No. _____

IN THE

Supreme Court of the United States

EUCLIDES BARTOLOME BUGLIOTTI,
MARIA CRISTINA DE BIASI, ROXANA INES ROJAS,
DENISE LAURET, MARIA CARLA GONANO,

Petitioners,

v.

THE REPUBLIC OF ARGENTINA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Argentine holders of defaulted Argentine bonds, in suing to enforce their bonds in federal court in New York, invoked the sovereign issuer's normal waiver of immunity and consent to jurisdiction contained in its Fiscal Agency Agreement (FAA) used in issuing the bonds. The holders' bonds had been placed in an Argentine trust. Their original enforcement action was dismissed for lack of standing under an Argentine statute requiring judicial approval for actions brought by trust beneficiaries instead of their trustee. The holders immediately obtained judicial approval and sued again. By that time, the limitation period on most of their bond claims had run. The court of appeals held that New York's "saving" statute did not extend limitations for these holders on the ground that, under the Foreign Sovereign Immunities Act (FSIA), the holders' lack of standing retroactively voided their invocation, in their original complaint, of the jurisdictional consent and waivers contained in the FAA, meaning jurisdiction had never existed.

1. Whether a plaintiff bondholder's later-cured lack of standing under foreign trust law may retroactively negate a foreign sovereign's contractual waiver of immunity and consent to jurisdiction under the FSIA, thereby extinguishing claims that were timely filed and continuously litigated under New York law?

2. Whether a federal court of appeals may resolve an outcome-determinative and unsettled question concerning the scope of New York's remedial limitation saving statute by applying a novel FSIA-based jurisdictional theory without first obtaining guidance from New York's highest court through its available certification procedure?

PARTIES TO THE PROCEEDINGS

Petitioners Euclides Bartolome Bugliotti, Maria Cristina De Biasi, Roxana Ines Rojas, Denise Lauret, and Maria Carla Gonano were Plaintiffs-Appellants in the court below.

Respondent The Republic of Argentina was Defendant-Appellee in the court below.

No party is a corporation.

LIST OF RELATED PROCEEDINGS

Bugliotti et al. v. Republic of Argentina, No. 17 Civ. 9934 (LAP), United States District Court for the Southern District of New York, dismissed and judgment entered, Jan. 15, 2019.

Bugliotti et al. v. Republic of Argentina, No. 19-379, United States Court of Appeals for the Second Circuit, dismissal vacated in part and remanded, Mar. 17, 2020.

Bugliotti et al. v. Republic of Argentina, No. 17 Civ. 9934 (LAP), United States District Court for the Southern District of New York, dismissed and judgment entered, Mar. 31, 2021.

Bugliotti et al. v. Republic of Argentina, No. 21-1014, United States Court of Appeals for the Second Circuit, affirmed, May 2, 2023.

Bugliotti, Euclides B. and others v. Caja de Valores, No. 10733/2023, Commercial Court No. 9 of Buenos Aires, Argentina, judicial authorizations entered, Jun. 21 and Jul. 17, 2023.

Bugliotti et al. v. Republic of Argentina, No. 23 Civ. 6588 (LAP), United States District Court for the Southern District of New York, dismissed and judgment entered, Sep. 30, 2024.

Bugliotti et al. v. Republic of Argentina, No. 24-2950, United States Court of Appeals for the Second Circuit, affirmed, Mar. 9, 2026, petition for rehearing and rehearing en banc denied, Apr. 9, 2026.

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CITATIONS OF OPINIONS AND ORDERS

The opinion of the Court of Appeals for the Second Circuit below, affirming dismissal of this action on limitation grounds, is unreported. It is No. 24-2950 (2d Cir. slip op. Mar. 9, 2026)—"Bugliotti VI" (Pet. App. 1a).

The order of the Court of Appeals for the Second Circuit below, denying panel rehearing and rehearing en banc, dated April 9, 2026, is unreported—(Pet. App. 33a).

The opinion of the District Court for the Southern District of New York below, dismissing the action on multiple grounds, is unreported. It is 23 Civ. 6588 (LAP), 2024 WL 4349273 (S.D.N.Y. Sep. 30, 2024)—"Bugliotti V" (Pet. App. 35a).

In the prior action below, the second opinion of the Court of Appeals for the Second Circuit, affirming in part and dismissing the action for lack of standing on Argentine trust law grounds, dated May 2, 2023, is reported at 67 F.4th 102 (2d Cir. 2023)—"Bugliotti IV" (Pet. App. 54a).

In the prior action below, the second opinion of the District Court for the Southern District of New York, dismissing the action on multiple grounds, is unreported. It is 17 Civ. 9934 (LAP), 2021 WL 1225971 (S.D.N.Y. Mar. 31, 2021)—"Bugliotti III."

In the prior action below, the first opinion of the Court of Appeals for the Second Circuit, affirming in part, vacating in part, and remanding, is reported at 952 F.3d 410 (2d Cir. 2020)—"Bugliotti II."

In the prior action below, the first opinion of the District Court for the Southern District of New York, dismissing the action on multiple grounds, is unreported. It is 17 Civ. 9934 (LAP), 2019 WL 58691 (S.D.N.Y. Jan. 15, 2019)—"Bugliotti I."

JURISDICTION

The court of appeals entered judgment on March 9, 2026. The court of appeals denied a timely petition for rehearing and rehearing en banc on April 9, 2026.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

28 U.S. Code § 1605—General exceptions to the jurisdictional immunity of a foreign state.

> "(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver; * * * "

N.Y. Civil Practice Law & Rules § 205—Termination of action.

> "(a) New action by plaintiff. If an action is timely commenced and is terminated in any other manner than by a voluntary

> discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff, or, if the plaintiff dies, and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period. * * * "

N.Y. Court of Appeals, Rules of Practice, 22 NYCRR § 500.27—Discretionary Proceedings to Review Certified Questions from Federal Courts and Other Courts of Last Resort.

> "(a) Whenever it appears to the Supreme Court of the United States, any United States Court of Appeals, or a court of last resort of any other state that determinative questions of New York law are involved in a case pending before that court for which no controlling precedent of the Court of Appeals exists, the court may certify the dispositive questions of law to the Court of Appeals. * * * "

Other relevant statutory provisions are reproduced in Appendix F, Pet. App. 68a-73a.

STATEMENT OF THE CASE

Summary

This litigation is one of the flood of actions arising in New York federal and state courts brought by holders of defaulted foreign-sovereign bonds under New York law for breach of contract to recover unpaid principal and interest.

Petitioners filed their first action in 2017. Argentina defended on numerous theories. After six years, only one ground of dismissal was ultimately affirmed by the Second Circuit: it held, in May 2023, that Petitioners had failed to obtain an order from an Argentine court authorizing them to sue in place of their trustee—a standing defect under Argentine trust law.

Petitioners, along with the trustee, immediately obtained authorization orders in Buenos Aires, and then filed the present "follow-on" action in New York federal court in July 2023. But by then, more than six years had passed after the bonds' maturities (New York's applicable limitation period, CPLR § 213, Pet. App. 71a). Argentina asserted a limitation bar. The district court declined to apply the six-month extension provided by New York's limitation "saving" statute for follow-on actions. The Second Circuit affirmed, based on its finding that the Foreign Sovereign Immunities Act (FSIA, 28 U.S.C. § 1605, Pet. App. 68a) precluded operation of the saving statute.

Facts

Petitioners are two Argentine families who invested the proceeds of their sale of their lifelong business in their country's sovereign bonds in the years prior to the defaults on those bonds at the end of 2001. They bought about $30.3 million face amount of bonds that would mature in 2012 and about $5.5 million face amount of bonds maturing in 2017. The bonds' origination document ("Fiscal Agency Agreement") contained Argentina's waiver of sovereign immunity; consents to personal jurisdiction and service of process in New York; and application of New York law.

Petitioners enrolled their bonds in an Argentine government "Tax Credit Program" in early 2001. The program required participants to place their bonds in trust with Caja de Valores, a leading depositary, as trustee. From the outset, Caja reserved the right not to sue for enforcement of bonds it held in trust, due to Caja's close ties with the government. The program provided tax credit certificates, in amounts equivalent to the accruing semi-annual bond interest obligations, which participants could use (if the government failed to make the interest payments directly) to pay their local taxes. The bonds defaulted at the end of 2001 and the periodic bond interest payments ceased.

That aspect of the program worked as intended. After default, Petitioners received the tax credits until their bonds matured—one issuance in 2012 and one in 2017. The major issue in this case is how the bondholders would then obtain repayment of their principal, as well as post-maturity interest, on their bonds.

In mid-2017, as New York's six-year limitation period neared expiration for the bonds that had matured in 2012, Petitioners realized they needed to bring suit. They asked Caja to sue as trustee, but Caja raised its reservation of rights not to sue the government. Petitioners and Caja accordingly entered into a "Certification" stating that Caja "looked to" or "understood" that the requisite lawsuit would be brought by Petitioners, as trust beneficiaries, instead of the trustee. Petitioners sued in the Southern District of New York for breach of contract to obtain repayment of principal and payment of post-maturity interest on both issuances of their bonds in late 2017.

The complaint asserted the FSIA jurisdictional waiver and consents, as contained in the FAA, and alleged that Caja looked to the Petitioners to sue in its place. After four years of litigation involving numerous defenses raised by Argentina; one dismissal and remand ("Bugliotti I" and "Bugliotti II"); and another Rule 12 motion, the district court dismissed the action for multiple reasons ("Bugliotti III"), including Petitioners' lack of standing due to their failure to obtain statutory authorization from an Argentine court to stand in for the trustee as plaintiffs in their suit (*see* Arg. Civil and Commercial Code Art. 1689, Pet. App. 73a). In May 2023, the Second Circuit affirmed dismissal of the action, based only on that authorization/delegation issue ("Bugliotti IV," 67 F.4th 102 (2d Cir. 2023) (Pet. App. 54a)).

Plaintiffs, accompanied by Caja, promptly obtained judicial authorizations in Buenos Aires, Pet. App. 65a, and then filed the present follow-on action, on July 28, 2023, again seeking to recover principal and post-maturity interest on their bonds.

Argentina moved to dismiss the follow-on action, now asserting (among other issues) that the action was limitation-barred because by that time more than six years had passed since the maturity dates of both bond issuances. The district court dismissed on several grounds ("Bugliotti V"), including that the six-month limitation saving extension provision in New York Civil Practice Law & Rules § 205(a) was unavailable to Petitioners because (it said) the prior action had been terminated due to a failure by Petitioners to obtain personal jurisdiction over the defendant—one of the four exceptions listed in § 205(a) (Pet. App. 70a).

The Second Circuit affirmed the dismissal, only on limitations ("Bugliotti VI"). It held that Petitioners did not qualify for a § 205(a) extension because of the personal jurisdiction exception. It rejected Petitioners' argument that the prior action had been terminated due to Petitioners' lack of standing under Argentine trust law; the court focused instead on what it termed the "true defect" in the prior action: failure to obtain personal jurisdiction, as determined by the district court. The Second Circuit held:

> Although the district court referred to the Bondholders' lack of "standing" in its decision . . . , the true defect was lack of jurisdiction: The district court was speaking to the Bondholders' lack of standing to enforce the consent-to-jurisdiction terms of the FAA, not to a lack of Article III or statutory standing.

"Bugliotti VI," slip op. at 15 (Pet. App. 1a at 14a). That explanation, referring to the district court's standing dismissal in Bugliotti III, did not refer to the subsequent 2023 Second Circuit decision (Bugliotti IV), which was the single operative dismissal of the prior action.

Petitioners sought rehearing and rehearing en banc in the Second Circuit, including a request to certify the dismissal issue to the New York Court of Appeals under its certification rules (N.Y. Court of Appeals Rules of Practice, 22 NYCRR § 500.27, Pet. App. 72a). The petition for rehearing was denied on April 9, 2026 (Pet. App. 33a).

REASONS FOR GRANTING THE PETITION

Summary

This case presents an unusual combination of circumstances. An outcome-determinative question concerning the scope of New York's remedial limitation-extension statute was resolved by a federal court through a novel FSIA-based jurisdictional theory.

Certification of the issue to the New York Court of Appeals was available. Petitioners specifically requested certification in their rehearing petition below. Yet Petitioners' claims were extinguished through a federal interpretation of New York law, while New York's highest court has never had the opportunity to determine whether that interpretation accurately reflects New York law.

While this petition appears to focus on intricacies of New York limitation law, standing under Argentine trust law, and FSIA jurisdiction, its deeper significance transcends those doctrines. The Second Circuit's decision below opens a new pathway for a foreign sovereign to escape the FSIA jurisdictional consents and waivers of immunity contained in its indenture-like bond origination documents as conditions for being able to market its debt.

The novel (indeed, unprecedented) logic of the Second Circuit's decision is that a later-determined standing defect concerning a bondholder's authority or entitlement to enforce the bonds, adjudicated at any time in the litigation, gives the sovereign the ability retroactively to negate its initial jurisdictional waivers and consents, on the theory that such a defect, although not jurisdictional in itself, deprived the bondholder of the ability to invoke the sovereign's waivers and consents.

That was the meaning of the crucial step in the Second Circuit's limitation dismissal in the prior action here. It denied Petitioners the limitation extension provided by § 205(a) by transforming the actual ground of termination of the prior action (standing) into a so-called "true defect" of lack of personal jurisdiction, thus engaging the personal jurisdiction exception in § 205(a). Such an approach would prevent invocation of the limitation saving statute—which is a critical protection for plaintiffs that New York's highest court has emphasized has existed in New York law "since at least 1788."[1]

The Second Circuit did not need to proceed in that way. It could have accepted the plain fact that the termination of the prior action was for a plaintiff-side standing defect under Argentine trust law, not a personal jurisdiction dismissal based on the FSIA. Moreover,

1. *Reliance Ins. Co. v. PolyVision Corp.*, 9 N.Y.3d 52, 56, 876 N.E.2d 898, 845 N.Y.S.2d 212 (2006).

Petitioners had properly served Argentina at the outset of their prior action according to the terms of the FAA, giving defendant full notice of their claims; and Argentina also had definitively waived personal jurisdiction defenses in its FAA.

