit Split Regarding Its Meaning,* 25 Regent Univ. Law Review 209 (2012) (collecting numerous conflicting Rule 55 cases).

Second, in resolving these inter-Circuit conflicts regarding Rule 55, reversal is necessary to avoid rendering other rules superfluous. Many other civil rules already authorize entry of default judgments ***after*** the pleading stage. To apply Rule 55 to post-pleading defaults would render superfluous and unnecessary other rules which are specifically designed for post-pleading default judgments. *See, e.g.,* Fed.R.Civ.P. 16(f)(1) (authorizing use of Rule 37(b)(2)(A)(vi) to enter default judgment for failure to comply with pretrial scheduling order); Fed.R.Civ.P.

37(b)(2)(A)(vi) (authorizing default judgment for failure to comply with discovery order); Fed.R.Civ.P. 37(c)(1)(C) (authorizing use of Rule 37(b)(2)(A)(vi) to enter default judgment for failure to make discovery); Fed.R.Civ.P. 37(d)(3) (same); Fed.R.Civ.P. 37(e)(2)(C) (authorizing default judgment for failure to preserve electronically stored information). *See* dissent at Pet.App.24a; 187 F.4th at 1365 (other rules "wouldn't be necessary in their current form"). *Hibbs v. Winn,* 542 U.S. 88, 101 (2004) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative, superfluous, void or insignificant"); *Corley v. U.S.,* 556 U.S. 303, 314 (2009) (same).

Third, permitting Rule 55 to apply to post-pleadings defaults – where other post-pleading rules already authorize default judgments – also invites confusion over which rule applies and over the standards that govern. *Home Port Rentals, Inc. v. Allen,* 957 F.2d 126, 133 (4th Cir. 1992) ("The district court did not address whether it was issuing its default judgment pursuant to Rule 37 or Rule 55," addressing confusion over which rule to apply).

Fourth, a common-sense reading of Rule 55 in context also limits its application to defaults at the pleading stage. The rule on its face limits a "default" to a defendant who "fails to plead or otherwise defend." Fed,R.Civ.P. 55(a). "Pleading" by definition exists only at the pleading stage (Fed.R.Civ.P. 7(a), defining "pleading") which in context similarly limits its parallel provision "otherwise defend" in Rule 55(a) to the same pleading stage, as the dissent correctly noted (Pet.App.19a-22a; 187 F.4th at 1363).

Fifth, many provisions in Rule 55 would not make sense if it applied after the pleading stage. The provision for entry of "default" by the Clerk (Fed.R.Civ.P. 55(a)) would not make sense and would delegate excessive power to the Clerk if the District Judge already had assumed authority over the case by striking a defendant's Answer for post-pleading violation of the rules. And the provision for entry of a "default judgment" by the Clerk in certain circumstances (Fed.R.Civ.P. 55(b)(1)) also would not make sense, and would give the Clerk excessive authority, if the District Judge already had assumed authority over the case by striking a defendant's Answer. In these and similar circumstances both the text and context of Rule 55 compel its limitation to the pleading stage, as the dissent correctly showed.

Sixth, judicial efficiency and intelligent case administration compel a limitation of Rule 55 to the pleading stage and warrant authorization for the District Judge to proceed with trial in a defendant's absence. The District Judge is in a unique position to discern the degree of a defendant's involvement in a case and whether a defendant's minor transgressions or failure to show up at trial constitute a "default." Here Venezuela's comprehensive defense of the case for several years (p.7 *supra*) and its legitimate status as a *pro se* defendant (p.8n.1 *supra*) clearly refute any notion that it was somehow in "default." This supports the District Judge's decision to proceed with trial in Venezuela's absence after Venezuela ignored repeated and undisputed notice of the Trial Schedule (p.9 *supra*).

Seventh, the Eleventh Circuit's decision seriously prejudices already-overworked trial Judges as well as plaintiffs and their witnesses and attorneys. Trial Judges and their staffs who prepare for trial set aside substantial time and resources in accord with their tight schedules. Plaintiffs and their witnesses and attorneys who prepare for trial typically reschedule their lives to show up for trial ready to proceed. The last-minute cancellation of a trial by reason of a defendant's non-appearance seriously prejudices trial Judges, their staffs, the Court system, as well as Plaintiffs, their witnesses, and attorneys. Yet that is exactly what the Eleventh Circuit imposes by prohibiting a trial on the merits when a defendant fails to show up. Reversal is essential for the integrity of the judicial system.

Eighth, the Eleventh Circuit's decision sets a terrible precedent that invites obstruction and delay. It invites recalcitrant defendants to obstruct and delay a case by simply failing to show up at trial: A defendant's last-minute no-show at trial, or last-minute failure to file a couple trial-related papers shortly before trial, will require a District Judge to slam on the brakes, cancel the trial at the last minute, and delay the case while switching to separate "default" proceedings under Rule 55.

Ninth, preeminent legal scholars support the proposition that a District Court has authority to proceed with trial in a defendant's absence:

> "A defendant who has participated throughout the pretrial process and has filed a responsive pleading, placing the case at issue, has not

> conceded liability. ***Unlike a default, if the trial proceeds in the absence of a defendant, the court should require plaintiff to present evidence supporting liability, as well as damages,*** and a judgment should be entered in plaintiff's favor only if the evidence supports it."

10A Wright & Miller, *Federal Practice and Procedure* §2682 (4th ed., 2025) (emp.added) ("court can exercise its discretion and refuse to enter default").

The commentator cited earlier in the text reaches the same conclusion:

> "Three bases suggest that a narrow interpretation of failure 'to plead or otherwise defend' in Rule 55(a) [limiting Rule 55 to the pleading stage] is the better approach: (1) the plain meaning of Rule 55(a); (2) the better case law analyzing Rule 55(a); and (3) the Federal Rules of Civil Procedure as a whole."

Cantarino, *supra, Playing by the Rules, FRCP 55(a) and the Circuit Split Regarding Its Meaning,* 25 Regent Univ. Law Review 209, 226 (2012).

Tenth, plain and simple fairness compels reversal. The Eleventh Circuit faulted the District Court for failing to comply with the 7-day notice requirement for a default judgment under Rule 55(b)(2) and for failing to ensure that Plaintiff "establish entitlement to relief by providing satisfactory evidence as to each element of [his] claims" (Pet.App.14a; 187 F.4th at 1360). Neither criticism is correct for the following two reasons:

Even though this case did not involve a default under Rule 55, the dissent correctly pointed out (1) that Plaintiff gave Venezuela more than 4 months' notice of the Trial Schedule (Pet.App.38a-39a; 187 F.4th at 1371, referring to Notice at Pet.App.73a-76a), and that (2) Plaintiff complied with what would be the requirements of default proof anyway as part of Plaintiff's proof at trial. The FSIA requires in cases of default that Plaintiff prove his case by "evidence satisfactory to the Court," 28 U.S.C. § 1608(e), which is exactly what Plaintiff did anyway at trial on the merits (Pet.App.39a; 187 F.4th at 1371: "That's precisely what Devengoechea did"). Indeed, the District Court after trial "conclude[d] that … Plaintiff has proved his case on the merits" (FFCL at Pet.App.48a; 2023 WL 9184570 at *1) in a "full trial on the merits where Plaintiff bore all evidentiary burdens" (Pet.App.43a; Order in 12-CV-23743 record at ECF 299 p.1).

This Court should grant Certiorari regarding the Rule 55 issues and should reverse the judgment of the Eleventh Circuit.

2. The Party Presentation Issue:

This Court Should Grant Certiorari to Address the Party Presentation Issue Where the Eleventh Circuit Violated the Doctrine of Party Presentation by *Sua Sponte* Using a New Ground to Vacate the Judgment of the District Court Which the Parties Never Presented at any Stage of the Case Nor in any Appellate Brief

The Eleventh Circuit's decision contravenes the Doctrine of Party Presentation. This Court has invoked this doctrine no less than three times in the last six years. It prevents a Court of Appeals from contriving new claims or issues on behalf of an Appellant – in order to reverse a judgment – which the Appellant neither asserted in the District Court nor in its brief in the Court of Appeals. *Margolin v. National Association of Immigration Judges,* 608 U.S. 339, 342-343 (2026) (doctrine of Party Presentation prohibits a Court of Appeals from reversing a judgment based on a new approach to administrative jurisdiction raised by the Court of Appeals regarding federal-employee claims but never asserted by the parties in the District Court nor appellate briefs); *Clark v. Sweeney,* 607 U.S. 7, 9-10 (2025) (doctrine of Party Presentation prohibits a Court of Appeals from reversing a judgment based on its own *sua sponte* findings regarding an impartial jury and confrontation where appellant never presented these claims and instead asserted only ineffective assistance of counsel in the District Court and appellate brief); *U.S. v. Sineneng-Smith,* 590 U.S. 371, 375-376 (2020) (doctrine of Party Presentation prohibits a Court of Appeals from reversing a

judgment based on its own *sua sponte* findings of First Amendment overbreadth where appellant never presented this claim and instead asserted only the straightforward denial of First Amendment speech rights in the District Court and appellate brief).

The Eleventh Circuit's decision contravenes the doctrine of Party Presentation. The Eleventh Circuit vacated the judgment of the District Court based on a claim/issue never presented by any party in the District Court nor in their briefs on appeal in the Eleventh Circuit. The Eleventh Circuit held *sua sponte* that Venezuela's failure to attend trial or file two trial-related papers shortly before trial constituted a "default" which required the District Court to abruptly switch to "default" procedures under Fed.R.Civ.P.55 and that the District Court could not proceed with trial on the merits despite timely notice to Venezuela of the Trial Schedule (Pet.App.1a-14a; 187 F.4th 1353).