Furthermore, New York caselaw uniformly rejects equating lack of standing with lack of personal jurisdiction in applying § 205(a).[2] That saving statute is to be applied consistent with its "broad and liberal purpose" of resolving claims on their merits, rather than allowing death-knell limitation dismissals of follow-on actions even though the defendant had received timely notice of the claims against it.[3]

Institutionally, the issues presented by this case may be resolved through a narrow and modest disposition. This Court may grant the petition, vacate the judgment below, and remand for further consideration and certification to the New York Court of Appeals. New York law governs virtually all sovereign bonds issued in this hemisphere. The issue ultimately decided below did not depend on any particular determination of FSIA jurisdiction; it was a dispositive question concerning the operation of New York's remedial limitation statute.[4]

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2. *Brown v. Lutheran Medical Ctr.*, 939 N.Y.S.2d 817, 819-20 (Sup. Ct. Kings Co. 2012), *aff'd*, 107 A.D.3d 837, 968 N.Y.S.2d 526 (2d Dep't 2013).

3. *Hakala v. Deutsche Bank AG*, 343 F.3d 111, 115 (2d Cir. 2003).

4. The restrained approach suggested by Petitioners thus is warranted in part *because* this petition does not present a traditional federal circuit split. As argued below, virtually

Such a course would permit resolution of the proper scope and application of New York's remedial limitation saving statute by the court charged with interpreting it, in a way that would be authoritative and dispositive.

A. The Decision Below Introduces an Unprecedented Expansion of Foreign Sovereigns' Immunities Under the FSIA

The dismissal below appears to be the first reported decision holding that a bondholder plaintiff's later-determined lack of standing under foreign trust law allows a foreign sovereign to retroactively nullify its contractual waiver of immunity and consents to jurisdiction under the FSIA. Those waivers and consents appear in virtually all official documents promulgated by sovereign issuers in connection with their public debt financings (such as the FAA in this case).

Moreover, the logic of the Second Circuit's decision could expand beyond lack of standing under Argentine trust law to other alleged defects in a bondholder's action to enforce sovereign bonds. In this litigation, for example, Argentina argued that Petitioners were required to pay back all their tax credit benefits as a condition precedent to filing their bond enforcement action, and that Petitioners were required to arbitrate their dispute in Argentina rather than sue in New York.

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all sovereign debt issuances in this hemisphere provide for application of New York law, jurisdiction in New York courts, and the sovereign's acceptance of personal jurisdiction in New York. The Second Circuit accordingly is the only federal appellate court likely to receive appeals in sovereign debt cases, meaning that decisional splits among federal circuits do not arise.

Had Argentina prevailed on either of those defense arguments, and Petitioners cured and filed a follow-on enforcement action, predictably Argentina would then have made parallel FSIA-based assertions about lack of jurisdiction and the unavailability of a § 205(a) extension, in seeking dismissal of the follow-on action as limitation-barred—even though those defenses, too, are not arguably about personal jurisdiction.

The decision below sets up a collision between the New York law governing most sovereign debt instruments issued in the U.S. and the federal law (FSIA) allowing foreign sovereign bond issuers to waive immunity and subject themselves jurisdictionally to lawsuits in the U.S. Those waivers are necessary preconditions for any sovereign debt financing here, but the decision below unnecessarily calls their effectiveness into question.

B. The Decision Below Conflicts with Established New York Law Distinguishing Standing from Jurisdiction in Applying CPLR § 205(a), Raising Federal-State Comity Issues

The Second Circuit's analysis and result cannot be reconciled with longstanding New York authority holding that a plaintiff's lack of standing does not constitute a jurisdictional defect under § 205(a).

Brown v. Lutheran Medical Ctr., 939 N.Y.S.2d 817, 819-20 (Sup. Ct. Kings Co. 2012), *aff'd*, 107 A.D.3d 837, 968 N.Y.S.2d 526 (2d Dep't 2013), holds that "lack of standing was *not* a legitimate ground for denying a § 205(a) extension," because "a party's lack of standing does not constitute a jurisdictional defect." 939 N.Y.S.2d at 819 (emphasis added)). The court explicitly rejected application of the personal jurisdiction exception in § 205(a) based on a standing deficiency. *Id.* at 820. The decision was affirmed on appeal.

Likewise, New York courts have repeatedly granted § 205(a) limitation extensions when a plaintiff cured a defect concerning the proper party authorized to bring suit, holding that lack of standing does not constitute a lack of personal jurisdiction under § 205(a).[5]

The personal jurisdiction exception was enacted to ensure that a plaintiff can obtain a § 205(a) extension only when the defendant has received notice of the claim through proper service of process.[6] In the present case, Argentina never contended, and the courts below never found, that Petitioners had failed to make timely and valid service of process in the original action, that Argentina

5. *See Carrick v. Central Gen. Hosp.*, 51 N.Y.2d 242, 251-53, 434 N.Y.S.2d 130, 414 N.E.2d 632 (1980) (permitting § 205(a) extension after dismissal on ground that plaintiff had incorrectly filed her claim for wrongful death of her spouse in her own name, rather than as administratrix of her spouse's estate); *Cannellas v. Lentz*, 396 F. Supp. 2d 435, 439 (S.D.N.Y. 2005) (applying § 205(a); holding that "defendant's argument that plaintiff's prior action was never 'commenced' because plaintiff lacked standing to sue at the time the action was brought is without merit"); *George v. Mt. Sinai Hosp.*, 47 N.Y.2d 170, 175-79, 390 N.E.2d 1156, 417 N.Y.S.2d 231 (1979); *cf. Diffley v. Allied-Signal, Inc.*, 921 F.2d 421, 423-24 (2d Cir. 1990) ("application of § 205(a) . . . neither affects nor circumvents . . . dismissal of the prior action; it creates no 'retroactive' diversity jurisdiction of the prior action . . . Instead, § 205(a) merely extends the period for filing a claim.").

6. David D. Siegel & Patrick M. Connors, *New York Practice* § 52 (6th ed. 2018 & Supp. 2025).

had not received notice, or that the FAA waivers were otherwise ineffective. There was no real controversy about personal jurisdiction.[7]

The decisions applying § 205(a) reflect New York's settled understanding that the limitation extension provision exists to preserve claims when a timely-filed action is dismissed for curable procedural defects rather than on the merits. There is no case authority to the contrary.

CPLR § 205(a) is a remedial statute which has at its core the strong public policy consideration that controversies should be adjudicated on their merits. The extension of the limitation period provided by § 205(a) is to "remedy[] what might otherwise be the harsh consequence of applying a limitation period where the defending party has had timely notice of the action." *Matter of Goldstein v. New York State*

7. Argentina's first Rule 12 motion in the prior action, in 2018, asserted that Petitioners had given up any interest in the bonds by placing them in trust, and were in fact suing to enforce the tax credit trust certificates, which did not contain any jurisdictional waivers and consents, such as those contained in the bonds' FAA; and the district court agreed. That decision was belied by Petitioners' complaint and was vacated in Bugliotti II. Thereafter, Argentina's renewed Rule 12 motion, raising numerous new arguments, recited the same Rule 12 bases for dismissal, again including lack of jurisdiction, which the district court accepted without analysis. Bugliotti III. On appeal, the Second Circuit affirmed dismissal of the action only for lack of standing based on Petitioners' failure to obtain Argentine judicial authorization to sue; its analysis did not refer to or depend on any defect in federal jurisdiction. Bugliotti IV. The Second Circuit's 2023 dismissal was, on its face, for lack of foreign-law standing, not for lack of any type of jurisdiction.

Urban Dev. Corp., 13 N.Y.3d 511, 521, 893 N.E.2d 635, 893 N.Y.S.2d 753 (2008). The provision provides "a second opportunity to the claimant who has failed the first time around because of some error pertaining neither to the claimant's willingness to prosecute in a timely fashion nor to the merits of the underlying claim." *George v. Mt. Sinai Hosp.*, 47 N.Y.2d 170, 178–79, 390 N.E.2d 1156, 417 N.Y.S.2d 231 (1979) (refusing to regard the defective prior action as a "nullity"). The remedial concept of the statute "has existed in New York law since at least 1788." *Reliance Ins. Co. v. PolyVision Corp.*, 9 N.Y.3d 52, 56, 876 N.E.2d 898, 845 N.Y.S.2d 212 (2006).

The conflict between the Second Circuit's decision and the New York law described above implicates important principles of federal-state comity. The Second Circuit's decision effectively creates an FSIA-based federal jurisdictional exception to § 205(a) that New York courts have never recognized.

C. The Two Decisions Applying CPLR § 205(a) Cited by the Second Circuit Actually Support a Limitation Extension

The two decisions on applying § 205(a) cited by the Second Circuit below clearly indicate that the statutory requirements for a limitation extension were satisfied.

In *Yonkers Contracting Co., Inc. v. Port Auth. Trans-Hudson Corp.*, 93 N.Y.2d 375, 690 N.Y.S.2d 512, 712 N.E.2d 678 (1999), the sovereign defendant contended that § 205(a) should not apply because of the terms of the statute waiving its immunity. The New York Court of Appeals agreed, holding that a § 205(a) extension was not available *if* the statute waiving the sovereign's immunity itself states the time limit for commencing a claim *and* explicitly makes satisfaction of the time limit a condition precedent for commencing suit.

The clear implication in the decision is that when those factors are *not* present in the enactments allowing waivers of sovereign immunity, § 205(a) extensions are available despite the defendant's sovereign status. Here, the FSIA statute recognizing sovereign waivers of immunity, 28 U.S.C. § 1605(a), does not itself contain any limitation period, let alone one expressed as a condition precedent. The limitation period applicable to Petitioners' claim appears in the limitation provision of the New York civil practice laws and rules applicable to contract claims generally; it is a normal limitation provision. N.Y. Civil Practice Law & Rules § 213(2). Under *Yonkers*, a plaintiff seeking to enforce Argentine bonds qualifies for a § 205(a) limitation extension.

Hakala v. Deutsche Bank AG, 343 F.3d 111 (2d Cir. 2003), concerned whether § 205(a) applied in cases brought under the New York statute on vacating an arbitration award. Plaintiff's counsel fumbled starting the litigation, suffered a dismissal, and sought a § 205(a) extension for a follow-on claim. The Second Circuit held that *Yonkers*-type considerations did *not* justify denying application of § 205(a). The court stated that § 205(a)'s "broad and liberal purpose is not to be frittered away by any narrow construction" and noted that the timely filing of the original petition "satisfied the primary goal of a limitation period—to give the defendant timely notice of the existence of the claim so that it could take steps to prepare for the litigation." 343 F.3d at 115. "In these circumstances it would seem a misadventure of justice to preclude reliance on the remedial provision of § 205(a)." *Id*. at 115-16.

In the present case, the Second Circuit's reach for a "true defect" to avoid a limitation extension under § 205(a) defied *Hakala*'s injunction to apply the saving statute broadly and liberally.

D. This Case Involves Basic Legal Ground Rules Governing the Trillion-Dollar Foreign Sovereign Bond Market Based in New York

New York serves as the dominant American legal center for the international sovereign bond market (sharing the worldwide market about equally with London) for almost all outstanding issuances. The bonds originating in New York are governed by New York law; designate New York courts as the forum for litigation; appoint a New York agent for service of process; waive sovereign immunity to the extent permitted by the FSIA; and are issued, traded, and settled through New York-based market infrastructure. New York is responsible for well over $1 trillion in estimated total stock of such bonds outstanding.[8]

Upcoming actions to enforce the billions of dollars of defaulted sovereign debt issued by Venezuela will make up the next wave of the type of litigation facing American

8. *See* IMF, The International Architecture for Resolving Sovereign Debt Involving Private-Sector Creditors—Recent Developments, Challenges, and Reform Options, September 2020, https://www.imf.org/-/media/Files/Publications/PP/2020/English/PPEA2020043.ashx.

courts. Those bonds are also issued under New York law.[9] Such bonds are frequently held through trustees, custodians, clearing systems, beneficial ownership structures, and other intermediary arrangements. Questions concerning authority to sue are therefore neither unusual nor confined to the present case.

This Court has repeatedly recognized the importance of predictable legal rules governing financial markets. *California Public Employees' Retirement System v. ANZ Securities, Inc.*, 528 U.S. 497, 510 (2017); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 281 (1995).

The rule adopted below creates uncertainty. If a later-discovered standing defect can retroactively negate an otherwise valid invocation of a FSIA waiver, investors cannot reliably determine whether procedural protections provided under state law will remain available after a defect is cured.

E. This Case Presents an Ideal Vehicle for Resolution by This Court

This case presents a clean and outcome-determinative legal issue.

There are no material factual disputes concerning the relevant events and relationships among the parties. Petitioners timely filed their original action. Argentina received notice of the claims. The original action was dismissed only on standing grounds as enunciated in the

9. *See Mazzaccone v. Bolivarian Republic of Venezuela*, No. 24-cv-6168 (DLC), S.D.N.Y. slip op. Feb. 17, 2026.

Second Circuit's 2023 decision. Petitioners immediately cured the identified defect and refiled.

The sole question is whether that standing determination amounts to a jurisdictional defect under the FSIA that defeats operation of New York's saving statute.

Because the issue was squarely decided below and is dispositive of Petitioners' claims, this case presents an ideal vehicle for review.

F. Alternatively, This Court Should Direct Certification to the New York Court of Appeals

Even if this Court concludes that plenary review is unwarranted at this stage, it should direct certification of the dispositive state-law question to the New York Court of Appeals.

This case presents precisely the circumstance for which such certification exists. An outcome-determinative and unsettled question concerning the scope of New York's principal remedial limitation statute was resolved by a federal court through a novel FSIA-based jurisdictional theory, without the benefit of guidance from New York's highest court, despite the availability of certification.

The issue is not merely whether the court below correctly applied CPLR § 205(a). Rather, the court below effectively narrowed the scope of that statute by concluding that Petitioners' later-cured lack of standing constituted a jurisdictional defect sufficient to *externally* defeat application of the saving statute. That logic does not find any support in the decisions of the New York Court of Appeals, or indeed in any New York or federal caselaw.

Certification is especially appropriate because no further factual development is required. The relevant events are undisputed. The issue is purely legal. The question was fully presented below. And certification was available but not utilized, notwithstanding the central role the unresolved state-law question ultimately played in the disposition of Petitioners' action.

This Court has long recognized the value of permitting state courts to speak authoritatively on important and unresolved questions of state law. *See Virginia v. American Booksellers Ass'n*, 484 U.S. 383 (1988); *Bellotti v. Baird*, 428 U.S. 132 (1976); *Clay v. Sun Insurance Office Ltd.*, 363 U.S. 207 (1960); *see also Ray v. Ray*, 22 F.4th 69 (2d Cir. 2022) (certifying question involving successive § 205(a) extensions); *Reliance Ins. Co. v. PolyVision Corp.*, 474 F.3d 54 (2d Cir. 2007) (certifying question involving § 205(a) extension in a follow-on action filed by a related plaintiff).

As a result of the decision below, Petitioners' claims were extinguished through a federal interpretation of New York law that New York's highest court has never had the opportunity to consider. Certification would allow the New York Court of Appeals to determine whether that interpretation accurately reflects New York law.