No party ever mentioned this claim/issue at any time in the District Court nor in any Appellate Brief.

The Eleventh Circuit raised it *sua sponte* for the first time at oral argument on the appeal.

On rehearing in the Eleventh Circuit, Devengoechea promptly objected precisely because, *inter alia,* the Eleventh Circuit's initial decision (like its decision on rehearing) ran afoul of the Party-Presentation doctrine. *See* Devengoechea Letter of Supplemental Authority filed Dec. 12, 2025 in Eleventh Circuit case no. 24-10029, objecting on ground of Party-Presentation Rule.

Nor does Venezuela's ***different and unrelated*** claim of alleged "default" save the Eleventh Circuit's decision. In its brief in the Eleventh Circuit, Venezuela asserted a ***different and unrelated*** claim of default – that its own failure to retain new counsel after its counsel-of-record withdrew somehow constituted a "default" under Rule 55 (Venezuela brief in Eleventh Circuit at p.30). This was a totally ***different and unrelated*** claim of default (failure to retain counsel after former counsel withdrew) which had nothing to do with the new claim of default asserted *sua sponte* by the Eleventh Circuit (failure to attend trial or file two trial-related papers).

Venezuela's mention in its Brief of alleged "default" on a different and unrelated ground does not save the Eleventh Circuit's decision. *U.S. v. Sineneng-Smith, supra,* 590 U.S. at 375-376 (2020) (mere mention of "First Amendment" on a different ground insufficient – First Amendment overbreadth claim raised *sua sponte* by Court of Appeals but not by parties contravened doctrine of Party Presentation notwithstanding ***different*** First Amendment claim raised by parties involving a straightforward denial of First Amendment speech rights. [2]

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[2] In its Eleventh Circuit Brief, Venezuela's different and unrelated claim of alleged default (its own failure to retain new counsel after counsel-of-record withdrew) clearly lacked merit anyway, in light of extensive precedent confirming Venezuela's right as a foreign nation to proceed *pro se* (p.8n.1 *supra*).

CONCLUSION

This Court should grant Certiorari, should reverse the decision of the Eleventh Circuit, and should remand with directions to affirm the Judgment of the District Court.

Respectfully submitted,

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APPENDIX A — OPINION (WITH DISSENT) OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED AUGUST 18, 2026

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-10029

RICARDO DEVENGOECHEA,

Plaintiff-Appellee,

versus

BOLIVARIAN REPUBLIC OF VENEZUELA,
A FOREIGN STATE,

Defendant-Appellant.

Filed August 18, 2026

Appeals from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:12-cv-23743-PCH

Before ROSENBAUM, BRANCH, and KIDD, Circuit Judges.
Rosenbaum, Circuit Judge, dissenting.

KIDD, Circuit Judge:

We vacate our prior opinion in this case and substitute the following in its place.

Appendix A

Ricardo Devengoechea sued the Bolivarian Republic of Venezuela to recover his collection of Simón Bolívar artifacts that Venezuela allegedly never returned to him. While Devengoechea's lawsuit was pending, Venezuela underwent a regime change, its attorneys withdrew from the case, and it failed to comply with the district court's pretrial orders.

Devengoechea decided not to seek a default judgment under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1608(e). Instead, at Devengoechea's request, the district court tried the case in absentia—that is, without Venezuela's presence. This was improper. The Foreign Sovereign Immunities Act requires courts to follow its default judgment provision, section 1608(e). We have previously held that Federal Rule of Civil Procedure 55 provides the procedural mechanism for courts to implement section 1608(e)'s requirements. Because the district court did not follow section 1608(e) and Rule 55, we vacate the judgment and remand the case to the district court.

I. BACKGROUND

Ricardo Devengoechea lives in Orlando, Florida, and once had a collection of Simón Bolívar artifacts. We described these artifacts and their historical significance the last time this case was before us. *See Devengoechea v. Bolivarian Republic of Venez.* ("*Devengoechea I*"), 889 F.3d 1213, 1216-17 (11th Cir. 2018). According to Devengoechea, officials of the Bolivarian Republic of Venezuela contacted him through his cousin and expressed

interest in purchasing the collection. In response, Devengoechea provided the Venezuelan officials with copies of certain items in the collection.

Shortly after, the Venezuelan officials allegedly arranged for a meeting with Devengoechea in Orlando to examine the collection and negotiate its purchase. During this meeting, the officials asked Devengoechea to bring the collection to Venezuela to continue negotiations. The officials and Devengoechea orally agreed to have the collection inspected in Venezuela, and after the inspection, the officials would either purchase the collection or return it to Devengoechea in Orlando.

In Venezuela, the officials informed Devengoechea that they needed more time to examine the collection. So Devengoechea left the collection in Venezuela with the officials and returned to the United States. Ultimately, Venezuela neither paid Devengoechea for the collection nor returned it to him.

Devengoechea sued Venezuela under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330(a), 1602-1611, for breach of contract and unjust enrichment. Because Venezuela failed to appear in the case, the clerk entered a default, the district court held a bench trial on damages, and the district court entered a default judgment against Venezuela.

Then Venezuela appeared. At Devengoechea's request, the district court vacated the clerk's default and default judgment, and it allowed Venezuela to respond to the

complaint. Venezuela eventually moved to dismiss the operative complaint for lack of subjectmatter jurisdiction, among other grounds. The district court denied Venezuela's motion, Venezuela appealed, and we affirmed. *See Devengoechea I*, 889 F.3d at 1217.

On remand, Venezuela filed a motion to dismiss the case on jurisdictional grounds and for summary judgment. While the motion was pending, a regime change occurred in Venezuela, and Venezuela's counsel withdrew from the case. Eventually, the district court denied Venezuela's motion. The district court then set several pretrial deadlines and filing requirements that Venezuela failed to meet. The district court noted that "[t]his alone would [have] be[en] an appropriate ground for granting a default against . . . Venezuela, and a ruling in favor of . . . Devengoechea, on liability." But because Devongoechea "stated he prefer[red] to prove his case," the district court "allowed the matter to proceed to trial on the merits."

Although Devengoechea notified Venezuela of the bench trial date, Venezuela did not appear at trial. Notwithstanding Venezuela's absence at trial, the district court ruled in favor of Devengoechea on the merits and awarded him a $17,128,630.10 judgment. Soon thereafter, counsel for Venezuela appeared again, and this appeal followed.

II. STANDARD OF REVIEW

"We review the district court's grant of a default judgment for abuse of discretion." *Giovanno v. Fabec*,

804 F.3d 1361, 1365 (11th Cir. 2015) (quoting *Sanderford v. Prudential Ins. Co. of Am.*, 902 F.2d 897, 898 (11th Cir. 1990)).

III. DISCUSSION

Venezuela argues that Devengoechea should have proceeded with a default due to Venezuela's absence, "pursuant to the procedural and substantive protections of Rule 55 of the Federal Rules of Civil Procedure and [section] 1608(e) of the FSIA." We agree. Our discussion proceeds in two parts. We first explain why the proper resolution of this case was a default judgment under the FSIA, 28 U.S.C. § 1608(e). Then we explain that Federal Rule of Civil Procedure 55 provides the procedural mechanism to obtain a default judgment under section 1608(e).

A. Default Judgment Under the FSIA

"To sue a foreign sovereign in the courts of the United States, plaintiffs must follow the strictures of the Foreign Sovereign Immunities Act of 1976 (FSIA)," which is "the comprehensive statute that . . . supplies the ground rules for obtaining jurisdiction over a foreign state in the courts of this country." *Republic of Hungary v. Simon*, 604 U.S. 115, 145 S. Ct. 480, 486, 488, 221 L. Ed. 2d 1 (2025) (citation modified). As the source of jurisdiction, the FSIA "must be applied by the district courts in every action against a foreign sovereign." *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434-35, 109 S. Ct. 683, 102 L. Ed. 2d 818 (1989) (citation modified).

Appendix A

This case concerns the FSIA's mechanism to obtain a default judgment against a foreign state, 28 U.S.C. § 1608(e):

> No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

Like many of the FSIA's provisions, 28 U.S.C. § 1608(e) is modeled after one of the Federal Rules of Civil Procedure. *Compania Interamericana Export-Import, S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 951 (11th Cir. 1996) (explaining that "[s]ection 1608(e) is modeled after [Rule 55(d)], which similarly protects the federal government from default judgments based solely upon procedural defaults"); *see* Fed. R. Civ. P. 55 advisory committee's note to 2007 amendment (noting the stylistic changes that renumbered the former Rule 55(e) as Rule 55(d)).

We previously discussed the rationale supporting Rule 55(d) in *Campbell v. Eastland*, 307 F.2d 478, 490-92 (5th Cir. 1962). As we then held, Rule 55(d) is limited to cases of "inaction" because it "rests on the rationale that the taxpayers at large should not be subjected to the cost of a judgment entered as a penalty against a government

official which comes as a windfall to the individual litigant." *Campbell*, 307 F.2d at 491. Relying on *Campbell*, we applied Rule 55(d)'s rationale to interpret the FSIA's default judgment provision in *Compania*, where we explained that "Congress intended [section] 1608(e) to provide foreign states protection from unfounded default judgments rendered solely upon a procedural default." 88 F.3d at 950-51.

In *Compania*, the plaintiffs sued Dominicana, an airline corporation wholly owned by the government of the Dominican Republic. *Id.* at 949. Dominicana appeared in the action and responded to the complaint. *Id.* But due to political unrest, management changes, and financial difficulties, Dominicana failed to comply with the district court's orders and its counsel withdrew due to non-payment of legal fees. *Id.* at 949-50. Because of Dominicana's noncompliance, the district court entered default against Dominicana, directed the plaintiffs to file a motion for default judgment, and set a response deadline for Dominicana. *Id.* at 950. Once the plaintiffs moved for default judgment, counsel for Dominicana reappeared to set aside the entry of default. *Id.* Nonetheless, the "district court entered a final default judgment, citing Dominicana's 'failure to obtain . . . counsel and . . . failure to comply with [the] Court's discovery orders.'" *Id.* Dominicana moved for relief from the default judgment, but the district court denied its motion and its motion to set aside the entry of default. *Id.* Dominicana appealed, arguing that the district court abused its discretion in refusing to set aside the entry of default under Rule 55(c) and failed to follow 28 U.S.C. § 1608(e) in entering a default judgment. *Id.*

On appeal, we affirmed the denial of the motion to set aside the entry of default, finding that default was properly entered due to Dominicana's repeated noncompliance with the district court's orders. *Id.* at 952. But we vacated the default judgment because the district court did not consider the "differing standard required by [section] 1608(e) prior to its entry of default judgment against Dominicana." *Id.* at 951. Because "a default judgment governed by [section] 1608(e) must be treated differently than an ordinary default judgment . . . the claimant must 'establish his claim or right to relief,' and must do so by 'evidence satisfactory to the court.'" *Id.* More specifically, the plaintiffs were "required to establish entitlement to relief by providing satisfactory evidence as to each element of the claims upon which relief was sought." *Id.* Since the plaintiffs did not satisfy that requirement, we remanded the case so that the district court could properly apply section 1608(e). *Id.*

Compania governs the outcome here. First, we must adhere to the FSIA because this is an action against a foreign state. *Argentine Republic*, 488 U.S. at 434-35. As in *Compania*, the foreign state —here, Venezuela— appeared in the action below, responded to the complaint, and subsequently failed to comply with the district court's orders. 88 F.3d at 949-50. Once Venezuela failed to comply, it was arguably in default. At that point, to seek relief against Venezuela, Devengoechea should have sought a default judgment under the FSIA.

B. Procedures To Obtain a Default Judgment Under the FSIA

The FSIA requires "evidence satisfactory to the court" before entering a default judgment, but it does not otherwise establish a *procedure* for obtaining a default judgment. *Id.* at 950. That is where the Federal Rules of Civil Procedure come into play. *See Compania*, 88 F.3d at 950-52 (discussing Rule 55 in the context of an FSIA default judgment). But importantly, the FSIA does *not* limit the *triggering event* for those procedures in any way. Section 1608(e) governs any circumstance that would trigger a default judgment against a foreign state.

Rule 55 sets forth the process for obtaining a default judgment. First, the district court must enter a party's default upon a triggering event. *See* Fed. R. Civ. P. 55(a). Although Rule 55(a) speaks specifically of a "fail[ure] to plead or otherwise defend," section 1608(e) does not limit default judgments to this triggering event. The purpose of entering the default is to place the defaulting party on formal notice that a triggering event has occurred. *See* Fed. R. Civ. P. 55(c) (authorizing a motion to set aside an entry of default). Additionally, "[a]lthough Rule 55(a) contemplates that entry of default is a ministerial step to be performed by the clerk of court . . . a district judge also possesses the inherent power to enter a default." *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 128 (2d Cir. 2011) (citation modified).

Following the entry of default, a party may seek entry of a default judgment by the clerk, Fed. R. Civ. P. 55

(b)(1), or by the district court, Fed. R. Civ. P. 55(b)(2). *See S.E.C. v. Smyth*, 420 F.3d 1225, 1231-32 (11th Cir. 2005) (distinguishing Rule 55(b)(1) and Rule 55(b)(2)). Because Devengoechea's claims were not for a sum certain, Rule 55(b)(2) applies. *See id.* at 1231. It provides, in part, that if the district court intends to hold a hearing and the "party against whom a default judgment is sought has appeared personally or by a representative," that party must receive "written notice of the application" for a default judgment at least seven days before such a hearing. Fed. R. Civ. P. 55(b)(2).

In this case, Venezuela's counsel withdrew, and it did not subsequently comply with the district court's pretrial orders. At that point, Venezuela was likely in default, and if Devengoechea wished to proceed against Venezuela in absentia, he was required to follow Rule 55's procedures for seeking a default judgment. Yet neither the clerk nor the court entered a default under Rule 55(a), and Devengoechea did not apply to the district court for a default judgment under Rule 55(b)(2). Although the record indicates that Devengoechea notified Venezuela of the trial date, Devengoechea failed to provide the notice that Rule 55(b)(2) requires prior to the district court's proceeding to default judgment. Notably, Devengoechea *did* follow Rule 55 in securing an earlier default judgment against Venezuela that he later agreed to vacate.

If Devengoechea had followed Rule 55 once more, Venezuela would have received notice of the potential default at least seven days before any hearing and would have had an opportunity to contest the default judgment. Fed. R. Civ. P. 55(b)(2). While we may harbor doubts

about what Venezuela would have done upon receiving such notice, those doubts do not defeat the requirement to provide the notice. *See Compania*, 88 F.3d at 950 (defaulting foreign state reappeared with counsel upon plaintiffs' motion for default judgment to challenge the entry of default and default judgment).

Devengoechea argues that a "[d]efendant who participated pretrial in pleadings, motions, and discovery is not in 'default' for not attending trial." To support this, Devengoechea quotes language from *Solaroll Shade & Shutter Corp., Inc. v. Bio-Energy Systems, Inc.*, 803 F.2d 1130, 1134 (11th Cir. 1986), and *Bass v. Hoagland*, 172 F.2d 205, 210 (5th Cir. 1949). As to *Solaroll*, that case did not involve a default judgment or a trial. 803 F.2d at 1131. Rather, the case involved the denial of a motion to vacate a reinstatement order. *Id.* at 1134 (noting that "the reinstatement order was not a default judgment within the meaning of Rule 55"). And while *Solaroll* relied upon *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396 (5th Cir. 1981), the Court in *Seven Elves* specifically stated that it was avoiding answering the question of whether the judgment at issue was a default judgment because the case could be decided under Rule 60(b). *Id.* at 400-01. The Court's discussions of Rule 55 in those cases are dicta because they were "not necessary to deciding the case[s]." *United States v. Caraballo-Martinez*, 866 F.3d 1233, 1244 (11th Cir. 2017) (citation omitted). Because we are not bound to follow dicta, we need not consider Devengoechea's reliance on *Solaroll*. *See Johnson v. Sec'y, Fla. Dep't of Corr.*, 132 F.4th 1309, 1315 (11th Cir.), *cert. denied sub nom., Johnson v. Dixon*, 146 S. Ct. 314, 223 L. Ed. 2d 131 (2025).

Bass is a closer case. 172 F.2d at 210. Devengoechea reads *Bass* to find that the alleged default judgment in that case was improper because the defendant had filed an earlier answer to the plaintiff's claims. Under Devengoechea's reading, default judgment in this case would be improper because Venezuela filed an answer to his claims. Likewise, much of the dissent is spent explaining why, in the dissent's view, *Bass* was correctly decided. But that issue is not before us.

We assume, without deciding, that *Bass* governs default judgments in the normal course of litigation. But this case does not arise out of the normal course of litigation. This is an FSIA case. *Bass* was decided before the FSIA was enacted, so it could not have accounted for the circumstances that could lead to a default judgment under the FSIA. And we see no reason to import *Bass* into this entirely different context.

The dissent states that "Rule 55 is Rule 55, whether in an FSIA case or any other type of civil case." We disagree. Nothing in the FSIA's default provision limits its applicability to a single triggering event—it speaks only of "judgment by default." 28 U.S.C. § 1608(e). A myriad of circumstances may lead to default judgment—including, as the dissent notes, the failure to plead or defend, Rule 37, and the district court's inherent powers.[1] We hold that *any*

1. The dissent does not clearly explain what it believes should happen when a district court uses its inherent powers to enter a default judgment. But the dissent cites both *Compania* and *Eagle Hospital Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298

triggering event that would lead to a default judgment, in name or effect, against a foreign state is governed by section 1608(e).[2] And before a district court can enter a default judgment against that foreign state, it must follow the *procedural* requirements of Rule 55.

Our most relevant precedent is *Compania*, which specifically considered default judgment under the FSIA and the policy reasons underlying the statutory provision. In *Compania*, despite the foreign state's earlier answer to the plaintiffs' claims, this Court affirmed the entry of default based on the failure to follow court orders and directed the district court to follow section 1608(e) before entering a default judgment under the FSIA. 88 F.3d at 951-52. We will do the same.

A final note in conclusion: Even if Devengoechea had followed the requirements of 28 U.S.C. § 1608(e) and Rule

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(11th Cir. 2009), for the proposition, and a review of the dockets in both cases confirms that the district courts properly followed the notice procedures of Rule 55. That is our prescription under the FSIA as well.