Such a course would provide a narrow and institutionally modest means of resolving the dispute. This Court would not need to determine the full scope of the FSIA, resolve broader questions concerning sovereign debt enforcement, or undertake plenary review of the merits. Certification would simply ensure that the dispositive question concerning the operation of New York limitation law is answered by the court charged with authoritatively interpreting it.

Indeed, if certification is not appropriate under these circumstances, it is difficult to identify what category of unresolved state-law issue would warrant certification. An outcome-determinative question concerning the scope of a major New York remedial statute, resolved below through application of a novel federal jurisdictional theory and without guidance from New York's highest court, presents one of the strongest imaginable cases for certification

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIIT, FILED MARCH 9, 2026

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2025
No. 24-2950

EUCLIDES BARTOLOME BUGLIOTTI, MARIA CRISTINA DE BIASI, ROXANA INES ROJAS, DENISE LAURET, MARIA CARLA GONANO,

Plaintiffs-Appellants,

v.

THE REPUBLIC OF ARGENTINA,

*Defendant-Appellee.**

On Appeal from a Judgment of the United States District Court for the Southern District of New York

ARGUED: SEPTEMBER 17, 2025
DECIDED: MARCH 9, 2026

Before: CHIN, NARDINI, and KAHN, *Circuit Judges.*

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* The Clerk of Court is respectfully directed to amend the caption as set forth above.

William J. Nardini, *Circuit Judge*:

This appeal is the latest chapter in the long-running saga of creditors trying to recover over $35 million in defaulted principal payments on Argentine sovereign bonds. The Plaintiffs-Appellants (the "Bondholders")[1] had brought a previous action against the Defendant-Appellee, the Republic of Argentina (the "Republic"), in the United States District Court for the Southern District of New York (Loretta A. Preska, *District Judge*). The district court dismissed those claims for a variety of reasons—primarily based on the Bondholders' lack of authority to sue on the bonds under Argentine law—and we ultimately affirmed. The Bondholders then obtained authorization from an Argentine court to sue to enforce the bonds and filed another complaint in New York.

The district court again dismissed the complaint, on two grounds. First, the district court held that all of the Bondholders' claims were barred under New York's six-year statute of limitations for contract claims. According to the court, N.Y. C.P.L.R. § 205(a), a "savings statute" that permits an action to be re-filed within six months after its dismissal, did not preserve the Bondholders' claims because their prior suit had been dismissed for lack of personal jurisdiction. Nor could the Bondholders invoke the tolling provisions in executive orders issued by

1. As discussed in more detail below, the bonds were acquired by the current Plaintiffs-Appellants or their predecessors in interest. For convenience, we will refer to them collectively as the "Bondholders."

the Governor of New York during the COVID pandemic, because the Bondholders had failed to demonstrate equitable entitlement to such tolling. Second, the district court held that the Bondholders were collaterally estopped from relitigating issues that had formed the basis of the district court's previous dismissal.

On appeal, we agree with the district court that § 205(a) does not apply, but we hold that New York's COVID-era tolling provisions do not require any showing of equitable entitlement. Accordingly, some (but not all) of the Bondholders' claims are timely. We further hold that collateral estoppel does not bar the Bondholders from relitigating certain questions that we did not reach in our previous affirmance of the district court's dismissal; and that under Argentine law, the Bondholders now have authority to sue on the bonds. Accordingly, we AFFIRM IN PART and VACATE IN PART the judgment of the district court and REMAND for further proceedings.

I. Background

Over a span of time, the Bondholders[2] in this case acquired $35,818,000 worth of bonds issued by the Republic. Their holdings include bonds from two different series: $30,299,000 of "GD65 Bonds" and $5,519,000 of "AR16 Bonds." The GD65 Bonds had a maturity date of February 21, 2012, and the AR16 Bonds had a maturity date of January 30, 2017. The Republic issued both sets of bonds pursuant to a "Fiscal Agency Agreement" dated October 19, 1994 (the "FAA" and bonds thereunder the "FAA Bonds"). The FAA contained a number of provisions that made the Republic amenable to suit in New York for disputes over the FAA Bonds, including a consent to jurisdiction in "any action arising out of or based on the Securities or this Agreement by the holder of any Security" in "any state or federal court in The City of New York" and appointment of a registered agent for service in New York. Joint App'x at 68. The Republic also waived "any immunity from the jurisdiction of any such court to

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2. Plaintiffs-Appellants in this case are Euclides Bartolomé Bugliotti, Maria Cristina de Biasi, Roxana Inés Rojas, Denise Lauret, and Maria Carla Gonano. Bugliotti and non-party Hugo Lauret were business partners who sold a large wholesale business in 1998 and decided to invest part of the proceeds in Argentine bonds. Bugliotti and his wife, de Biasi, purchased $27,252,000 of GD65 Bonds and $5,511,000 of AR16 Bonds. Hugo Lauret purchased $3,047,000 of GD65 Bonds and $8,000 of AR16 Bonds, which passed to his three heirs—Rojas, Lauret, and B.L.G., a minor—following his death in January 2015. Plaintiffs-Appellants Rojas, Lauret, and Gonano (appearing on behalf of her son, B.L.G.) presently maintain interests in the Bonds purchased by Hugo Lauret.

which it might otherwise be entitled in any action arising out of or based on the Securities or this Agreement by the holder of any Security." *Id.* at 69.

In August 2001, as the Republic was approaching another debt crisis, it launched a "Tax Credit Program" under Presidential Decree Number 1005/2001. Under this program, bondholders could deposit their FAA Bonds in trust with an Argentine clearing system, Caja de Valores S.A. ("Caja"). In exchange for their FAA bonds, participants would receive two different types of certificates. One set, called "custody certificates" ("*Certificados de Custodia,*" or "*CCs*"), corresponded to the principal value of their bonds and would be payable on the bonds' maturity date. The other set, called "tax credit certificates" ("*Certificados de Crédito Fiscal,*" or "*CCFs*"), corresponded to the value of outstanding interest payments. If the Republic missed an interest payment, the Bondholders could exchange a *CCF* to get an Argentine tax credit equal in value to the unpaid interest.

In November 2001, the Bondholders opted into the Tax Credit Program. They deposited their FAA Bonds in trust with Caja, and received *CCs* and *CCFs* corresponding in value to the principal and interest payable on the Bonds. The rights and obligations of the parties to these trusts were memorialized in identical Trust Agreements (the "Trust Agreements"), with the Bondholders as the "Principal" or "Trustor" and Caja as the "Trustee." Section 2.1 of these Agreements provides that the trusts "shall be governed by . . . Law 24[,]441" of Argentina, which in turn states that "[t]he trustee has standing to exercise all actions necessary to defend the trust assets, both against third parties and against the beneficiary." Joint App'x 77, 100, 462. Section 16 also contains the following arbitration clause:

> For all purposes of this Agreement, the Parties agree to resolve their disputes through an arbitration procedure, for which purpose they submit to the Permanent Arbitration Tribunal of the Buenos Aires Stock Exchange and the application of its regulations, waiving any other jurisdiction that may correspond to them.

Id. at 105.

On December 24, 2001, the Republic declared a moratorium on paying both principal and interest on sovereign debt and stopped making payments on the FAA Bonds. Because the Bondholders had enrolled in the Tax Credit Program, they exchanged their outstanding *CCFs* for tax credits in place of the unpaid interest until their FAA Bonds matured on February 21, 2012, and January 30, 2017. But when the FAA Bonds reached their maturity dates, the Republic failed to pay out the out-standing principal value represented by the *CCs.*

The Bondholders then embarked on a long series of legal proceedings to compel the Republic to pay the principal on the FAA Bonds.

After initial litigation in Argentine courts proved unsuccessful, the Bondholders—like many other investors in Argentine sovereign debt before them—turned to the federal courts in New York. On December 20, 2017, the Bondholders sued the Republic for non-payment of the FAA Bonds in the United States District Court for the Southern District of New York. The Bondholders relied on the FAA's consent to jurisdiction in New York and waiver of sovereign immunity to establish both personal and subject matter jurisdiction. Shortly before bringing suit, the Bondholders and Caja also entered into a certification recognizing that the Bondholders would sue to recover on the FAA Bonds in New York and that Caja would not be responsible for pursuing this action.

On January 15, 2019, the district court dismissed the Bondholders' complaint. The court concluded that once the Bondholders deposited the FAA Bonds with the trustee pursuant to the Tax Credit Program and received *CCs* and *CCFs* in exchange, it was the trustee—that is, Caja—that now owned the bonds. Absent an ownership interest in the FAA Bonds, the Bondholders themselves could not invoke the FAA's provisions on sovereign immunity, service, and jurisdiction that would allow the suit against the Republic to go forward in New York. *Bugliotti v. Republic of Argentina* ("*Bugliotti I*"), No. 17-CV-9934 (LAP), 2019 WL 586091, at *3-*4 (S.D.N.Y. Jan. 15, 2019).

On appeal, this Court affirmed in part, vacated in part, and remanded. *Bugliotti v. Republic of Argentina* ("*Bugliotti II*"), 952 F.3d 410, 415 (2d Cir. 2020). As relevant here, we held that the operative question was not who owned the FAA Bonds, but whether Argentine law authorized the Bondholders to bring suit to enforce them and therefore to invoke the jurisdictional provisions contained in the FAA. *Id.* at 411, 413.

On remand, the district court again dismissed the Bondholders' complaint. *Bugliotti v. Republic of Argentina* ("*Bugliotti III*"), No. 17-CV-9934 (LAP), 2021 WL 1225971, at *9 (S.D.N.Y. Mar. 31, 2021). Looking to Argentine trust law, the district court concluded that Caja had the exclusive right to sue to enforce the FAA Bonds and that it had not conferred this right on the Bondholders. *Id.* at *7-*8. The district court also concluded that Argentine law required the FAA Bonds "to be reassembled before being enforced." *Id.* at *8. That is, the Bondholders had to return the unredeemed *CCs* (the certificates for principal payments) to the trust, and to deposit into the trust an amount of money equivalent to the tax credits that the Bondholders had received pursuant to the *CCFs.* However, the court also discussed a potential "alternative remedy" to reassembly: "obtaining authorization from the [Argentine] judge to exercise an action instead of the trustee." *Id.* at *9.

The Bondholders appealed, and we affirmed. *Bugliotti v. Republic of Argentina* ("*Bugliotti IV*"), 67 F.4th 102, 107 (2d Cir. 2023). We explained:

> [E]ven if we assume arguendo that Caja had the authority to delegate its enforcement right to [the Bondholders], and that [the Bondholders] were not required to first reassemble the bonds before bringing this action, we still cannot find that [the Bondholders] are entitled to bring suit

> to recover the bonds under Argentine law, since there is no evidence that Caja ever made such a delegation.

Id. at 106.

Following this Court's decision, the Bondholders sought authorization from Commercial Court No. 9 in Buenos Aires, Argentina (the "Commercial Court") for their American lawsuit. Caja participated in the hearing and did not object to the Bondholders' application. On June 21 and July 12, 2023, the Commercial Court entered orders authorizing the Bondholders to "exercise and/or continue the relevant actions and all necessary acts for that purpose . . . in order to sue the issuer for the collection of the bonds or public securities that constitute the underlying assets of the mentioned trusts and their accessories[.]" Joint App'x at 43-44, 55.

With the Commercial Court's authorization in hand, the Bondholders refiled their complaint in the Southern District of New York on July 28, 2023.

For a third time, the district court dismissed the Bondholders' complaint. *Bugliotti v. Republic of Argentina* ("*Bugliotti V*"), No. 23-CV-6588 (LAP), 2024 WL 4349273, at *8 (S.D.N.Y. Sept. 30, 2024). The district court concluded that the Bondholders' new action was time-barred by the six-year statute of limitations for contract claims under N.Y. C.P.L.R. § 213(2). According to the court, N.Y. C.P.L.R. § 205(a), a "savings statute" under New York law that permits an action to be re-filed within six months after its dismissal, did not save the Bondholders' claims because their prior suit had been dismissed for lack of personal jurisdiction. Nor could the Bondholders invoke the tolling provisions in executive orders issued by the Governor of New York during the COVID pandemic, because they had failed to demonstrate equitable entitlement to such tolling. The district court further held that, even if the claims were timely, the Bondholders were collaterally estopped from relitigating issues of jurisdiction, including whether reassembly was required, which had formed the basis of the district court's previous dismissal in *Bugliotti III*.

This appeal followed.

II. Standard of Review

This Court reviews *de novo* a district court's grant of a motion to dismiss, accepting the allegations in the complaint as true and drawing all reasonable inference in favor of the plaintiff. *United States v. EZ Lynk, SEZC*, 149 F.4th 190, 198 (2d Cir. 2025). It similarly reviews *de novo* both conclusions of law regarding jurisdiction under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1602 *et seq.*, and determinations of foreign law. *Harvey v. Permanent Mission of Republic of Sierra Leone to United Nations*, 97 F.4th 70, 76 (2d Cir. 2024) (FSIA); *Branch of Citibank, N.A. v. De Nevares*, 74 F.4th 8, 14 (2d Cir. 2023) (foreign law).

III. Discussion

This appeal raises several principal issues. As a threshold matter, we must determine whether the Bondholders' claims are time-barred, in light of New York's "savings statute," N.Y. C.P.L.R. § 205(a), as well as COVID-era executive orders issued by the Governor of New York. To the extent the claims are not barred by the statute of limitations, we consider whether the Bondholders are collaterally estopped from relitigating whether Argentine law authorizes them to sue on the FAA Bonds (and therefore to establish jurisdiction in the district court). If collateral estoppel does not bar their arguments, we then address (a) whether the Bondholders' failure to reassemble their FAA Bonds bars this suit; and (b) if not, whether the Bondholders nevertheless lack authority to enforce the FAA Bonds because the Commercial Court's authorization was ineffective. We consider each issue in turn.

A. Statute of Limitations

Under New York law, claims for breach of contract are subject to a six-year statute of limitations. N.Y. C.P.L.R. § 213(2).[3] The Bondholders filed this action on July 28, 2023, more than six years after both the AR16 and GD65

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3. The FAA provides that New York law governs the Agreement. The parties also agree that the Bondholders' claims are subject to New York's six-year statute of limitations on contract claims.