2. The dissent faults us for "offer[ing] no reason why a district court cannot try a civil defendant in absentia when the litigant ceases to defend the case." But notably, the dissent cites no statute or precedent that provides for a trial in absentia in an FSIA case. As previously discussed, by enacting the FSIA, Congress provided a comprehensive scheme for litigation involving foreign states. *See Republic of Hungary*, 145 S. Ct. at 488. The FSIA does not provide for trials in absentia. It *does* provide for default judgments in section 1608(e), and that provision covers the litigation before the district court in this case.

55, the default judgment proceedings would still have been deficient. Section 1608(e) required Devengoechea to "establish entitlement to relief by providing satisfactory evidence as to each element of the claims upon which relief was sought." *Id.* at 951. This requirement "provide[s] foreign states protection from unfounded default judgments rendered solely upon a procedural default." *Id.* at 950-51. The record in this case does not reflect that the district court considered section 1608(e) at all. As such, the record would be insufficient to allow us to assess whether the district court abused its discretion in doing so, and we would nonetheless remand the case to allow the district court to consider section 1608(e)'s requirements.

IV. CONCLUSION

Devengoechea failed to comply with section 1608(e) of the FSIA and the procedural requirements of Rule 55. Accordingly, the district court abused its discretion by entering judgment against Venezuela. We therefore **VACATE** the district court's judgment and **REMAND** the case for further proceedings consistent with this opinion.

ROSENBAUM, Circuit Judge, dissenting:

I would affirm the judgment of the district court. The Majority Opinion reaches the opposite conclusion only because, most respectfully, it confuses three distinct concepts: (1) Rule 55, Fed. R. Civ. P., defaults; (2) defaults under a district court's inherent powers; and (3) in absentia trials after proper notice to the absent party.

Under Federal Rule of Civil Procedure 55(a), the clerk of court "must" enter default against a party only if that party "has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." In *Bass v. Hoagland*, our predecessor Court held that failure to "otherwise defend" means only failure to defend at the pleading stage. 172 F.2d 205, 210 (5th Cir. 1949).[1] So under *Bass*, once the proceedings pass the pleading stage, Rule 55(a) default is off the table. *Bass* means the district court here can't engage in Rule 55's default procedure on remand because the Bolivarian Republic of Venezuela "otherwise defend[ed]" when it moved to dismiss. So no Rule 55 default ever even arguably occurred here.

In contrast, under its inherent powers, a district court can enter default judgment against a party at any time in the litigation—even after the pleading stage. But to do so, the court must find that the party acted in bad faith.

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1. In *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc), we adopted decisions of the Fifth Circuit handed down by the close of business on September 30, 1981, as binding precedent.

Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc., 561 F.3d 1298, 1306 (11th Cir. 2009).

Then we have in absentia trials. They fill the remaining space—when a party fails to respond to the court after the pleading stage but the court cannot (or chooses not to) make a finding of bad faith. Once the parties have passed the pleading stage, the issue has been joined,[2] so as I've explained, the court cannot enter a Rule 55 default judgment. *Bass*, 172 F.2d at 209-10; *Solaroll Shade & Shutter Corp., Inc. v. Bio-Energy Sys., Inc.*, 803 F.2d 1130, 1134 (11th Cir. 1986). Indeed, we've said, at that point, "Rule 55 is inapplicable." *Solaroll*, 803 F.2d at 1134. The proper procedure then requires trial after appropriate notice to the defendant. *See Bass*, 172 F.2d at 210; *Solaroll*, 803 F.2d at 1134.

Here, the case had passed the pleading stage, so Rule 55 default was not an option. That left either inherent-powers default or *in absentia* trial, given the Bolivarian Republic of Venezuela's failure to respond to the district court's orders. Perhaps because the district court did not think it appropriate to find bad faith, the court expressly said that it "did not hold [the Bolivarian Republic of Venezuela] in default but treated the trial as a full trial on the merits where [Devengoechea] bore all evidentiary burdens." And after holding that trial, the court entered findings of fact and conclusions of law determining that Devengoechea had established his claims by a preponderance of the evidence. Venezuela

2. *See Joinder of Issue*, Black's Law Dictionary (12th ed. 2024).

has not shown that the district court's factual findings were clearly erroneous or that the district court erred in determining Devengoechea had established each of the elements of his claims by a preponderance of the evidence. So I would affirm the district court's ruling.

The Majority Opinion offers no reason why a district court cannot try a civil defendant in absentia when the litigant ceases to defend the case. And it doesn't explain how—despite binding precedent to the contrary—a judgment following that type of trial is a default judgment.

Instead, the Majority Opinion vacates the district court's judgment because it says that the district court failed to comply with the Foreign Sovereign Immunities Act's ("FSIA") default provision, 28 U.S.C. § 1608(e), which in turn incorporates the default provisions of Rule 55, Fed. R. Civ. P. But as I've explained, the court never entered default in this case; it entered judgment based on its factual findings and conclusions of law after Devengoechea proved his case at trial. So the FSIA's default provision does not apply here.

Nor, as the Majority Opinion asserts, does *Compania Interamericana Export-Import, S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948 (11th Cir. 1996), somehow alter this fact. In *Compania*, unlike here, the district court entered a default judgment. Not only that, but it did so based on its inherent powers, not on Rule 55. Because the district court here issued judgment for Devengoechea after trial—not on a default—Section 1608(e) and *Compania* do not apply.

And in any case, the district court entered judgment for Devengoechea only after it found he had proven all the elements of his claims by a preponderance of the evidence. So even under Section 1608(e) of the FSIA, then, Devengoechea "establish[ed] entitlement to relief by providing satisfactory evidence as to each element of the claims upon which relief was sought." *Compania*, 88 F.3d at 951.

For these reasons, I would affirm.

I divide my discussion into four substantive parts. Section I explains why the district court could not enter a Rule 55 default judgment in this case (and why, contrary to the Majority Opinion's suggestion, it can't do so on remand). Section II discusses inherentpowers defaults. It also shows why *Compania*, where the district court entered a default judgment under its inherent powers, is irrelevant to the analysis here and doesn't somehow invalidate *Bass* in FSIA cases. And Section III reviews why the district court did not err in holding trial in Venezuela's absence and entering judgment for Devengoechea after trial.

I. Contrary to the Majority Opinion's suggestion, under binding Circuit precedent, the district court could not (and cannot on remand) enter a Rule 55 default judgment in this case because the parties had passed the pleading stage.

Before I review what the district court did here, it's important to understand what the district court did not do. The district court did not enter a default judgment

of any type. Nor could it have done so. And despite the Majority Opinion's suggestion to the contrary, the district court can't enter a Rule 55 default judgment on remand. This section explains why.

Bass, as well as Rule 55's text and the structure of the Federal Rules of Civil Procedure limit the availability of Rule 55's default procedure to cases that haven't yet passed the pleading stage. But this case has passed that stage.

I begin my discussion with Rule 55's text and the structure of the Federal Rules of Civil Procedure. Then I show why *Bass* requires the conclusion that Rule 55 default is not an option when, as here, a party has already moved to dismiss.

A. Rule 55's text and the structure of the Federal Rules of Civil Procedure limit the availability of Rule 55's default procedure to cases that haven't yet passed the pleading stage.

Rule 55(a) requires the clerk of court to enter default against a party if that party "fail[s] to plead or otherwise defend, and that failure is shown by affidavit or otherwise." Fed. R. Civ. P. 55(a). After the clerk enters default, "[i]f the [party]'s claim is for a sum certain or a sum that can be made certain by computation," the clerk "must enter judgment for that amount and costs against a defendant" once the plaintiff presents an affidavit "showing the amount due." Fed. R. Civ. P. 55(b)(1). But sometimes, a party can't show he's due a sum certain. In that case, if the allegedly defaulting party "has appeared personally or by

a representative," the party seeking the default judgment must serve written notice on the defaulting party at least seven days before the court conducts a hearing on the motion for default judgment. Fed. R. Civ. P. 55(b)(2).

In either case, though—that is, whether a party seeking default proceeds under Rule 55(b)(1) through the clerk or Rule 55(b)(2) through the district court itself—the clerk must have first correctly entered default under Rule 55(a). So it's worth examining the circumstances under Rule 55(a) that require the clerk to enter default.

As relevant here, the clerk must enter default only when the allegedly defaulting party has "failed to plead or otherwise defend." Fed. R. Civ. P. 55(a).

A "fail[ure] to plead" is easy enough to understand. Rule 7 identifies what "pleadings" the Federal Rules of Civil Procedure permit. They include (1) a complaint; (2) an answer to a complaint; (3) an answer to a counterclaim designated as a counterclaim; (4) an answer to a crossclaim; (5) a third-party complaint; (6) an answer to a third-party complaint; and (7) if the court orders one, a reply to an answer." Fed. R. Civ. P. 7(a). And other rules limit the contents and form of those pleadings. *See* Fed. R. Civ. P. 8-15.

As for "otherwise defend," we commonly understand the verb "defend" to mean "[t]o do something to protect someone or something from attack." *Defend*, Black's Law Dictionary (12th ed. 2024). And "otherwise" means "[i]n another case; in other circumstances; if not; else."

Otherwise, Oxford English Dictionary Online, https://perma.cc/T3JT-9ZYZ.

In construing these words together, of course, we must consider the phrase "otherwise defend" in its context. That's so both because we don't evaluate the meaning of words in a vacuum, and the word "otherwise," by its nature, is comparative. So we ask what ways exist to "otherwise defend" compared to a responsive "plead[ing]."

In *Bass*, we answered that question by saying "otherwise defend" means other defenses at the pleading stage. 172 F.2d at 210. Though we didn't express our reasoning, in my view, the text of Rule 55(a) and the structure of the Federal Rules of Civil Procedure mandated our answer.

Start with the text of Rule 55(a). Again, that rule applies when a party "has failed to plead or otherwise defend." Fed. R. Civ. P. 55(a). So "has failed to" applies to both "plead" and "otherwise defend." But "has failed to defend" is not the same thing as "has ceased to defend." In the first case, a party hasn't defended itself in any way; it has filed neither a responsive pleading nor a responsive motion. But in the second case—"has ceased to defend"—the party *has* defended itself at some point; it must have at least filed a responsive pleading or motion, and only after that, stopped defending. So the text "failed to defend" in Rule 55(a) reflects the drafters' intent to cover only failures to file responsive motions, in the absence of filing a responsive pleading, at the pleading stage.

But even if we assumed "failed to defend" included ceasing to defend after the pleading stage, there's another textual problem. Had the drafters of Rule 55(a) intended for the rule to apply beyond the pleading stage, they needn't have specified "fail[ure] to plead" as a basis for default. The drafters could have simply written the rule to apply when a party failed to defend. That is, the drafters could have specified, "When a party against whom a judgment for affirmative relief is sought has failed to defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." But by including the phrase "failed to plead" before "or otherwise defend," the drafters reflected the intent to limit the default remedy under the rule to only those cases when a party fails to defend at the pleading stage.

The structure of the Federal Rules of Civil Procedure also shows that Rule 55(a) applies only when a party has failed to respond at the pleading stage. Both Rule 8 and Rule 37 support that.

Consider Rule 8(b)(6). Rule 8(b)(6) specifies the "[e]ffect of [f]ailing to [d]eny . . . [a]n allegation—other than one relating to the amount of damages— . . . if a responsive pleading is required." Fed R. Civ. P. 8(b)(6). That "[e]ffect" is the allegation is deemed "admitted." *Id.*

Compare that to "[t]he effect of a default judgment": "the defendant . . . admits the plaintiff's well-pleaded allegations of fact." *See Nishimatsu Construction Co., Ltd. v. Houston National Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975). In other words, the party failed to deny *even one* allegation in the pleading, so default judgment is

warranted. But the failure to deny even one allegation in the pleading can happen at only the pleading stage.

So Rule 55 is the logical extension of Rule 8(b). Rule 55 tells us what happens when a party has literally failed to deny *even one* allegation in the pleading: default.

After the pleading stage, a party's failure to respond to discovery or dispositive motions or to appear for trial is qualitatively a different kind of failure: "[a] defendant who has participated throughout the pretrial process and has filed a responsive pleading, placing the case at issue, has not conceded liability." 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2682 (4th ed. Sept. 2025 Update). And that difference explains why we've insisted on a finding of bad faith for a district court to strike a party's responsive pleading and enter default judgment under its inherent power. *See e.g.*, *Malautea v. Suzuki Motor Co., Ltd.*, 987 F.2d 1536, 1542 (11th Cir. 1993).

Yet Rule 55(a) *requires* the clerk of court to enter default merely if a party "has failed to plead or otherwise defend." *See* Fed. R. Civ. P. 55(a) ("When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, ad that failure is shown by affidavit or otherwise, the clerk *must* enter the party's default.") (emphasis added). It's ministerial. It can't be the case that Rule 55 allows the clerk of court to, in a case where the parties have participated in the pleading stage, do what a court under its inherent power could not do without a finding of bad faith.

As for Federal Rule of Civil Procedure 37, Rule 37(b)(2)(A)(vii) allows for the entry of default judgment against a party who fails to obey a discovery order, and Rule 37(d)(3) permits the court to enter a default judgment against a party that fails to attend its own deposition, serve answers to interrogatories, or respond to a request for inspection. If Rule 55(a) covered all postpleading-stage cessations of efforts to defend, Rules 37(b)(2)(A)(vii) and 37(d)(3) wouldn't be necessary in their present form.

I see two possible responses to this reasoning, which I address in turn.

First, one might argue that if the drafters wished to limit Rule 55(a)'s applicability to failures to defend at the pleading stage, they could have simply said that, instead of using what appears on its face to be a broad term: "otherwise defend." But I'm not so sure.

Making Rule 55(a) applicable "[w]hen a party against whom a judgment for affirmative relief is sought *has failed to defend at the pleading stage*," as opposed to "failed to plead or otherwise defend," reasonably may have created an ambiguity. "Failed to defend at the pleading stage" may have left doubt as to whether simply filing a responsive pleading, instead of filing a motion responsive to a pleading, would be enough to satisfy the terms of Rule 55(a). So "failed to plead or otherwise defend" more precisely captures failures to defend at the pleading stage.

Second, one might argue that limiting the meaning of "otherwise defend" to pleading-stage actions does not make practical sense. It leaves courts without any ability to control their dockets when a party fails to appear for

trial but the record doesn't permit a finding of bad faith. So a case could sit on the court's docket undefended for years, and the court could not dispose of it. *See Hoxworth v. Blinder, Robinson & Co.*,, 980 F.2d 912, 918 (3d Cir. 1992), *abrogated on a different basis by Morgan v. Sundance, Inc.*, 596 U.S. 411, 142 S. Ct. 1708, 212 L. Ed. 2d 753 (2022) (collecting cases that "support the proposition that the district court's power to maintain an orderly docket justifies the entry of a default [under Rule 55] against a party who fails to appear at trial"). Nor could the plaintiff obtain resolution of his claim.

Indeed, the Third Circuit has observed, "[t]he failure to plead is no greater an impediment to the orderly progress of a case than is the failure to appear at trial or meet other required time schedules." *Id.* at 918. So it's hard to understand "why the former would be subject to a sanction not equally applicable to the latter." *Hoxworth*, 980 F.2d at 917.

But there's an answer for this problem. Instead of using Rule 55(a) and (b), a court may enter default judgment under its inherent powers when "a litigant has been given ample opportunity to comply with court orders but fails to effect any compliance." *Compania*, 88 F.3d at 952. In that situation, the district court may "deem[] [the party's conduct] willful." *Id.* Or the district court may proceed to an in absentia trial after proper notice to the noncompliant litigant. *See infra* at Section III.

Even if these options weren't available, Rule 55(a)'s text is unambiguous. And we don't get to rewrite unambiguous rules to comport with our preferred interpretation.

To be sure, several Circuits besides the Third have construed "otherwise defend" in Rule 55(a)'s text to refer to a party's ceasing its defense up through trial. *See, e.g.*, *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 129 (2d Cir. 2011) ("We have embraced a broad understanding of the phrase 'otherwise defend.'"); *Home Port Rentals, Inc. v. Ruben*, 957 F.2d 126, 133 (4th Cir. 1992); *Ackra Direct Mktg. Corp. v. Fingerhut Corp.*, 86 F.3d 852, 856 (8th Cir. 1996); *Ringgold Corp. v. Worrall*, 880 F.2d 1138, 1141-42 (9th Cir. 1989) (per curiam).

But none of these opinions purport to explain why the drafters of Rule 55(a) wouldn't have simply said "failed or ceased to defend" instead of "failed to plead or otherwise defend" if the drafters intended the rule to apply to failures to defend beyond the pleading stage. Nor do they address the difference between the failure to defend and the ceasing of defending. They also don't discuss their interpretation of how Rule 55 is consistent with Rule 8(b).

And while *Hoxworth* mentions Rule 37 default sanctions, it doesn't explain why those are necessary if Rule 55(a) provides for default whenever a party ceases to defend. *See Hoxworth*, 980 F.2d at 919. To the contrary, *Hoxworth* suggests Rule 37 as "an alternate basis" for the district court's Rule 55 default judgment. *See id.* In the absence of viable answers to these problems, I don't see how we can faithfully construe the text of Rule 55(a) to apply to failures to defend beyond the pleading stage.

B. Under *Bass*, a district court cannot enter a Rule 55 default when, as here, a party has already moved to dismiss.

That brings me to why *Bass* binds us here. But before I discuss *Bass*, it's important to distinguish between two concepts: Rule 55's default procedure and the constitutional right to due process.

I begin with Rule 55. As a Federal Rule of Civil Procedure, it enjoys the authority that the Rules Enabling Act, 28 U.S.C. § 2071 *et seq.*, bestows upon it. Under that Act, when it comes to "practice and procedure," *id.* § 2072(a), the Federal Rules govern, and "[a]ll laws in conflict with such rules shall be of no further force or effect," *id.* § 2072(b). In other words, "[t]he Federal Rules of Civil Procedure have the force and effect of a statute." *Brotherhood of Locomotive Firemen and Enginemen v. United States ex rel. Deavers*, 183 F.2d 65, 67 (5th Cir. 1950). Rule 55's default procedure obviously qualifies as a rule of "procedure," so it has the "force and effect of a statute."

That said, even statutes must bow to the Constitution. So if, in a given case, application of Rule 55's default procedure deprives a litigant of due process under the Fifth Amendment, that application cannot stand. But the fact that the application of Rule 55's default procedure may violate due process in a case where the facts don't support its application doesn't somehow change the meaning or application of Rule 55 in other cases where the facts do.