Bonds matured.[4] The Bondholders argue, however, that the limitations period on their claims has not run because of New York's "savings statute," N.Y. C.P.L.R. § 205(a), which—subject to certain conditions—lets plaintiffs re-file an action within six months after its dismissal. This argument, if valid, would render timely the Bondholders' claims on all their Bonds because the Bondholders initiated their prior suit on December 20, 2017, before the statute of limitations on either the AR16 or GD65 Bonds expired. In the alternative, the Bondholders argue that the limitations period on their claims was tolled for 228 days by the COVID Orders. This latter argument, if correct, would save the Bondholders' claims for recovery on the AR16 Bonds. But it would not preserve their claims on the GD65 Bonds, because the limitations period for those expired in February 2018, long before the COVID Orders were in place.

1. N.Y. C.P.L.R. § 205(a)

Under N.Y. C.P.L.R. § 205(a), "[i]f an action is timely commenced and is terminated . . . the plaintiff . . . may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination" so long as the new action would have been timely when the prior action was commenced and service is effected within the same

4. The Bondholders' AR16 Bonds matured on January 30, 2017, and the subsequent six-year period ended on January 30, 2023. Similarly, the Bondholders' GD65 Bonds matured on February 21, 2012, and the following six-year period terminated on February 21, 2018.

six-month period. N.Y. C.P.L.R. § 205(a). The statute lists certain exceptions to this rule. As relevant here, the savings provision does not apply if an action was previously dismissed for "failure to obtain personal jurisdiction over the defendant." *Id.*

In *Bugliotti III*, the district court granted the Republic's motion to dismiss the Bondholders' then-operative complaint under Federal Rules of Civil Procedure 12(b)(1), (2), and (5). 2021 WL 1225971, at *1. The district court reasoned that because Caja had not conferred the right to bring suit on the Bondholders, as required under the Trust Agreements and Argentine law, the Bondholders lacked standing to enforce the FAA Bonds. 2021 WL 1225971, at *7-9. Consequently, the Bondholders could not "invoke the 1994 FAA Bonds' service of process and jurisdictional provisions under the FSIA." *Id.* at *9. On appeal, this Court noted that it reviewed *de novo* the dismissal of the complaint for lack of both personal and subject-matter jurisdiction. *Bugliotti IV*, 67 F.4th at 104.

The Bondholders now argue that the district court's dismissal of the complaint in *Bugliotti III* was based only on lack of standing, not lack of personal jurisdiction. As a result, the Bondholders contend, they can invoke N.Y. C.P.L.R. § 205(a) to cure their statute of limitations defect.

The Bondholders' argument misapprehends the nature of the district court's jurisdiction over the Republic in this matter. The FSIA is the "sole basis for obtaining jurisdiction over a foreign state in our courts." *CC/Devas*

(Mauritius) Limited v. Antrix Corp. Ltd., 605 U.S. 223, 229, 145 S.Ct. 1572, 221 L.Ed.2d 867 (2025) (internal quotation marks omitted). Personal jurisdiction exists under the FSIA where any of the statute's exceptions to immunity applies and service of process has been accomplished. *Id.* at 232, 145 S.Ct. 1572. One such exception is where a "foreign state has waived its immunity either explicitly or by implication." *Cap. Ventures Int'l v. Republic of Argentina*, 552 F.3d 289, 293 (2d Cir. 2009) (quoting 28 U.S.C. § 1605(a)(1)).

In the operative complaint at issue in *Bugliotti III*, the Bondholders relied on the Republic's waiver of sovereign immunity and consent-to-jurisdiction clause in the FAA to establish personal jurisdiction. However, the district court in *Bugliotti III* found that the Bondholders were unable to enforce the FAA Bonds, 2021 WL 1225971, at *7-*8, meaning that they could not invoke the jurisdictional provisions contained in the FAA. The ruling thus undermined the Bondholders' sole basis for asserting that the district court had personal jurisdiction over the Republic. Although the district court referred to the Bondholders' lack of "standing" in its decision, *id.* at *7, the true defect was lack of jurisdiction: The district court was speaking to the Bondholders' lack of standing to enforce the consent-to-jurisdiction terms of the FAA, not to a lack of Article III or statutory standing. This conclusion was made even more clear by the district court's express invocation of Federal Rule of Civil Procedure 12(b)(2) (which provides for dismissal for "lack of personal jurisdiction") as one of the bases for dismissing the complaint. *See id.* at *1. The district court's dismissal in

Bugliotti III was thus grounded, at least in part, in a lack of personal jurisdiction. Accordingly, the Bondholders cannot invoke the six-month relation-back provision of § 205(a) to make their present complaint timely.

Further, we are unpersuaded by the Bondholders' argument that § 205(a) applies despite any "curable defect," which they argue is the situation here. As a preliminary matter, the text of § 205(a) plainly states that the statute does not apply where the prior action was dismissed for lack of personal jurisdiction; it does not distinguish between curable and non-curable defects. *See* N.Y. C.P.L.R. § 205(a). But even assuming § 205(a) does make such a distinction, the Bondholders' argument would still fail. In *Yonkers Contracting Co. v. Port Authority Trans-Hudson Corp.*, 93 N.Y.2d 375, 690 N.Y.S.2d 512, 712 N.E.2d 678 (1999), the New York Court of Appeals held that § 205(a) does not apply to an action that was previously dismissed for the "curable defect" of failure to establish that the defendant waived its sovereign immunity. *Id.* at 379, 690 N.Y.S.2d 512, 712 N.E.2d 678 (holding that sovereign immunity had not been waived, where statute required "timely suit as an integral part of its waiver of sovereign immunity"). This Court later stated that the outcome in *Yonkers Contracting* was, in part, a result of the plaintiff's right to sue arising from a "statutory waiver of sovereign immunity." *Hakala v. Deutsche Bank AG*, 343 F.3d 111, 114 (2d Cir. 2003). We reasoned that "[g]iven the fact that a sovereign entity was free to make itself completely immune to suit by simply declining to waive its immunity, the harsh result of disallowing the remedial provision of § 205(a) was far less unfair." *Id.* at

116. The same rationale applies here. Because *Bugliotti III* held that the Bondholders could not take advantage of the waiver of sovereign immunity in the FAA Bonds (which in turn would have granted personal jurisdiction), 2021 WL 1225971, at *9, § 205(a) does not apply to the Bondholders' claims.

2. The COVID Orders

We agree with the Bondholders, however, that New York's COVID-era executive orders tolled the statute of limitations between March 20 and November 3, 2020, for a total of 228 days.

On March 20, 2020, then-New York Governor Andrew Cuomo issued Executive Order 202.8, declaring that "[i]n accordance with the directive . . . to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement . . . of any legal action . . . is hereby *tolled* from the date of this executive order until April 19, 2020." N.Y. Exec. Order 202.8 (emphasis added). The Governor later issued eight executive orders that repeatedly extended the March 20, 2020, Order. *See* N.Y. Exec. Order Nos. 202.14, 202.28, 202.38, 202.48, 202.55, 202.55.1, 202.60, 202.67.

Since then, the New York Court of Appeals has consistently characterized these Orders as "tolling" the statute of limitations. *Favourite Ltd. v. Cico*, 42 N.Y.3d 250, 260-61, 218 N.Y.S.3d 540, 243 N.E.3d 494 (2024); *see also Jaime v. City of New York*, 41 N.Y.3d 531, 537 n.2, 213 N.Y.S.3d 730, 237 N.E.3d 796 (2024) ("the governor issued an executive order containing a provision that *tolled* all limitations periods due to the COVID-19 pandemic") (emphasis added). All four New York Appellate Departments have also stated that these Orders operate to toll the applicable New York-law limitations periods. *Zak v. Bronx Park Phase I Preserv., LLC*, 237 A.D.3d 654, 655, 233 N.Y.S.3d 288 (1st Dep't 2025) ("the three-year statute of limitations was tolled by executive orders"); *Baker v. 40 Wall St. Holdings Corp.*, 226 A.D.3d 637, 638, 208 N.Y.S.3d 680 (2d Dep't 2024) (holding that executive orders "constitute a toll of the filing deadlines") (internal quotation marks omitted); *Matter of Roach v. Cornell Univ.*, 207 A.D.3d 931, 932, 172 N.Y.S.3d 215 (3d Dep't 2022) (holding that executive orders constituted a "toll" that suspended the running of the limitations period); *Harden v. Weinraub*, 221 A.D.3d 1460, 1462, 200 N.Y.S.3d 207 (4th Dep't 2023) (characterizing executive orders as creating a "toll"). This Circuit, too, has echoed the New York Court of Appeals' characterization of the COVID Orders as tolling the relevant periods. *See In re Nordlicht*, 115 F.4th 90, 113 (2d Cir. 2024).

Adopting this characterization, we conclude that the COVID Orders, like all other tolling provisions, extended the window for the Bondholders to commence this action by the length of the 228-day tolled period. *See Bermudez Chavez v. Occidental Chem. Corp.*, 35 N.Y.3d 492, 505 n.8, 133 N.Y.S.3d 224, 158 N.E.3d 93 (2020) ("A toll does not extend the statute of limitations indefinitely but merely suspends the running of the applicable statute of limitations for a finite and, in this instance, readily identifiable time period. . . ."). Thus, the Bondholders' deadline to file claims over the AR16 Bonds was pushed back 228 days from January 30, 2023, to September 15, 2023. Because the Bondholders initiated suit on July 28, 2023, their claims on the AR 16 Bonds are timely. By contrast, the tolling provided by the COVID Orders does not save the claims over the GD65 Bonds because the limitations period on these claims expired in 2018, before the COVID Orders were in place. Put another way, because the statute of limitations had already run on the GD65 Bonds, there was no longer a limitations period to be tolled on those claims by the time that the Governor issued his executive orders.

The district court reached a different conclusion on the effect of the COVID Orders, reasoning that the Bondholders could not invoke "equitable tolling" because they had not explained how the COVID-19 pandemic impacted their ability to file claims, and indeed they were litigating this matter while the COVID Orders were in place. *Bugliotti V*, 2024 WL 4349273, at *5. The district court erred, however, in analyzing the COVID Order under an equitable tolling framework. Equitable tolling is a discretionary exercise of a court's equitable powers that "prevent[s] unfairness to a plaintiff who is not at fault for lateness in filing" when the movant demonstrates "some extraordinary circumstance stood in her way" and that "she has been pursuing her rights diligently." *Saint-Jean v. Emigrant Mortg. Co.*, 129 F.4th 124, 142 (2d Cir. 2025) (internal citation and quotation marks omitted). New York's COVID Orders do not, however, condition their applicability upon any equitable showing by a party. Instead, the COVID Orders provide automatic relief from limitations periods on New York-law claims for a set period of time. *See* N.Y. Exec. Order 202.8.

We are unpersuaded by the Republic's contention that the COVID Orders extended the limitations period only for claims that expired while the Orders were in effect. The text of the March 20, 2020, Order does not restrict tolling to limitations periods that expired while the Order was in place. N.Y. Exec. Order 202.8. Nor, as a general matter, does tolling work that way. *See Bermudez Chavez*, 35 N.Y.3d at 505 n.8, 133 N.Y.S.3d 224, 158 N.E.3d 93. Indeed, the Second Department has expressly rejected the argument put forth by the Republic, and we are persuaded that its holding accurately reflects New York law. *Baker*, 226 A.D.3d at 638, 208 N.Y.S.3d 680.

Nor do we discern any merit in the Republic's contention that then-Governor Cuomo lacked authority to toll the statute of limitations. Executive Law Section 29-a provides the Governor with authority to "temporarily *suspend* specific provisions of any statute, local law, ordinance, or orders . . . if compliance with such provisions would prevent, hinder, or delay action necessary to cope with [a state disaster emergency]." N.Y. Exec. Law § 29-a(1) (emphasis added). Suspensions of statutory requirements under Section 29-a "may provide for the alteration or modification of" these requirements. *Id.* § 29-a(2)(d). The First and Second Departments have both held that the authority to "alter[]" or "modify[]" statutory requirements includes tolling limitations periods, and they have confirmed the Governor's authority to do so under Section 29-a. *Murphy v. Harris*, 210 A.D.3d 410, 411, 177

N.Y.S.3d 559 (1st Dep't 2022); *Brash v. Richards*, 195 A.D.3d 582, 584-85, 149 N.Y.S.3d 560 (2d Dep't 2021). This outcome strikes us as correct, and these decisions allow us to predict with confidence that the New York Court of Appeals would rule the same way if asked. *See Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 673 F.3d 50, 74 (2d Cir. 2012).

In sum, although the Bondholders cannot take advantage of N.Y. C.P.L.R. § 205(a), the COVID Orders extended the limitations period on the AR16 Bonds by 228 days. As a result, the Bondholders' claims to recover on the AR16 Bonds are timely and the district court erred in declining to apply the COVID Orders to those claims.

B. The Bondholders' Authority to Enforce the FAA Bonds

The Bondholders next argue that the district court erred in holding that collateral estoppel barred relitigation of whether they had authority to sue to enforce the FAA Bonds—in particular, whether they needed to reassemble their Bonds before bringing suit. In their view, the district court's determination on this point in *Bugliotti III* has no preclusive effect because this Court affirmed *Bugliotti III* on alternative grounds. The Bondholders further contend that Argentine law does not actually require reassembly of the FAA Bonds, and that the new orders of the Commercial Court authorize them to proceed with the litigation in New York. We agree with the Bondholders in each respect.

1. Collateral Estoppel

"[I]f an appellate court considers only one of a lower court's alternative bases for its holding, affirming the judgment without reaching the alternative bases, only the basis that is actually considered can have any preclusive effect in subsequent litigation." *Niagara Mohawk Power Corp. v. Tonawanda Band of Seneca Indians*, 94 F.3d 747, 754 (2d Cir. 1996); *accord In re Peters*, 642 F.3d 381, 386 (2d Cir. 2011). In so holding, we have echoed the Restatement of Judgments: "If the appellate court upholds one of [multiple] determinations as sufficient and refuses to consider whether or not the other is sufficient and accordingly affirms the judgment, the judgment is conclusive as to the first determination." Restatement (Second) of Judgments § 27 cmt. o (1982), *cited in In re Peters*, 642 F.3d at 386.

The district court's holding on reassembly in *Bugliotti III* falls neatly into this exception to collateral estoppel. In *Bugliotti III*, the district court held that the Bondholders lost on two independent grounds: (1) that Caja had not at that time conferred on the Bondholders the right to bring suit, *and* (2) that the Bondholders failed to satisfy the reassembly requirement that, the court held, was mandated by Argentine law. 2021 WL 1225971, at *7-8. It described the first of these issues—obtaining authorization to initiate suit—as an "alternative remedy" to reassembling the Bondholders' FAA Bonds. *Id.* at *9. On appeal, we affirmed on the first ground alone: that the Bondholders lacked authority to enforce the FAA Bonds because Caja had not delegated this authority to the Bondholders. *Bugliotti IV*, 67 F.4th at 105. We were studiously agnostic, however, about the district court's holding with respect to reassembly. All we said on that score was that our conclusion would be the same even if reassembly was not required. *Id.* at 105-06. In short, the district court's holding on reassembly in *Bugliotti III* was an alternative basis for the judgment that was not affirmed on appeal. Accordingly, it is not preclusive.

For similar reasons, the district court erred in holding that the Bondholders were collaterally estopped from broadly relitigating "issues of jurisdiction." *Bugliotti V*, 2024 WL 4349273, at *7. As we have explained, *Bugliotti III* relied on two alternative bases for its holding that the Bondholders had failed to establish jurisdiction in New York—Caja's failure to authorize the Bondholders to sue on the bonds, and the Bondholders' failure to reassemble the bonds—both of which precluded the Bondholders from invoking the jurisdiction-granting provisions of the FAA. When this occurs, the preclusion analysis looks to whether each of the alternative bases was affirmed on appeal, not whether the overarching holding was upheld. *See Niagara Mohawk*, 94 F.3d at 754. Here, the district court framed its preclusion analysis around *Bugliotti III's* overarching holding on jurisdiction. This was in error.

Therefore, to determine whether reassembly is a condition precedent to bringing suit on the FAA Bonds, and then to consider whether the Bondholders have now obtained authority to sue in lieu of Caja, this Court must embark on its own examination of Argentine law.

2. Reassembly Requirement Under Argentine Law

Under Federal Rule of Civil Procedure 44.1, "the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence" when determining questions of foreign law. Fed. R. Civ. P. 44.1. "Rule 44.1 frees courts to `reexamine and amplify material . . . presented by counsel in partisan fashion or in insufficient detail." *Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, 585 U.S. 33, 42, 138 S.Ct. 1865, 201 L.Ed.2d 225 (2018) (internal quotation marks and citation omitted). This extends to appellate courts, which review *de novo* a district court's determination of foreign law under Rule 44.1. *Bugliotti II*, 952 F.3d at 413-14.

The parties presented the district court with competing declarations from experienced Argentine lawyers to marshal the pertinent legal authorities on each side of the question of whether Argentine law requires the Bondholders to reassemble their bonds in order to pursue the present lawsuit. For the Republic, Gabriel Bottini attests to the existence of a reassembly requirement. For the Bondholders, Mario A. Carregal and Roberto E. Silva, Jr., argue to the contrary. After reviewing these authorities, the district court concluded that "Argentine law requires Plaintiffs to return the tax-credit certificates and *CCs* to reassemble the bonds to bring suit on the bonds." *Bugliotti III*, 2021 WL 1225971, at *8. The court reasoned that 358*358 Argentine "precedent indicat[es] that bondholders must reassemble their bonds before exercising any rights related to their bonds." *Id.* Upon our own independent review of the relevant authorities, we conclude that Argentine law does not require reassembly as a condition precedent to suing to recover on the bonds.

The Republic attempts to locate a reassembly requirement in three sources of Argentine law: (1) the Argentine Supreme Court's 2014 decision in *Domec Compania de Artefactos Domésticos S.A.I.C. y F v. Republic of Argentina*, 265/2011, 47-D (Arg. Sup. Ct. Nov. 27, 2014) ("*Domec*"); (2) the Argentine Supreme Court's 2015 decision in *Bugliotti v. Republic of Argentina*, 134/2012 (Arg. Sup. Ct. July 14, 2015) and an "opinion of the public prosecutor" endorsed therein; and (3) Section 5 of the Trust Agreements. However, none of these sources establishes that participants in the Tax Credit Program must reassemble their FAA Bonds before suing to recover on these instruments.

We begin with *Domec*. The Republic and its Argentine-law expert repeatedly cite this opinion as establishing that participants in the Tax Credit Program must reassemble their Bonds before suing to enforce them. We read the Argentine Supreme Court's decision differently.[5] That case involved a public debt exchange

5. In considering Argentine law, we accord great weight to decisions of the Argentine Supreme Court even though its rulings are not strictly binding on lower courts in the Argentine civil law system which, like most legal regimes based on the continental model, lacks a formal doctrine of vertical *stare decisis*. *See* Alberto F. Garay, *A Doctrine of Precedent in the Making: The Case of the Argentine Supreme Court's Case Law*, 25 Sw. J. Int'l L. 258, 268-

offer by the Republic pursuant to a 2004 decree, in which bondholders could basically swap out their old FAA bonds for new replacement bonds subject to new terms, even if they had participated in the Tax Credit Program. In order to trade in their bonds, however, the program required bondholders to "reconstitute" (*reconstituir*) their old bonds by tendering any unused *CCs* and *CCFs* to Caja, and to deposit cash in the amount of any *CCs* and *CCFs* that had been paid out. Joint App'x at 428. The Republic devised a similar debt-exchange program in 2010, for participants in the Tax Credit Program who had not taken advantage of the 2004 decree. Like its predecessor, the 2010 program allowed bondholders to swap out their original bonds, but only if they deposited both their unused *CCs* and *CCFs* and an amount of cash equal to any certificates they had already used. After recounting the details of these programs, the Argentine Supreme Court merely held that the Republic's suspension of payments on the FAA Bonds was lawful. Joint App'x at 429 ("Under the above-mentioned conditions and in the then-prevailing emergency situation, it is possible to conclude that the government's decision to suspend the system stipulated in Decree No. 1226/01 . . . was a step that can be considered valid. . . .").

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73 (2019) (describing the role of judicial precedent in Argentina); Santiago Legarre, *Precedent in Argentine Law*, 57 Loyola L. Rev. 781, 786 (2011) (noting that as a practical matter lower courts in Argentina generally follow on-point cases from the Argentine Supreme Court, but can depart from this precedent where there is good reason to do so).

Nothing in the *Domec* decision suggests that, in order to bring suit on the FAA Bonds in New York, bondholders had to "reconstitute" or "reassemble" the bonds. To the extent that the Argentine Supreme Court discussed reassembly at all, it was only to describe the steps that were explicitly required by government decree for participation in the 2004 and 2010 debt exchange programs. At no point did the Court suggest that a similar reassembly requirement was mandated in other contexts, such as a lawsuit to enforce FAA Bonds. Accordingly, *Domec* does not support the Republic's argument that reassembly was required here.

Nor is the Republic's argument aided by the Argentine Supreme Court's 2015 decision in *Bugliotti v. Republic of Argentina*, 134/2012 (Arg. Sup. Ct. July 14, 2015). In that case, which was part of these Bondholders' challenge to the constitutionality of the Republic's payment moratorium in Argentina, the Argentine Supreme Court issued a brief order endorsing an "opinion of the Public Prosecutor." Joint App'x at 448. That cross-referenced opinion acknowledged a reassembly requirement for participants in the Tax Credit Program who sought to take part in a new "public debt swap." Dkt. No. 36, Exhibit A at 14. But that simply restates the holding in *Domec*: According to the rules of a decree creating a new public debt exchange offer, participants in the Tax Credit Program had to reassemble the underlying bonds if they wanted to swap their *CCs* and *CCFs* for yet another form of Argentine sovereign debt. And, as in *Domec*, the public prosecutor's opinion nowhere suggests an analogous reassembly requirement for creditors who wished to bring suit against the Republic under the terms of the underlying FAA, pursuant to which the FAA Bonds were issued.

Finally, the Republic attempts to locate a reassembly requirement in Section 5 of the Trust Agreements, whereby the Bondholders agreed to the "disassembly of the [FAA Bonds] for their crediting as CCFs or CCs." Joint App'x at 102-03. However, this language at most establishes that the Bondholders agreed to "disassembl[e]" their FAA Bonds when placing them in trust with Caja, for purposes of receiving corresponding certificates for the principal and interest components of the bonds. It does not suggest that, if the Republic were to default on its obligations under the Tax Credit Program, creditors would have to effectively repay all of the interest they had received (or more precisely, the value of the tax credits they had received in lieu of the interest payments), in order to sue the Republic to recoup the unpaid principal.

The Republic has thus failed to demonstrate that Argentine law precludes the Bondholders from proceeding with this suit if they do not first reassemble the Bonds.

The Republic cautions that failure to impose a reassembly requirement for private litigants would enable participants in the Tax Credit Program to double-recover on interest payments that they already received in the form of tax credits. This concern is misplaced. As the Bondholders expressly represented to this Court, they seek to recover only the unpaid principal amounts on their FAA Bonds (plus post-maturity interest on that principal), not any interest that would have been payable on the bonds themselves. *See* Appellants' Reply Br. at 18 (arguing that reassembly "is particularly insupportable for a lawsuit (such as this one) *not seeking to recover bond interest*").

C. Effectiveness of Commercial Court Authorization

Finally, we turn to whether the Commercial Court's authorization for the Bondholders to sue on the FAA Bonds was effective under Argentine law. Though the district court did not address this issue below, *Bugliotti V*, 2024 WL 4349273, at *3, *7, this Court has discretion to decide when issues should be addressed for the first time on appeal, and it has exercised this discretion to answer purely legal questions. *J.C. v. Reg'l Sch. Dist. 10, Bd. of Educ.*, 278 F.3d 119, 125 (2d Cir. 2002). Here, we take up this issue because the effectiveness of the Commercial Court's authorization to enforce the FAA Bonds is a pure question of Argentine law, the issue has been fully briefed, and remanding for the district court to consider this question in the first instance would delay the pendency of this already long-running suit.

After this Court affirmed dismissal of the Bondholders' prior complaint in *Bugliotti IV*, the Commercial Court issued orders expressly authorizing the Bondholders to sue the Republic for collection on the FAA Bonds, in light of the fact that Caja as trustee had declined to bring such actions. Caja participated in the authorization proceeding and did not object to the Bondholders' application. The Bondholders then initiated the current suit in New York.

The Republic does not dispute that, under the terms of the Trust Agreements and Argentine law, the Bondholders were entitled to seek authorization to enforce the bonds in place of Caja. As the Commercial Court observed, Article 18 of Argentine Law 24,441 (which governed the Trust Agreements at the time they were executed) provided that:

> The trustee is authorized to exercise all actions necessary for the defense of the trust assets, both against third parties and against the beneficiary. *The judge may authorize the trustor or the beneficiary to exercise actions instead of the trustee when the trustee fails to do so without sufficient cause.*

Joint App'x at 40 (emphasis added); *id.* (noting that this provision "was incorporated almost verbatim in Article 1689 of the Civil and Commercial Code of [Argentina]"). The Republic's challenge to the validity of the Commercial Court's ruling is based entirely on an arbitration clause contained in the Section 16 of the Trust Agreements, which provides that the "Parties agree to resolve their disputes [*discrepancias*] through an arbitration procedure, for which purpose they submit to the Permanent Arbitration Tribunal [PAT] of the Buenos Aires Stock Exchange and the application of its regulations, waiving any other jurisdiction that may correspond to them." In the Republic's view, only the PAT—and not the Commercial Court—had competency to authorize the Bondholders to enforce the FAA Bonds. The Bondholders, unsurprisingly, take the opposite position.

It is not clear to us that the Republic, as a non-party to the Trust Agreements, has the right to require arbitration of any disputes between Caja and the Bondholders. But we need not resolve this question because, as we explain below, the uncontested proceeding before the Commercial Court did not fall within the scope of the arbitration clause at all.

The parties' disagreement about the scope of the arbitration clause turns on the term "*discrepancias,*" in the phrase "the Parties agree to resolve their disputes [*discrepancias*] through an arbitration procedure. . . ." The parties agree that the word "*discrepancias*" translates here to "disputes." They also agree that under Article 736 of the Argentine Civil and Commercial Procedural Code, which governs the Trust Agreements, the term "dispute" must be read to include "questions."[6] However, the Bondholders' Argentine-law experts also explain, citing "one of the main authorities" on Argentine procedural law, that the term "questions" must be read to mean "the filing of a dispute" or a "controversy." Joint App'x at 464 (citing Lino Enrique Palacio, V *Derecho Procesal Civil* 3779-80 (4th ed. 2011)). They also note that arbitrators cannot be called upon to act in a "voluntary procedural role" under

6. Article 736 provides: "[A]ny question between parties . . . may be submitted to the decision of arbitration judges, either before or after the trial has been instituted and whatever the stage of the trial may be." Joint App'x at 645. In Spanish, this reads: "*Toda cuestión entre partes, excepto las mencionadas en el artículo 737, podrá ser sometida a la decisión de jueces árbitros, antes o después de deducida en juicio y cualquiera fuere el estado de éste.*" *Id.*

Argentine law. *Id* (citing Palacio, V *Derecho Procesal Civil* at 3779-80). The Republic's expert, by contrast, does not cite any Argentine legal authority or scholarly commentary in arriving at a contrary conclusion.[7] We find the Bondholders' interpretation more solidly supported by Argentine authority, and therefore more persuasive.

Applying this interpretation here, the arbitration clause did not require the Bondholders to resort to the PAT to obtain authorization to enforce the FAA Bonds, where Caja informed the Commercial Court that it did not oppose their request and there was accordingly no "dispute" between the parties to be arbitrated. We therefore conclude that the Commercial Court's orders validly authorized the Bondholders to bring the present lawsuit.

IV. Conclusion

In sum, we hold as follows:

(1) The Bondholders' claims to recover on the GD65 Bonds are time-barred by New York's six-year statute of limitations for contract actions. Their

7. The Republic's other Argentine-law expert, Gabriel Bottini, also opines that "the competent jurisdiction as regards to any matter relating to the Trust Agreement . . . is the Arbitration Tribunal of the Buenos Aires Stock Exchange." Joint App'x at 81. However, Bottini does not discuss whether a voluntary assignment of authority to enforce the FAA Bonds can be adjudicated only in the PAT. Similarly, the Bottini Declaration from the prior district court docket that the Republic cites in its brief contains only an offhanded reference to authorizing the right to enforce the FAA Bonds in arbitration. It does not discuss whether a voluntary authorization, which is presently at issue, falls within the arbitration clause.

claims to recover on the AR16 Bonds are timely given the tolling of this limitations period by New York's COVID-era executive orders.

(2) The district court's decision in *Bugliotti III* did not collaterally estop the Bondholders from relitigating the question of whether they were required to reassemble their FAA Bonds before initiating suit.

(3) As a matter of Argentine law, reassembly of the FAA Bonds is not a condition precedent to the Bondholders bringing suit in New York to recover unpaid principal on those bonds.

(4) The orders of Commercial Court No. 9 of Buenos Aires authorizing the Bondholders to sue the Republic over nonpayment of the FAA Bonds were effective under Argentine law and permit the Bondholders to bring this action for the non-payment of principal on those bonds.