With that in mind, I turn to *Bass*. In *Bass*, before the suit at issue there, the plaintiff (Hoagland) obtained a monetary judgment against Bass in a Kansas federal district court. *See Bass*, 172 F.2d at 206-07. Hoagland then filed the suit at issue in *Bass*—this time in Texas federal district court—seeking execution of the Kansas judgment. *See id.* In Bass's answer, he asserted several defenses. *Id.* As relevant here, he alleged that the Kansas judgment was a default judgment, and it violated his due-process rights under the Fifth Amendment because Hoagland had allegedly failed in the Kansas case to give notice under Rule 55(b) of Bass's alleged default.

In response, Hoagland presented a certified copy of the judgment. *Id.* at 207. That judgment said that "the case came on for trial," Hoagland's attorneys were present, but neither Bass nor his attorneys were. *Id.* So, the judgment continued, the court determined Bass to be "in default by reason of the withdrawal of [his attorney], which withdrawal had previously [been] made in open court by said attorneys after notice to defendants." *Id.* Based on these alleged circumstances, the judgment explained, the Kansas court "proceeded to trial," took evidence, heard argument, and found that Hoagland was entitled to judgment in the stated amount. *Id.*

Bass took issue with this version of events in the Kansas case. He filed an answer in the Texas case asserting that he had demanded a jury trial in the Kansas case. *Id.* But then his attorney withdrew from the Kansas case. *Id.* at 207-08. And though the Kansas judgment said that "notice of the withdrawal was given the defendants,"

Bass alleged he had no knowledge of his attorney's withdrawal. *Id.* at 208. As a result, when the case came up for trial, neither Bass nor his attorney was present. *Id.*

Back in the Texas case, the district court was not impressed with Bass's answer to Hoagland's claim. And it entered judgment for Hoagland on the pleadings in that case. *Id.* at 206. Bass appealed.

Our predecessor Court determined that the district court erred in entering judgment for Hoagland on the pleadings. *Id.* at 210. Instead, the Court said that the district court had to try "the truth of [Bass's] answer." *Id.* The Court continued, "If the judgment sued on is found to be void, the Kansas court would probably now set it aside, leaving the case there for trial on its merits." *Id.*

In reaching this decision, the Court necessarily considered whether the Kansas default judgment would be void if Bass's version of the facts were true. *See id.* at 208-11. The Court said it would. *See id.*

Under Bass's version of the facts, the Court explained, no default under Rule 55(a) had occurred. *See id.* at 210. That was so, the Court reasoned, because "[t]he words 'otherwise defend' [in Rule 55(a)] refer to attacks on the service, or motions to dismiss, or for better particulars, and the like, which may prevent default without presently pleading to the merits." *Id.* But "[w]hen Bass by his attorney filed a denial of [Hoagland's] case neither the clerk nor the judge could enter a default against him." *Id.*

And even not considering that Rule 55(a) doesn't authorize a default after a party pleads or otherwise responds to a pleading, the Court went on, there was another problem. *Id.* Hoagland had failed to give Bass and his counsel the notice Rule 55(b) requires before a court can enter a default judgment. *Id.*

Finally, the Court concluded that based on the facts as Bass alleged them, the Kansas court's entry of default despite the inapplicability of Rule 55—and that court's failure to comply with Rule 55's procedures or any notice procedures, in any case—violated Bass's constitutional right to due process. *Id.* In other words, in reviewing an order rejecting a collateral attack on a prior judgment, the Court determined both that the Kansas court did not have the authority to enter default judgment under Rule 55 and that the Kansas court's way of proceeding, taken as a whole, separately violated Bass's constitutional rights.

So *Bass* requires us to construe the meaning of "otherwise defend" under Rule 55(a) to be limited to defending at the pleading stage. *See Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 400 n.2 (*Bass* "remains as binding precedent in this circuit. Thus, under *Bass*, a default judgment entered upon the failure of the appellants or their attorney to appear at trial might well be found to have been erroneously entered as a matter of law under Fed. R. Civ. P. 55."). And because the Bolivarian Republic of Venezuela defended at the pleading stage, Rule 55 default is off the table under our precedent. Finally, because neither the Supreme Court nor we, sitting en banc, have abrogated this holding from *Bass*, we are bound

to apply it under the prior-panel-precedent rule. *See In re Lambrix*, 776 F.3d 789, 794 (11th Cir. 2015).

II. *Compania* is irrelevant here because it involved an inherent-powers default, but the district court did not enter a default judgment; it instead held an in absentia trial and entered judgment for Devengoechea only after finding that he had established each of the elements of his claims by a preponderance of the evidence.

The Majority Opinion asserts that *Bass* doesn't apply here because *Compania*, a later one of our precedents, does instead. *See* Maj. Op. at 8. But *Compania* deals with a default that the district court entered under its inherent powers, not under Rule 55.

If *Compania* addressed a default under Rule 55(a) or (b)—the provisions under which the Majority Opinion asserts Devengoechea should have sought a default judgment—it would have conflicted directly with *Bass*'s holding. And because *Bass* precedes *Compania*, *Bass*—not *Compania*—would govern. *See United States v. Madden*, 733 F.3d 1314, 1319 (11th Cir. 2013) ("When we have conflicting case law, we follow our oldest precedent."). But as I've explained, *Compania* deals only with default judgment under a court's inherent powers, not under Rule 55.

In *Compania*, the defendant filed a responsive pleading and defended the case for some time. *See Compania*, 88 F.3d at 949-50. At some point, though,

the defendant's counsel withdrew and the defendant began having problems responding to the plaintiff and the court in a timely way. *See id.* at 950. So the plaintiff moved for default. *Id.* While that motion was pending, the court ordered the parties to participate in mediation at least 60 days before the scheduled trial date. *Id.* The defendant moved for an extension of time (one of many such motions it had filed in the case), and its new counsel moved to withdraw. *See id.* That was enough aggravation for the district court, and it granted the plaintiff's pending motion for default and directed the plaintiff to move for default judgment. *Id.*

In response, the plaintiff did so. *Id.* It supported its request for damages with affidavits. *Id.* The defendant secured counsel again and moved to set aside the entry of default. *Id.* Instead, though, the district court entered a final default judgment because of the defendant's "failure to obtain . . . counsel and . . . failure to comply with this Court's discovery orders." *Id.* Based solely on the affidavits that the plaintiff filed with its motion for default judgment, the court awarded the plaintiff damages. *Id.*

Then the defendant moved for relief from judgment. *Id.* But the district court denied the motion to set aside the entry of default and the default judgment. *Id.*

In *Compania*, we issued two holdings. First, we held that the district court did not abuse its discretion in refusing to set aside its entry of default under its inherent powers. *See id.* at 951-52. But second, we held that, to obtain a default judgment under the FSIA, a party must

also "establish[] his claim or right to relief by evidence satisfactory to the court." *See id.* at 950 (quoting 28 U.S.C. § 1608(e)). Because the district court had not found that the *Compania* plaintiff had done that, we vacated the default judgment and remanded for further proceedings. *Id.* at 952.

There's no doubt that *Compania* is right that a party seeking a default judgment in an FSIA case must also "establish[] his claim or right to relief by evidence satisfactory to the court." But nothing about that holding affects in any way our holding in *Bass* that establishes the prerequisites for obtaining a Rule 55 default. In fact, at no point in its discussion did the *Compania* court even mention *Bass* or its progeny. *See generally id.* And that makes sense because the *Compania* district court entered default judgment under its inherent powers, not under Rule 55(a) and (b).

The Majority Opinion explains the absence of *Bass* from *Compania*'s discussion by saying that "*Bass* was decided before the FSIA was enacted, so it could not have accounted for the circumstances that could lead to a default judgment under the FSIA. And we see no reason to import *Bass* into this entirely different context." Maj. Op. at 12. But that's no answer. Nothing about the FSIA's default provision somehow makes *Bass*'s interpretation of Rule 55(a) and (b) inapplicable to cases arising under the FSIA. Rule 55 is Rule 55, whether in an FSIA case or any other type of civil case. And *Compania* says nothing at all about Rule 55(a) and (b). Rather, it focuses on the district court's *inherent powers to enter a default judgment* and

on Section 1608(e). Yet Section 1608(e) merely requires—in addition to a *valid* default (whether under Rule 55 or the court's inherent powers)—that a claimant "establish[] his claim or right to relief by evidence satisfactory to the court."

As we explained in *Compania*, Congress enacted Section 1608(e) "to provide foreign states protection from unfounded default judgments rendered solely upon a procedural default." 88 F.3d at 951. Under *Bass*, had the *Compania* district court entered a Rule 55 default (again, it didn't), we would have vacated it. That would have protected the foreign state from a "default judgment[] rendered solely upon a procedural default," *see id.*, even in the absence of the plaintiff's establishing of its claim by "evidence satisfactory to the court."

To be sure, a Rule 55 default could be valid under *Bass* in an FSIA case if the foreign state failed to plead or otherwise defend at the pleading stage. But even then, Section 1608(e)'s mechanism for protecting against any unfounded default judgment of that type would work by requiring the claimant to, in addition to obtaining a default, "establish[] his claim or right to relief by evidence satisfactory to the court," 28 U.S.C. § 1608(e).

Section 1608(e)'s additional requirement does nothing to contradict *Bass*'s holding. Rather, *Bass*'s holding, if anything, furthers Section 1608(e)'s protective purpose. *Bass* limits even the potential availability of a Rule 55 default judgment to situations where the foreign state has failed even to file a responsive pleading or otherwise

defend. And then, under Section 1608(e), a plaintiff must also "establish[] his claim or right to relief by evidence satisfactory to the court," 28 U.S.C. § 1608(e).

In short, *Compania* issued no holdings about Rule 55's default procedure. It didn't even address Rule 55(a) or (b) but instead dealt solely with a default judgment that the district court entered under its inherent powers. So when it comes to Rule 55(a) and (b) defaults, *Bass* remains good law, whether in an FSIA case or any other kind of civil case.

III. The district court did not err in entering judgment against Venezuela after an in absentia trial following proper notice to Venezuela because the district court found that Devengoechea established each of the elements of his claims by a preponderance of the evidence, and Venezuela has failed to show reversible error.

Finally, Section 1608(e) doesn't govern this case because the district court did not enter a default or a default judgment. Rather, the district court entered judgment for Devengoechea only after holding a bench trial on the merits of his claims and making findings of fact and conclusions of law based on the evidence Devengoechea presented at that trial. And it did so after providing Venezuela with appropriate notice. That was the proper procedure under our precedent.

In *Solaroll Shade*, we held that when a defendant "has answered the complaint but fails to appear at trial, . . .

the court can proceed with the trial."[3] 803 F.2d at 1134. We explained that, "[i]f plaintiff proves its case, the court can enter judgment in its favor although the defendant never participated in the trial." *Id.* We recognized that the resulting judgment "is not a default judgment." *Id.*

The Majority Opinion attempts to distinguish *Solaroll* on the basis that *Solaroll* "did not involve a default judgment or a trial." Maj. Op. at 11. But it's precisely because *Solaroll* did not involve a default judgment that it is relevant. After all, Devengoechea's case does not involve a default judgment, either.

In *Solaroll*, the parties agreed to a settlement of their federal case. 803 F.2d at 1131. The district court dismissed the case but retained jurisdiction to enforce the settlement agreement. *Id.* A few years later, the plaintiff moved to reinstate the action and to enforce the settlement agreement. *Id.* The plaintiff supported its motion with evidence. *See id.* at 1134. But the defendant never responded. *Id.* at 1131. So the district court granted the plaintiff's unopposed reinstatement motion and, without further notice, entered the proposed order to enforce the settlement agreement that the plaintiff submitted with its reinstatement motion. *Id.* When the defendant moved to vacate the judgment under Rule 60(b), Fed. R. Civ. P., the district court denied the motion, and the defendant appealed. *Id.*

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3. Once again, *Bass* and its progeny required this holding. *See Bass*, 172 F.2d at 210 ("When neither Bass nor his attorney appeared at the trial no default was generated; the case was not confessed. The plaintiff might proceed, but he would have to prove his case.").

We affirmed. *See id.* at 1135. In explaining why, we addressed the defendant's argument that "[t]o the extent the order constitute[d] a default judgment, it [was] allegedly invalid because the court failed to comply with the notice and hearing provisions of Fed. R. Civ. P. 55(b)." *Id.* at 1133. We rejected the defendant's contention that the judgment was "a default judgment within the meaning of Rule 55." *Id.* at 1134. In doing so, we reasoned that Rule 55 authorizes a district court to enter a default judgment only at "the responsive pleading stage." *See id.* But in *Solaroll*, that stage "had long passed." *Id.* Instead, we said, once the responsive-pleading stage has passed, "the court can proceed with the trial. If plaintiff proves its case, the court can enter judgment in its favor although the defendant never participated in the trial." *Id.* And we determined that, effectively, that's what the district court did in *Solaroll. See id.* (explaining that the *Solaroll* judgment was not "a summary judgment merely because the court relied only on the movant's supporting evidence").

So *Solaroll* tells us that once we progress past the responsivepleading stage, if the district court does not enter default judgment under its inherent powers, it may proceed to trial even in the defendant's absence. That's precisely what the district court did here.

Still, due process requires that a defendant in this situation receive fair notice of the proceedings before they occur. But once again, that happened here.

On July 11, 2023, the district court entered orders denying Venezuela's motion to dismiss and for summary

judgment and setting the case for non-jury trial more than four months later, on November 29, 2023. The court filed these orders on the docket, making them available to anyone by PACER or to counsel with CM/ECF access. Devengoechea's counsel also certified that they served these orders by first-class U.S. Mail, DHL Express, U.S. Air Mail, and email on the Bolivarian Republic of Venezuela the next day, July 12, 2023. And no evidence suggests Venezuela did not timely receive notice of the trial.

Plus, the Southern District of Florida's Local Rules warn that "[f]ailure to comply with the requirements of [S.D. Fla. L.R. (relating to pretrial and certain trial requirements)] will subject the party or counsel to appropriate penalties, including but not limited to . . . the striking of defenses and entry of judgment." S.D. Fla. L.R. 16.1(l).

Then, the district court held a bench trial, heard testimony, and reviewed evidence before making findings of fact and entering conclusions of law. The record here does not show that the district court's factual findings were clearly erroneous or that the district court erred in finding that Devengoechea had established all the elements of his claims.

And while Section 1608(e) doesn't apply because the district court did not enter a default judgment against Venezuela, it wouldn't make a difference to the outcome even if we (incorrectly) assumed Section 1608(e) governed. Section 1608(e) requires a claimant to "establish[] his

claim or right to relief by evidence satisfactory to the court." That's precisely what Devengoechea did. And Venezuela hasn't shown otherwise.

In sum, the district court did not err in proceeding to trial without Venezuela. And because the evidentiary record sufficiently supports the district court's entry of judgment for Devengoechea, I respectfully dissent. I would affirm.

APPENDIX B — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED AUGUST 18, 2026

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-10029

RICARDO DEVENGOECHEA,

Plaintiff-Appellee,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,
A FOREIGN STATE,

Defendant-Appellant.

Entered: August 18, 2026

Appeals from the United States District Court
for the Southern District of Florida D.C.
Docket No. 1:12-cv-23743-PCH

For the Court: DAVID J. SMITH, Clerk of Court

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

APPENDIX C — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED AUGUST 18, 2026

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-10029

RICARDO DEVENGOECHEA,

Plaintiff-Appellee,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,
A FOREIGN STATE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida D.C.
Docket No. 1:12-cv-23743-PCH

ON PETITION FOR REHEARING AND REHEARING EN BANC

Before ROSENBAUM, BRANCH, and KIDD, Circuit Judges.

PER CURIAM:

The Petition for Rehearing and Rehearing En Banc is DENIED AS MOOT, in light of the substituted opinion issued August 18, 2026.

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, FILED DECEMBER 22, 2023

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

December 22, 2023, Decided;
December 22, 2023, Filed

Case No.: 12-CV-23743-HUCK

RICARDO DEVENGOECHEA,

Plaintiff,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,
A FOREIGN STATE,

Defendant.

ORDER PERMITTING ENFORCEMENT OF JUDGMENT INCLUDING BY EXECUTION AND/OR ATTACHMENT PURSUANT TO 28 U.S.C. § 1610(c)

This cause came before this Court on December 22, 2023 on the Emergency Motion by Plaintiff for an Order pursuant to 28 U.S.C. § 1610(c) determining that a reasonable amount of time has elapsed since entry of the

judgment without payment by Defendant despite prompt notice to Defendant of the entry of the judgment, thereby permitting Plaintiff to enforce the judgment entered in this action by execution, attachment, and/or otherwise.

Plaintiff has shown that after the trial and entry of judgment in this action on December 4, 2023 (ECF 295), Plaintiff promptly on the next day December 5, 2023 served upon Defendant by email, by DHL Express, and by Postal mail copies of the following 4 documents: (1) this Court's Final Judgment after trial (ECF 295), (2) this Court's Findings of Fact and Conclusions of Law (ECF 293), (3) this Court's order permitting immediate enforcement and registration of the judgment as authorized by Fed.R.Civ.P. 62(a) and 28 U.S.C. § 1963 (ECF 294), and (4) formal Notice of Entry of the foregoing three documents (ECF 297).

Defendant was not in default but appeared in this action by counsel and then pro se which is permitted under the Foreign Sovereign Immunities Act, although Defendant declined to appear at trial on the merits. This Court did not hold Defendant in default but treated the trial as a full trial on the merits where Plaintiff bore all evidentiary burdens.

Plaintiff reports that he has not received any payment toward the judgment.

Plaintiff has shown that Defendant has unreasonably delayed this action, by *inter alia* entering into a settlement agreement in December 2018 (ECF 225-228) which Defendant refused to consummate (ECF 229) which

delayed this action for several years and which forced Plaintiff to proceed to trial on the merits after several years' delay, and that as a result of trial on the merits Plaintiff obtained a judgment against Defendant (ECF 295). Plaintiff further has shown that the only reasonably foreseeable opportunity for Plaintiff to enforce the judgment in this action is by writ of attachment in the United States District Court for the District of Delaware in the action entitled *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, Misc. No. 17-151-LPS (D.Del.) ("*Crystallex*") where the Delaware Court has ordered the sale of Venezuelan-owned shares in Citgo Oil Corp. to satisfy the judgments obtained by judgment-creditors of Defendant Bolivarian Republic of Venezuela.