The judgment of the district court is AFFIRMED IN PART, to the extent it dismissed the Bondholders' claims with respect to the GD65 Bonds; it is VACATED IN PART, to the extent that it dismissed the AR16 Bonds; and the case is REMANDED for further proceedings.

A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit
/s/ Catherine O'Hagan Wolfe

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED APRIL 9, 2026

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No: 24-2950

EUCLIDES BARTOLOME BUGLIOTTI, MARIA CRISTINA DE BIASI, ROXANA INES ROJAS, DENISE LAURET, MARIA CARLA GONANO,

Plaintiffs-Appellants,

v.

THE REPUBLIC OF ARGENTINA,

Defendant-Appellee.

ORDER

Appellants, Euclides Bartolome Bugliotti, Maria Cristina De Biasi, Roxana Ines Rojas, Denise Lauret and Maria Carla Gonano, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

/s/ Catherine O'Hagan Wolfe

APPENDIX C — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FILED SEPTEMBER 30, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 23 CV 6588 (LAP)

EUCLIDES BARTOLOMÉ BUGLIOTTI, MARIA CRISTINA DE BIASI, ROXANA INÉS ROJAS, DENISE LAURET, AND MARIA CARLA GONANO,

Plaintiffs,

-against-

THE REPUBLIC OF ARGENTINA,

Defendant.

MEMORANDUM & ORDER

LORETTA A. PRESKA, Senior United States District Judge:

Euclides Bartolomé Bugliotti, Maria Cristina De Biasi, Roxana Inés Rojas, Denise Lauret, and Maria Carla Gonano (collectively, "Plaintiffs") bring this second action against the Republic of Argentina ("the Republic") for damages resulting from the Republic's alleged default on bonds.[1] The Republic moves to dismiss the action pursuant to Federal Rules of Civil Procedure 12(b)(1), (2), (5), and (6).[2] Plaintiffs oppose.[3] For the following reasons, the Republic's motion to dismiss is granted.

I. Background

This is Plaintiffs' second action against the Republic and the Republic's third 12(b) motion before the Court. This action arises between Plaintiffs, who are citizens and residents of Argentina, and the Republic, a foreign state under the Foreign Sovereign Immunities Act ("FSIA"). (*See* Compl. ¶ 2); *see* 28 U.S.C. § 1603(a).

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1. (*See* Compl., dated July 28, 2023 [dkt. no. 1].)

2. (*See* Def.'s Notice of Mot. to Dismiss, dated Oct. 16, 2023 [dkt. no. 17]; Def.'s Mem. of Law in Supp. of Mot. to Dismiss ("Def.'s Br."), dated Oct. 16, 2023 [dkt. no. 18]; Def.'s Notice under Rule 44.1, dated Oct. 16, 2023 [dkt. no. 19]; Decl. of Rathna J. Ramamurthi in Supp. of Mot. to Dismiss ("Ramamurthi Decl."), dated Oct. 16, 2023 [dkt. no. 20]; Def.'s Reply Mem. of Law in Supp. of Mot to Dismiss, dated Jan. 9, 2024 [dkt. no. 33]; Decl. of Rathna J. Ramamurthi in Supp. of Reply, dated Jan. 9, 2024 [dkt. no. 34]; Decl. of Carlos M. Tombeur in Supp. of Reply, dated Jan. 9, 2024 [dkt. no. 35]; Decl. of Caja de Valores in Supp. of Reply, dated Jan. 9, 2024 [dkt. no. 36].)

3. (*See* Pl.'s Mem. of Law in Opp'n to Mot. to Dismiss ("Opp'n Br."), dated Nov. 27, 2023 [dkt. no. 27]; Decl. of Michael C. Spencer in Opp'n to Mot. to Dismiss ("Spencer Decl."), dated Nov. 27, 2023 [dkt. no. 28]; Decl. of Mario A. Carregal & Roberto E. Silva, Jr., dated Nov. 27, 2023 [dkt. no. 29]; Notice under Rule 44.1, dated Nov. 27, 2023 [dkt. no. 30].)

A. Factual Background

The instant action derives from the same "[b]onds, claims, transactions, and occurrences . . . as in the prior action [before this Court,] 17 Civ. 9934." (Compl. ¶ 23.) The Court presumes familiarity with the facts and lengthy history of the prior case, which this Court and the Court of Appeals have recounted at length.

In short, Plaintiffs are the beneficiaries of trusts holding $35.8 million of Argentine bonds. (*Id.* at 2.) Plaintiffs originally purchased the bonds pursuant to the Fiscal Agency Agreement dated October 19, 1994 ("FAA"). (*Id.* ¶¶ 6-7.) The terms of the FAA required the Republic to make payments for principal and interest on the bonds. (*Id.* ¶ 9.) Moreover, under the FAA, the Republic appointed Banco de la Nación Argentina as its agent for service of process, waived sovereign immunity, and submitted to the jurisdiction of this Court. (*Id.* ¶ 10.)

In or around November 2001, Plaintiffs subscribed to a Tax Credit Program, whereby Plaintiffs agreed to place their bonds in trust with Caja de Valores, S.A. ("Caja") and, in exchange, received custody certificates and tax credits. (*Id.* ¶ 12.) Under the Program, Plaintiffs could credit any unpaid interest on their bonds toward local tax liabilities. (*Id.* ¶¶ 12, 15); *Bugliotti v. Republic of Arg. ("Bugliotti I")*, No. 17 Civ. 9934 (LAP), 2019 WL 586091, at *2 (S.D.N.Y. Jan. 15, 2019).

The Trust Agreement governing this transaction provides, in relevant part, that the trust "is governed by

. . . [Argentine] Law 24[,]441. . . .” *Bugliotti v. Republic of Arg. (“Bugliotti IV”)*, 67 F.4th 102, 105 (2d Cir. 2023) (citing Trust Agreement § 2.1). In turn, Article 18 of Law 24,441 provides that the trustee (Caja) may “exercise all actions necessary to defend the [bonds]” but notes that a “judge may authorize the trustor or the beneficiary to exercise actions instead of the trustee[]. . . .” *See id.* (citation omitted). Moreover, Section 5 of the Trust Agreement requires “the disassembly of the [bonds] for their crediting as [tax-credit certificates or custody certificates]. . . .” (*See* Ramamurthi Decl., Ex. 2.3 § 5(iii).) Plaintiffs do not allege that the Trust Agreement contains a waiver of sovereign immunity or submission of jurisdiction.

On or around December 24, 2001, the Republic declared a moratorium on the payment of principal and interest on bonds issued under the FAA. (Compl. ¶ 13.) Plaintiffs allege that the Republic has not made any payments on these bonds since it instituted the moratorium. (*Id.* ¶ 14.)

Plaintiffs’ bonds matured on February 21, 2012, and January 30, 2017, respectively. (*Id.* ¶ 15.)

B. Procedural History

As relevant here, Plaintiffs filed suit in federal court on December 20, 2017 (the “Earlier Action”), seeking damages and injunctive relief based on the Republic’s alleged non-payment on the bonds.[4] The Republic moved

4. Plaintiffs also commenced *amparo* proceedings in Argentina, which were the subject of some discussion in the Earlier

to dismiss, arguing lack of subject-matter jurisdiction, lack of personal jurisdiction, insufficient service of process, and failure to state a claim. (*See* Spencer Decl., Ex. 4.) The Court dismissed the Earlier Action on January 15, 2019, concluding that Plaintiffs' participation in the Tax Credit Program constituted an "exchange" of Plaintiffs' bonds, such that Plaintiffs no longer "owned" bonds under the FAA. *See Bugliotti I*, 2019 WL 586091, at *2-3. The Court concluded that Plaintiffs therefore could not rely on the Republic's waiver of sovereign immunity under the FAA and the Court lacked jurisdiction to hear the matter. *See id.*

The Court of Appeals vacated the judgment as to damages, holding that the relevant question was "not whether Plaintiffs 'own' the bonds but whether they may sue to enforce them[,]" and it remanded the case for a determination of whether Plaintiffs are "entitled to sue to enforce the bonds." *Bugliotti v. Republic of Arg. ("Bugliotti II")*, 952 F.3d 410, 411 (2d Cir. 2020). The Court of Appeals instructed this Court to apply Federal Rule of Civil Procedure 44.1 to interpret whether, under Argentine law, Plaintiffs retained a right to sue on the bonds in federal court. *See id.* at 414.

On remand, the Republic renewed its motion to dismiss for lack of subject-matter jurisdiction, lack of personal jurisdiction, and insufficient service of process, (*see* Spencer Decl., Ex. 11), and the parties briefed the

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Action. As the *amparo* proceedings do not bear on the instant motion, the Court omits further mention of them here.

question of whether, under Argentine law, Plaintiffs maintained a right to bring suit on the bonds held in trust. The Court again dismissed the Earlier Action, concluding that Caja held an exclusive right to enforce the bonds, and Caja had not delegated that right to Plaintiffs. *Bugliotti v. Republic of Arg. ("Bugliotti III")*, No. 17 Civ. 9934 (LAP), 2021 WL 1225971, at *7-8 (S.D.N.Y. Mar. 31, 2021).

The Court also held that no party could bring suit on the bonds unless they were first "reassembled" by returning the custody certificates and economic value of the tax—credit certificates and terminating the trust. (*Id.* at *7-9.) The Court then noted that, still, Plaintiffs were not without recourse because Article 18 of Law 24,441 permits Plaintiffs to seek judicial authorization to enforce the bonds instead of Caja. *See id.* at *9 (citing Law No. 24,441, Art. 18, Jan. 9, 1995, B.O. 28061 (Arg.)).

Plaintiffs again appealed the dismissal order to the Court of Appeals. In recounting the procedural history below, the Court of Appeals recited this Court's determination that "*no party—Caja or Plaintiffs*—could bring suit under the bonds without first reassembling [them]. . . ." *Bugliotti IV*, 67 F.4th at 104 (emphasis added). It also quoted the Court's holding that "'Plaintiffs lack[ed] standing to bring suit to enforce the [bonds] . . . under Argentine trust law,' and therefore, could not 'invoke the [FAA's] service[-]of[-] process and jurisdictional [waivers] under the FSIA.'" *See id.* (quoting *Bugliotti III*, 2021 WL 1225971, at *9). The Court of Appeals affirmed the judgment, holding that "Plaintiffs do not have the right to recover the bonds under Argentine law." *See id.* at 107.

After the Court of Appeals ruled, Plaintiffs applied for judicial authorization orders from Argentine Commercial Court No. 9. (Compl. ¶ 20.) On June 21, 2023, Argentine Commercial Court No. 9 issued such orders authorizing Plaintiffs to bring suit in place of Caja. (*Id.* ¶¶ 2, 20; *id.*, Ex. A.) Plaintiffs do not allege that they have reassembled the bonds.

Plaintiffs filed the instant action on July 28, 2023, seeking damages for principal and post-maturity interest on the bonds, as well as an award of Plaintiffs' costs and attorney's fees and any pre-judgment interest. (*Id.* ¶ 40.) Plaintiffs again rely on the jurisdictional waivers and service-of-process provisions under the FAA to bring this suit.

II. Legal Standards

The Republic moves to dismiss this action pursuant to Federal Rules of Civil Procedure 12(b)(1), (2), (5), and (6).

A. Rule 12(b)(1)

On a Rule 12(b)(1) motion, a district court "must accept as true all material factual allegations in the complaint, but [may] not . . . draw interferences from the complaint favorable to plaintiffs." *Wasman v. Cliffs Nat. Res. Inc.*, 222 F. Supp. 3d 281, 286 (S.D.N.Y. 2016) (citation and internal quotation marks omitted). The plaintiffs, as the non-moving party, bear the burden of proving subject-matter jurisdiction by a preponderance of the evidence. *See Makarova v. United States*, 201 F.3d 110, 113 (2d Cir.

2000) (citation omitted); *Davis v. Kosinksy*, 217 F. Supp. 3d 706, 707 (S.D.N.Y. 2016). A court may also refer to evidence outside of the pleadings. *Makarova*, 201 F.3d at 11.

B. Rule 12(b)(2)

Under Rule 12(b)(2), the plaintiffs bear the burden of demonstrating personal jurisdiction over the defendant. *Troma Entm't, Inc. v. Centennial Pictures Inc.*, 729 F.3d 215, 217 (2d Cir. 2013). To meet this burden, the plaintiffs must make a *prima facie* showing of facts, which, "if credited by the ultimate trier of fact, would suffice to establish [personal] jurisdiction over the defendant." *O'Neill v. Asat Tr. Reg (In re Terrorist Attacks on Sept. 11, 2001)*, 714 F.3d 659, 673 (2d Cir. 2013) (quotation marks omitted).

C. Rule 12(b)(5)

Rule 12(b)(5) provides for dismissal of a claim for improper service of process. Fed. R. Civ. P. 12(b)(5). "[T]he plaintiff bears the burden of proving [the] adequacy" of service. *Mende v. Milestone Tech., Inc.*, 269 F. Supp. 2d 246, 251 (S.D.N.Y. 2003) (internal quotation marks and citation omitted). In evaluating whether service of process was proper under a Rule 12(b)(5) motion to dismiss, a court must look to Federal Rule of Civil Procedure 4. The Court is required to dismiss an action if service was improper or incomplete "unless it appears that proper service may still be obtained." *Garcia v. City of New York*, No. 15-CV-7470 (ER), 2017 WL 1169640, at *4 (S.D.N.Y. Mar. 28, 2017) (quoting *Romandette v. Weetabix Co.*, 807 F.2d 309, 311 (2d Cir. 1986)). In analyzing a motion to dismiss under

Rule 12(b)(5), the Court may look outside the four corners of the complaint to determine whether it has jurisdiction. *Garcia*, 2017 WL 1169640, at *4.

D. Rule 12(b)(6)

To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must plead sufficient facts "to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A court must accept as true all well-pleaded facts and must draw all reasonable inferences in favor of the plaintiff. *Twombly*, 550 U.S. at 566. But the court is not bound to accept as true legal conclusions that are couched as factual allegations. *Iqbal*, 556 U.S. at 678. "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (citing *Twombly*, 550 U.S. at 557). If there are insufficient factual allegations to raise a right to relief above the speculative level, the complaint must be dismissed. *Twombly*, 550 U.S. at 555.

III. Discussion

The Republic moves, again, to dismiss the instant action for lack of subject-matter jurisdiction, lack of personal jurisdiction, insufficient service of process, and failure to state a claim. The Republic primarily argues (1) that the claims are time-barred under New York state's six-year statute of limitations for contract claims, and (2) that Plaintiffs are not entitled to sue on the bonds as a matter of Argentine law. The Court agrees.

A. *Plaintiffs' Claims Are Time-Barred*

The Republic argues first that Plaintiffs' claims are time-barred by New York's C.P.L.R. § 213(2). Under C.P.L.R. § 213(2), "an action upon a contractual obligation or liability, expressed or implied," must be "commenced within six years." The limitations period for principal and post-maturity interest begins to run the day after bond maturity. *See Lucesco Inc. v. Republic of Arg.*, No. 16 Civ. 7638 (LAP), 2018 WL 9539167, at *2 (S.D.N.Y. Sept. 10, 2018) (citation omitted), *aff'd*, 788 F. App'x 764, 769 (2d Cir. 2019); *see also Ajdler v. Province of Mendoza*, 768 F. App'x 78, 79 (2d Cir. 2019) ("Once a creditor can no longer establish a right to repayment of principal, there is no basis or foundation upon which to allege a right to repayment of post-maturity interest." (quotation omitted)). Here, the bonds matured on February 21, 2012, and January 30, 2017, respectively. (Compl. ¶ 15). As such, the limitations period on the 2012 bonds expired on February 21, 2018, and the limitations period on the 2017 bonds expired on January 30, 2023. *See* C.P.L.R. § 213(2); (*see also* Def.'s Br. at 12 (citing Compl. ¶ 15).) Plaintiffs do not contest that C.P.L.R. § 213(2) applies, that the limitations periods have run, and that, absent an exception, the claims are barred.

Rather, Plaintiffs argue that New York's "savings statute," C.P.L.R. § 205(a), applies and saves the time-barred claims. In the alternative, Plaintiffs argue that Executive Order 202.8 (the "COVID-19 Order") tolls the statute of limitations by 228 days, such that the claims on the 2017 bonds are still timely. (*See* Opp'n Br. at 8-16.)

i. C.P.L.R. § 205(a)

Under C.P.L.R. § 205(a), a party may commence a new action within six months after termination of an earlier action unless the earlier action was dismissed for "voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits." *See* C.P.L.R. § 205(a). The parties disagree whether the Court dismissed the Earlier Action on personal jurisdiction grounds. (*See* Def.'s Br. at 12-14; Opp'n Br. at 8-16.)

The Republic contends that the Court ruled on personal jurisdiction, which renders § 205(a) inapplicable and bars Plaintiffs' claims. (*See* Def.'s Br. at 13.) Plaintiffs argue that the Court cabined its holding to whether Plaintiffs had standing to enforce the terms of the FAA—a basis separate from personal jurisdiction. (*See, e.g.*, Opp'n Br. at 12.) Plaintiffs' narrow reading ignores the plain text of the Court's holdings and that, without the ability to sue under the FAA, Plaintiffs cannot demonstrate a basis for subject-matter and personal jurisdiction.

To take a step back, "the FSIA provides the sole basis for obtaining jurisdiction over a foreign state in federal court. . . ." *Reiss v. Societe Centrale du Groupe Des Assurances Nationales*, 235 F.3d 738, 746 (2d Cir. 2000) (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 439 (1989)). Under the FSIA, a district court may exercise personal jurisdiction over a foreign state where (1) it has original jurisdiction over the claim, *and* (2) service has been made under 28 U.S.C. § 1608. 28 U.S.C. § 1330(b) (emphasis added). A district court has original jurisdiction over "any nonjury civil action against a foreign state . . . as to any claim for relief *in personam* with respect to which the foreign state is not entitled to immunity. . . ." *Id.* § 1330(a). Put another way, subject-matter jurisdiction exists under the FSIA when there is (1) a nonjury civil action, (2) against a foreign state, (3) a claim for relief *in personam*, and (4) no entitlement to immunity. As to the fourth element, specifically, a foreign state is "presumptively immune from the jurisdiction of United States courts" unless an exception applies. *See Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993); *see also* 28 U.S.C. §§ 1605-07 (listing FSIA exceptions). Waiver is one such exception.

Plaintiffs' complaint in the Earlier Action invoked the terms of the FAA to argue that the Republic had waived immunity and submitted to the jurisdiction of this Court. (*See* Compl., *Bugliotti v. Republic of Arg.*, No. 17-cv-9934 (S.D.N.Y. filed on Dec. 20, 2017), ECF 1 ¶ 10.) The Court, in concluding that Plaintiffs lacked standing to sue on the FAA, held that Plaintiffs could "not invoke the 1994 FAA Bonds' service of process and jurisdictional provisions under the FSIA." *Bugliotti III*, 2021 WL 1225971, at *9. Because Plaintiffs relied on the FAA to allege a basis for jurisdiction—that is, that the Republic had waived immunity and submitted to this Court's jurisdiction,—and Plaintiffs did not allege any other basis for subject-matter or personal jurisdiction, the Court concluded that it lacked jurisdiction and dismissed the Earlier Action.

On appeal, the Court of Appeals acknowledged the same, applying a *de novo* standard of review for lack of subject-matter and personal jurisdiction and reciting the Court's conclusion that Plaintiffs "could not invoke the FAA's service-of-process and jurisdictional waivers under the FSIA." *See Bugliotti IV*, 67 F.4th at 104. Thus, the plain text of two court opinions makes clear that the Court ruled, in part, on personal jurisdiction grounds.

Accordingly, as the Court dismissed the Earlier Action for lack of personal jurisdiction, § 205(a) does not apply to the instant action, and Plaintiffs' claims are barred by § 213(2).

ii. The COVID-19 Order

Alternatively, Plaintiffs argue that the COVID-19 Order tolls the six-year statute of limitations by 228 days, such that Plaintiffs' claims on the 2017 bonds are timely. (*See* Opp'n Br. at 16.) Plaintiffs are incorrect.

The COVID-19 Order, like § 205(a), does not apply to Plaintiffs' claims. Under the COVID-19 Order, former Governor Andrew Cuomo declared a state of emergency due to the COVID-19 pandemic and "toll[ed]" the limitations periods prescribed under New York's procedural laws "to cope with the disaster emergency" or "to assist or aid in coping with such disaster." N.Y. Comp. Codes R. & Regs. tit. 9, § 8.202.8 (2020). Governor Cuomo extended the tolling period, through successive executive orders, until November 3, 2020—228 days from the effective date. *See id.* § 8.202.72.

Plaintiffs' effort to invoke the COVID-19 Order to toll the six-year statute of limitations by 228 days is without merit because "[t]he COVID-19 pandemic alone is insufficient to warrant equitable tolling without a more specific personal reason." *See Verne v. N.Y.C. Dep't of Educ.*, No. 21-CV-5427, 2022 WL 4626533, at *6 (S.D.N.Y. Sept. 30, 2022). Plaintiffs provide no reason for how the COVID-19 pandemic affected their ability to file these claims. To the contrary, between May 8, 2020 and October 5, 2020—while the COVID-19 Order was in effect—Plaintiffs were busy preparing expert testimony and briefing the issues ultimately considered in *Bugliotti III*. (*See Bugliotti v. Republic of Arg.*, No. 17-cv-9934 (S.D.N.Y. filed May 8, 2020-Oct. 5, 2020), ECF 26-46.) That Plaintiffs were actively litigating during this span demonstrates, in the first instance, that Plaintiffs were capable of meeting filing deadlines and did not require assistance "coping" during the COVID-19 pandemic.

Permitting Plaintiffs to benefit from the COVID-19 tolling period now, nearly four years after its expiration and without a specific reason as to why, would result in "an unwarranted windfall" to Plaintiffs. *See Loeb v. Cnty. of Suffolk*, No. 22-CV-6410 (HG), 2023 WL 4163117, at *3 (E.D.N.Y. June 23, 2023). Thus, the COVID-19 Order does not apply to Plaintiffs' claims on the 2017 bonds, and these claims remain time-barred.

B. Plaintiffs Are Collaterally Estopped from Relitigating Issues of Jurisdiction

Even assuming *arguendo* that any of Plaintiffs' claims were timely, they would nonetheless fail because Plaintiffs are collaterally estopped from relitigating issues of jurisdiction. Although preclusion doctrines are typically considered affirmative defenses subject to waiver, *see* Fed. R. Civ. P. 8(c), a court may nonetheless raise issues of collateral estoppel *sua sponte* where, as here, the prior action was brought before the same court and deference to the prior determinations promotes judicial economy. *See Doe v. Pfrommer*, 148 F.3d 73, 80 (2d Cir. 1998) (observing that a court may, *sua sponte*, raise collateral estoppel issues); *see also Grieve v. Tamerin*, 269 F.3d 149, 154 (2d Cir. 2001). The doctrine of collateral estoppel, or issue preclusion, serves to conserve judicial resources and to relieve parties of the cost and vexation of repeat litigation. *See Montana v. United States*, 440 U.S. 147, 153-54 (1979) (explaining that the doctrine of collateral estoppel is "central to the purpose for which civil courts have been established").

Collateral estoppel bars relitigation of a specific factual or legal issue in a second proceeding where (1) the identical issue was raised in a prior proceeding, (2) the issue was actually litigated and decided, (3) the precluded party had a full and fair opportunity to litigate the issue in the earlier action, and (4) the resolution of the issue was necessary to support a valid and final judgment on the merits. *See Grieve*, 269 F.3d at 153 (citation and internal quotation marks omitted); *MMA Consultants 1, Inc. v.*

Republic of Peru, 245 F. Supp. 3d 486, 518 (S.D.N.Y. 2017) (citing *Ball v. A.O. Smith Corp.*, 451 F.3d 66, 69 (2d Cir. 2006)), *aff'd*, 719 F. App'x 47 (2d Cir. 2017).

Collateral estoppel, unlike the doctrine of claim preclusion, may apply to determinations of jurisdiction. *Zapata v. HSBC Holdings PLC*, 414 F. Supp. 3d 342, 348 (E.D.N.Y. 2019); *see also Ins. Co. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.9 (1982) ("It has long been the rule that [collateral estoppel] appl[ies] to jurisdictional determinations—both subject matter and personal."). That is, a dismissal for lack of jurisdiction may bar a party's invocation of jurisdiction in a second action based on the same facts. *See Stengel v. Black*, 486 F. App'x 181, 183 (2d Cir. 2012) (summary order); *see also Reed v. Columbia St. Mary's Hosp.*, 782 F.3d 331, 335 (7th Cir. 2015).

Plaintiffs bring this second action for claims predicated on the same causes of actions and factual allegations as the Earlier Action. Plaintiffs concede as much, alleging that "[t]he [b]onds, claims, transactions, and occurrences at issue in the present action are the same as in the prior action 17 Civ. 9934. . . ." (*See* Compl. ¶ 23.) Plaintiffs contend here that a judicial authorization order permits them to sue on the bonds under the FAA because they are not required to reassemble the bonds. (*See* Opp'n Br. at 18-20.) As explained below, Plaintiffs are collaterally estopped from relitigating issues previously decided by this Court in reaching its jurisdictional determinations. *See Bugliotti III*, 2021 WL 1225971, at *7-9 (concluding that Plaintiffs must reassemble the bonds before invoking the provisions of the FAA).

To be sure, each element of collateral estoppel is met. As discussed, the jurisdictional issues at bar are identical to those presented in the Earlier Action. The only additional fact is that, since the Court of Appeals affirmed dismissal and terminated the Earlier Action, Plaintiffs have sought and obtained a judicial authorization order from an Argentine court. (*See* Compl. ¶ 21; *id.*, Ex. A.) Still, absent reassembly of the bonds, this fact is insufficient to change the legal result or to establish a different basis for jurisdiction. *See also JDM Import Co. Inc. v. Shree Ramkrishna Exports Pvt., Ltd.*, 2023 WL 2632179, at *5 (S.D.N.Y. Mar. 24, 2023) (considering identicalness).

Plaintiffs also had a full and fair opportunity to litigate these issues, which were actually litigated and decided in the Earlier Action. The Republic has now moved three times to dismiss Plaintiffs' claims, in part, for lack of subject-matter jurisdiction and lack of personal jurisdiction. (*See* Def.'s Notice of Mot. to Dismiss; Spencer Decl., Exs. 4, 11.) Plaintiffs have known the Republic's arguments for dismissal since the Republic filed its first motion to dismiss in 2018. Additionally, the Court already considered whether Plaintiffs could invoke the terms of the FAA to exercise jurisdiction over the Republic, and the Court determined that, regardless of the party seeking to enforce the bonds, reassembly of the bonds remained a precondition to jurisdiction.[5] *See Bugliotti III*, 2021 WL

5. The Court observes that Plaintiffs also rely on the FAA's service-of-process provisions for bringing this suit. (*See* Opp'n Br. at 7 (noting that Plaintiffs served a summons and the Complaint "as prescribed in the 1994 FAA for service of process on Argentina for bond matters," that is, "by serving Banco de la Nación Argentina

1225971, at *7-9. Accordingly, Plaintiffs had a full and fair opportunity to litigate the issues, which the court considered and decided in the Earlier Action.

Last, resolution of these issues was necessary to support a valid and final judgment on the merits. *See DDR Const. Servs., Inc. v. Siemens Indus., Inc.*, 770 F. Supp. 2d 627, 649 (S.D.N.Y. 2011) (quoting *MTS, Inc. v. 200 E. 87th Street Assocs.*, 899 F. Supp. 1180, 1184 (S.D.N.Y. 1995)) (explaining that an issue is necessary when it is not "mere dictum"); *see also* 18 Wright et al. § 4421. Although "a dismissal for lack of jurisdiction is not an adjudication on the merits of a claim, . . . such a dismissal precludes [relitigation] of the issue[s] it decided." *Stengel*, 486 F. App'x at 183. Because the Court dismissed the Earlier Action for lack of jurisdiction, its determinations were "necessary" to the ultimate judgment.

Accordingly, the doctrine of collateral estoppel applies to the issues of jurisdiction. Plaintiffs' attempt to relitigate these points now through opposition papers is tantamount to their requesting reconsideration of the prior determinations. Thus, even if Plaintiffs could allege timely claims, they would be collaterally estopped from relitigating the issues of jurisdiction. Plaintiffs' claims must therefore fail.

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in New York[] on August 16, 2023").) Although the Court need not reach the issue of service to dispose of this case, the Court notes that the method of service is also improper in light of the Court's prior holdings.

C. Remaining Arguments

In light of the foregoing conclusions, the Court need not reach the parties' remaining arguments.

IV. Plaintiffs' Request for Oral Argument

On November 27, 2023, Plaintiffs filed a letter requesting oral argument on the Republic's pending motion to dismiss. (*See* dkt. no. 31.) Because the Court decides the Republic's motion on the papers, Plaintiffs' request for oral argument is DENIED as moot.