Plaintiff has shown that in the *Crystallex* action there are extremely tight deadlines imposed by Court Order. These deadlines require that Plaintiff as judgment-creditor quickly must do more than merely register his judgment in Delaware. Rather, by Court Order in the *Crystallex* action, Plaintiff must register his judgment in Delaware, and move for a writ of attachment, and actually obtain a writ of attachment - all by January 12, 2024 (*Crystallex* at ECF 738 p.3) (ordering a January 12, 2024 deadline to obtain a writ of attachment as "step 5" in an intricate 7-step process for judgment-creditors to participate in the recovery from the sale of shares in Venezuelan-owned Citgo Oil Corp.). The 7-step process was detailed and explained by the Delaware Court in its prior order, *Crystallex* at ECF 646 pp.3-8 (ordering and explaining the 7-step process).

Plaintiff thus has shown that he is caught in a two-sided time squeeze. On the one hand, Plaintiff needs to move as quickly as legally possible to meet the Delaware Court's January 12, 2024 deadline in *Crystallex* to obtain a writ of attachment. On the other hand, Plaintiff must wait a reasonable period of time after entry of judgment before moving to enforce it against a foreign country, as required by 28 U.S.C. § 1610(c).

It appears to this Court that there is no just cause for further delay after entry of judgment in this action, and that in light of all the circumstances - including Defendant's prompt receipt of notice of the judgment, Defendant's unreasonable delay of this action, and the tight deadline which Plaintiff now confronts in Delaware to enforce the judgment - that a reasonable amount of time has elapsed since entry of the judgment in this action as prescribed by 28 U.S.C. § 1610(c).

Accordingly it is

ORDERED that Plaintiff's Emergency Motion is granted; and it is further

ORDERED that a reasonable amount of time has elapsed after entry of the judgment in this action, as prescribed by 28 U.S.C. § 1610(c), and that Plaintiff therefore may proceed to enforce the judgment in this action by execution, attachment and/or otherwise; and it is further

ORDERED that this Order does not affect or impair, and leaves undisturbed, this Court's prior Order

dispensing with the 30-day stay of enforcement of the judgment under Fed.R.Civ.P. 62(a) as authorized by that Rule and dispensing with the 30-day waiting period for registration of the judgment in another District under 28 U.S.C. § 1963 as authorized by that section (ECF 294). This Court's prior Order under Rule 62(a) and § 1963 (ECF 294) was for purposes of that Rule and that section only and did not address the reasonable-time requirement under 28 U.S.C. § 1610(c) which could not be addressed until after a reasonable time had elapsed post-judgment.

DONE AND ORDERED in Miami, Florida on December 22, 2023.

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

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

RICARDO DEVENGOECHEA,

Plaintiff,

v.

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 E

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.

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]

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

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.

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.

Appendix E

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.

Appendix E

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. 1st 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").

Appendix E

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 F — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI-DADE DIVISION, FILED DECEMBER 4, 2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI-DADE DIVISION

Case No.: 12-CV-23743-HUCK

RICARDO DEVENGOECHEA,

Plaintiff,

vs.

BOLIVARIAN REPUBLIC OF VENEZUELA,
A FOREIGN STATE,

Defendant.

Filed December 4, 2023

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

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

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA, MIAMI-DADE DIVISION

Case No. 12-CV-23743-HUCK

RICARDO DEVENGOECHEA,

Plaintiff,

v.

BOLIVARIAN REPUBLIC OF VENEZULA, A FOREIGN STATE,

Defendant.

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 H — NOTICE OF ENTRY OF ORDERS AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI-DADE DIVISION, FILED DECEMBER 5, 2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI-DADE DIVISION

Case No.: 12-CV-23743-HUCK

RICARDO DEVENGOECHEA,

Plaintiff,

vs.

BOLIVARIAN REPUBLIC OF VENEZUELA,
A FOREIGN STATE,

Defendant.

Filed December 5, 2023

NOTICE OF ENTRY OF TWO COURT ORDERS AND A FINAL JUDGMENT ON DECEMBER 4, 2023

NOTICE TO THE BOLIVARIAN REPUBLIC OF VENEZUELA

In this action against you, as a result of the trial of this action yesterday December 4, 2023, this Court has signed and filed two Court Orders and a Final Judgment yesterday December 4, 2023 which are attached as Exhibit 1, Exhibit 2, and Exhibit 3.

Appendix H

The attached Exhibit 1 is the December 4, 2023 Court Order consisting of the Court's Findings of Fact and Conclusions of Law.

The attached Exhibit 2 is the December 4, 2023 Court 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.

The attached Exhibit 3 is the December 4, 2023 Final Judgment.

CERTIFICATE OF SERVICE

True copies of this Notice and of the attached three documents – two Court Orders and a Final Judgment – have been served upon Defendant Bolivarian Republic of Venezuela on this December 5, 2023 in the following manners:

by DHL Express and by United States Postal Service Air Mail addressed to the Attorney General of defendant Bolivarian Republic of Venezuela in Caracas, Venezuela as follows:

Honorable Attorney General
Av Los Ilustres
cruce con calle Francisco Iazo Marti
Edificio Sede Procuraduria de la Republica
Caracas 1041 Distrito Capital
Venezuela
(phone 58 212-5973300); and

by United States Postal Service First Class Mail addressed to defendant Bolivarian Republic of Venezuela as follows:

Venezuelan Mission
335 East 46 Street
New York, New York 10017; and

by email to defendant Bolivarian Republic of Venezuela addressed to:

ministeriopublico@mp.gob.ve, bfincheltub@us.embajadavenezuela.org, serviciosconsulares@us.embaj adavenezuela.org, misionvenezuelaonu@gmail.com, despacho.embveus@mppre.gob.ve; and to attorney Bryan Busch, Esq. (attorney who has not formally appeared for Defendant but who has recently communicated by telephone and email) at bb@buschmills.com; and to attorney Carlos Acevedo, Esq. (attorney who has not formally appeared for Defendant but who has recently communicated by telephone and email) at cacevedo@krupnicklaw.com; and to further email addresses of defendant Venezuela supplied by defendant's former attorneys. These 2 further email addresses are required to be kept confidential by Court order filed February 2, 2023 (ECF 253 ¶ 4).

Appendix H

Dated: December 5, 2023

LAW OFFICE OF DENNIS GROSSMAN

by: /s/ Dennis Grossman
Dennis Grossman
Attorney for Plaintiff
6701 Sunset Drive (Suite 104)
Miami, Florida 33143
(516) 466-6690
dagrossmanlaw@aol.com
FBN 0841811

LAW OFFICE OF MAX R. PRICE, P.A.
Max R. Price
Attorneys for Plaintiff
6701 Sunset Drive (Suite 104)
Miami, Florida 33143, (305) 662-2272
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FBN 651494

APPENDIX I — NOTICE OF ENTRY OF ORDERS OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI-DADE DIVISION, FILED JULY 12, 2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI-DADE DIVISION

Case No.: 12-CV-23743-HUCK

RICARDO DEVENGOECHEA,

Plaintiff,

vs.

BOLIVARIAN REPUBLIC OF VENEZUELA,
A FOREIGN STATE,

Defendant.

Filed July 12, 2023

NOTICE OF ENTRY OF TWO COURT ORDERS ON JULY 11, 2023

NOTICE TO THE BOLIVARIAN REPUBLIC OF VENEZUELA

In this action against you, this Court has signed and filed two Orders on July 11, 2023 which are attached as Exhibit 1 and Exhibit 2.

Appendix I

The attached Exhibit 1 is the July 11, 2023 Court Order Denying Motion to Dismiss and Motion for Summary Judgment.

The attached Exhibit 2 is the July 11, 2023 Court Order Setting Civil Non-Jury Trial Date and Pretrial Schedule, Requiring Mediation and Referring Certain Motions to Magistrate Judge.

Plaintiff Ricardo Devengoechea intends to prosecute this action against you to the full extent permitted by law.

You may defend this action either with or without an attorney. Plaintiff strongly advises you to retain an attorney to better protect your rights.

You will be bound by the result of this action regardless of whether you retain an attorney in your defense.

CERTIFICATE OF SERVICE

True copies of this Notice and of the attached two Court Orders have been served upon Defendant Bolivarian Republic of Venezuela on this July 12, 2023 in the following manners:

by DHL Express and by United States Postal Service Air Mail addressed to the Attorney General of defendant Bolivarian Republic of Venezuela in Caracas, Venezuela as follows:

Appendix I

Honorable Attorney General
Av Los Ilustres
cruce con calle Francisco Iazo Marti
Edificio Sede Procuraduria de la Republica
Caracas 1041 Distrito Capital
Venezuela
(phone 58 212-5973300); and

by United States Postal Service First Class Mail addressed to defendant Bolivarian Republic of Venezuela as follows:

Venezuelan Mission
335 East 46 Street
New York, New York 10017; and

by email to defendant Bolivarian Republic of Venezuela addressed to:

ministeriopublico@mp.gob.ve,
bfincheltub@us.embajadavenezuela.org,
serviciosconsulares@us.embaj adavenezuela.
org, misionvenezuelaonu@gmail.com,
despacho.embveus@mppre.gob.ve; and

2 further email addresses of defendant Venezuela supplied by defendant's former attorneys. These 2 further email addresses are required to be kept confidential by Court order filed February 2, 2023 (ECF 253 ¶ 4).

Appendix I

Dated: July 12, 2023

LAW OFFICE OF DENNIS GROSSMAN

by: /s/ Dennis Grossman
Dennis Grossman
Attorney for Plaintiff
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Miami, Florida 33143
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