V. Conclusion

For the foregoing reasons, the Republic's motion to dismiss (dkt. no. 17), is GRANTED. The Clerk of the Court is directed to mark the above-captioned case as closed and any open letter motions denied as moot.

SO ORDERED.

Dated: September 30, 2024
New York, New York

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

APPENDIX D — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED MAY 2, 2023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2021

Argued: June 7, 2022
Decided: May 2, 2023

No. 21-1014

EUCLIDES BARTOLOMÉ BUGLIOTTI,
MARIA CRISTINA DE BIASI, AND
ROXANA INÈS ROJAS, AS THE EXECUTOR OF
THE ESTATE OF HUGO MIGUEL LAURET,

Plaintiffs-Appellants,

v.

REPUBLIC OF ARGENTINA

*Defendant-Appellee.**

Appeal from the United States District Court
for the Southern District of New York
No. 17-cv-9934, Loretta A. Preska, *Judge.*

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* The Clerk of Court is respectfully directed to amend the official case caption as set forth above.

Before: Calabresi, Lynch, and Sullivan, *Circuit Judges*.

Richard J. Sullivan, *Circuit Judge*:

Euclides Bartolomé Bugliotti, Maria Cristina de Biasi, and Roxana Inès Rojas (collectively, "Plaintiffs") appeal from the judgment of the district court (Preska, *J.*) dismissing their claims against the Republic of Argentina ("Argentina") in connection with sovereign bonds issued by Argentina and purchased by Plaintiffs. We vacated in part the district court's previous judgment of dismissal and remanded the case for the district court to determine in the first instance whether Plaintiffs are entitled to bring suit under Argentine law. The district court found on remand that Plaintiffs were not. Plaintiffs appealed again, arguing that the district court's findings are erroneous, and that Rule 17 of the Federal Rules of Civil Procedure offers them an alternative avenue to enforce their rights under the bonds in federal court. We hold that Plaintiffs are not entitled to bring suit under Argentine law and that nothing in Rule 17 can be read to alter that result. Accordingly, we **AFFIRM** the judgment of the district court.

I. BACKGROUND

Like many other claimants who have come before us in recent years, Plaintiffs purchased a large amount of Argentina's sovereign bonds under the 1944 Fiscal Agency Agreement ("FAA"), on which Argentina defaulted in 2001. But unlike those other claimants, Plaintiffs enrolled in a tax credit program (the "Tax Credit Program") shortly before Argentina's default, which allowed them to receive tax credits in lieu of interest payments. Under the Tax Credit Program, Plaintiffs placed their bonds in trust with Caja de Valores, S.A. ("Caja" or the "Trustee") and received in return two types of certificates—tax credit certificates and custody certificates (abbreviated in Spanish as "CCFs" and "CCs," respectively). Each CCF corresponded to one scheduled interest payment on the bond tendered, and each CC corresponded to the bond's outstanding principal. Bondholders in possession of the certificates were able to redeem the CCFs as each interest payment came due for a credit against their Argentine tax obligations. Plaintiffs, therefore, were able to claim tax credits using the CCFs after Argentina defaulted, while bondholders who did not participate in the Tax Credit Program stopped receiving interest payments on their bonds altogether.

All of Plaintiffs' bonds matured by the end of 2017, but Argentina has not repaid the principal to date. Plaintiffs brought this case in federal court against Argentina, seeking damages in the amount of the unpaid principal and post-maturity interest. Argentina moved to dismiss the case, arguing that it was immune from suit under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1602 *et seq.* The district court agreed, finding that, although Argentina had previously waived sovereign immunity, submitted to federal jurisdiction, and appointed an agent for service of process under the FAA in connection with the bonds, Plaintiffs' participation in the Tax Credit Program constituted an "exchange" of Plaintiffs' bonds for the CCFs and CCs, such that Plaintiffs no longer "own[ed]" the bonds themselves. *Bugliotti v. Republic of Argentina (Bugliotti I)*, No. 17-cv-9934 (LAP), 2019 WL 586091, at *2 (S.D.N.Y. Jan. 15, 2019). Since the trust agreement that Plaintiffs and Caja executed in connection with the Tax Credit Program (the "Trust Agreement") did not contain any comparable waiver, submission, or appointment of agent, the district court reasoned that Plaintiffs could no longer rely on the FAA as a waiver of sovereign immunity. Accordingly, the district court dismissed Plaintiffs' claims for lack of jurisdiction. *See Bugliotti I*, 2019 WL 586091, at *3-4.

Plaintiffs appealed to this Court, and in March 2020, we determined that the relevant question was not whether Plaintiffs owned the bonds but "whether the bonds remain a live obligation of the Argentine government and, if so, who may bring suit to enforce them" under Argentine law. *Bugliotti v. Republic of Argentina* (*Bugliotti II*), 952 F.3d 410, 413 (2d Cir. 2020). We remanded the case, concluding that the district court was, in the first instance, "better situated" for determining foreign law under Rule 44.1 of the Federal Rules of Civil Procedure. *Id.* at 411.

On remand, the district court reviewed evidence and arguments from the parties under Rule 44.1. The district court found that Argentine law provided Caja with the exclusive right to sue under the bonds, that Caja had not delegated its right to sue to Plaintiffs, and that no party—Caja or Plaintiffs—could bring suit under the bonds unless Plaintiffs first "reassembled" their bonds by returning the CCs and the economic value of the CCFs to the Argentine government. *Bugliotti v. Republic of Argentina (Bugliotti III)*, No. 17-cv-9934 (LAP), 2021 WL 1225971, at *7-9 (S.D.N.Y. Mar. 31, 2021). The district court concluded that "Plaintiffs lack[ed] standing to bring suit to enforce the [bonds] . . . under Argentine trust law," and therefore, could not "invoke the [FAA's] service[-]of[-] process and jurisdictional [waivers] under the FSIA." *Id.* at *9. Plaintiffs timely appealed.

II. STANDARDS OF REVIEW

"We review *de novo* the dismissal of a complaint for lack of personal and subject-matter jurisdiction." *Bugliotti II*, 952 F.3d at 412. Rule 44.1 provides that a "court's [foreign-law] determination must be treated as a ruling on a question of law," Fed. R. Civ. P. 44.1, which—"as is true of domestic[-]law determinations"—is subject to *de novo* appellate review, *Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, ___ U.S. ___, 138 S. Ct. 1865, 1873, 201 L.Ed.2d 225 (2018).

III. DISCUSSION

On appeal, Plaintiffs argue that the district court erred in finding that they were not entitled to bring suit to recover the bonds under Argentine law; alternatively, they contend that Rule 17 of the Federal Rules of Civil Procedure provides a separate avenue for them to enforce their rights under the bonds in federal court. We address each of these arguments in turn.

A. Right to Bring Suit Under Argentine Law

The district court found that Plaintiffs were not entitled to bring suit under the bonds because (1) Caja could not delegate its enforcement right to Plaintiffs under Argentine law; (2) even if Caja could do so, Caja did not in fact delegate its enforcement right to Plaintiffs; and (3) no party—Caja or Plaintiffs—could bring suit under the bonds without first reassembling the bonds by returning the CCs and the economic value of the CCFs to the Argentine government. *See Bugliotti III*, 2021 WL 1225971, at *7-9. We conclude that even if Caja could delegate its enforcement right to Plaintiffs under Argentine law, and Plaintiffs were not required to reassemble the bonds before bringing suit, Plaintiffs still lacked authority to bring suit under the bonds because Caja did not, in fact, delegate its enforcement right to Plaintiffs.

Section 2.1 of the Trust Agreement provides that the trust "is governed by . . . Law 24[,]441" of Argentina. App'x at 33. Article 18 of Law 24,441, in turn, states that Caja as the Trustee may "exercise all actions necessary to defend the [bonds]," but "[a] judge may authorize the trustor or the beneficiary to exercise actions instead of the [T]rustee[] when the latter fails to do so without sufficient cause." *Id.* at 352. Section 6 of the Trust Agreement further provides that "the Trustee is not obliged to initiate any court proceedings of any kind" in "pursuing the enforcement of the rights that are granted by the CCFs or CCs, or the [bonds]." *Id.* at 36. Moreover, "[f]or all purposes of [the Trust] Agreement," section 16 states that Plaintiffs and Caja "agree to resolve their disputes through an arbitration [before] the Permanent Arbitration Tribunal of the Buenos Aires Stock Exchange . . . , waiving any other jurisdiction that may correspond to them." *Id.* at 38.

Plaintiffs argue that they were free to bring suit under the bonds on Caja's behalf without first seeking judicial authorization as required by Law 24,441 because "Caja delegated and ratified Plaintiffs . . . to commence and prosecute this case." Pls. Br. at 35. In making this argument, Plaintiffs rely on paragraph 5 of a certification executed between Caja and Plaintiffs (the "Caja Certification"), which states:

> The Trustee certifies that according to the terms of the Trust Agreement, the Trustee is not responsible for the pursuit of legal action for the fulfillment of the rights granted by the CCs or the underlying [b]onds, and the Trustee accordingly *looks to* [("*entiende")*] Bugliotti to take such action.

App'x at 190-91 (emphases added). Plaintiffs argue that "[t]he only plausible meaning of [paragraph] 5 is that Caja was passing the baton to Plaintiffs" to "recover[] on the bonds." Pls. Br. at 36. We disagree.

As Argentina's expert pointed out, the Caja Certification does not contain "any indication . . . that any party intended to modify . . . the Trust Agreement," App'x at 857, which expressly provides that the Trustee retained exclusive authority to "exercise all actions necessary" to bring suit under the bonds absent judicial intervention. *Id.* at 809. Nothing in the Caja Certification suggests an intent to change, modify, or amend the terms of the Trust Agreement. *Id.* at 847. Plaintiffs nonetheless contend that the word "*entiende*" in paragraph 5—which they translate as "looks to," *id.* at 191, rather than "understands," *id.* at 858—suggests such a reading, *see* Pls. Br. at 36. But whether "*entiende*" means "looks to" or "understands" does not matter, since neither word suggests that the parties intended to "*modify* any term of the Trust Agreement," App'x at 858 (emphasis added), or that "the Trustee *delegated* the ability to enforce *its* rights to Plaintiffs," *id.* at 859 (internal quotation marks omitted) (emphasis in original). To the contrary, when read in full and in context, the Caja Certification plainly states that Plaintiffs "certif[y] [their] submission to the regime established in the Trust Agreement." *Id.* at 191. As discussed, the Trust Agreement provides that Caja alone may "exercise all actions necessary" to bring suit under the bonds, *id.* at 809, and that Caja "is not obliged to initiate any court proceedings of any kind," *id.* at 36. To the extent that Plaintiffs disagree with Caja's decision not to bring suit to recover on the bonds, their remedy is limited by section 16 of the Trust Agreement, which directs Plaintiffs and Caja to "resolve their disputes through an arbitration [before] the Permanent Arbitration Tribunal of the Buenos Aires Stock Exchange . . . , waiving any other jurisdiction that may correspond to them," *id.* at 38, and by Law 24,441, which requires judicial authorization before "the beneficiary [may] exercise actions instead of [Caja]," *id.* at 352.

Therefore, even if we assume arguendo that Caja had the authority to delegate its enforcement right to Plaintiffs, and that Plaintiffs were not required to first reassemble the bonds before bringing this action, we still cannot find that Plaintiffs are entitled to bring suit to recover the bonds under Argentine law, since there is no evidence that Caja ever made such a delegation.[1]

B. Rule 17 of the Federal Rules of Civil Procedure

Plaintiffs argue, in the alternative, that Rule 17 of the Federal Rules of Civil Procedure "recognizes Plaintiffs . . . as proper plaintiffs entitled to sue in place of [Caja]." Pls. Br. at 49 (internal quotation marks omitted). Rule 17(a)(1) provides that "[a]n action must be prosecuted in the name of the real party in interest," which includes "a trustee of an express trust." Fed. R. Civ. P. 17(a)(1)(E). But under Rule 17(a)(3), "[t]he court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action." Fed. R. Civ. P. 17(a)(3). "After [such] ratification, joinder, or substitution,

1. After oral argument in this case, Plaintiffs moved to supplement the record on appeal to include a certification that they executed with Caja. *See* Doc. No. 72. We declined to consider such post-hoc, "extra-record assertions and documents." *Rana v. Islam*, 887 F.3d 118, 122 (2d Cir. 2018) (citing Fed. R. App. P. 10(a)(1)); *see also* Doc. No. 80 (denying Plaintiffs' motion to supplement record on appeal); *Loria v. Gorman*, 306 F.3d 1271, 1280 n.2 (2d Cir. 2002) ("[M]aterial not included in the record on appeal will not be considered.").

the action [shall] proceed[] as if it had been originally commenced by the real party in interest." Fed. R. Civ. P. 17(a)(3).

Plaintiffs' Rule 17 argument comes in two steps. First, Plaintiffs contend that Rule 17(a)(1)—rather than Argentine law—prescribes the identity of the real parties in interest. Second, Plaintiffs argue that because Caja—as the Trustee—is the real party in interest under Rule 17(a)(1)(E), and the Caja Certification is effectively Caja's ratification for Plaintiffs to proceed as plaintiffs in this action, the district court erred in dismissing Plaintiffs' claims in violation of Rule 17(a)(3). Again, we disagree.

The Rules Enabling Act provides that the Federal Rules of Civil Procedure "shall not abridge, enlarge[,] or modify any substantive right." 28 U.S.C. § 2072(b). Heeding this command, we have repeatedly held that "[t]he procedural mechanisms set forth in Rule 17(a) for ameliorating real[-]party[-]in[-]interest problems may not . . . be employed to expand substantive rights." *Stichting Ter Behartiging Van de Belangen Van Oudaandeelhouders In Het Kapitaal Van Saybolt Int'l B.V. v. Schreiber*, 407 F.3d 34, 49 (2d Cir. 2005); *see also Cortlandt St. Recovery Corp. v. Hellas Telecomms., S.a.r.l*, 790 F.3d 411, 424 (2d Cir. 2015) (holding same); *Fed. Treasury Enter. Sojuzplodoimport v. SPI Spirits Ltd.*, 726 F.3d 62, 83 (2d Cir. 2013) (holding same). Rule 17(a) simply requires that a federal "action be brought by the person who . . . is entitled to enforce the [asserted] right," and whether a plaintiff is entitled to enforce the asserted right is a "question [that] must be answered with reference to *substantive* . . . law." *Schreiber*, 407 F.3d at 48. To hold otherwise "would amount to an improper expansion of the substantive rights provided by the [substantive law]." *Fed. Treasury*, 726 F.3d at 83.

As explained above, we have already concluded that Plaintiffs do not have the right to recover the bonds under Argentine law—the applicable substantive law in this case. That being so, Rule 17 provides no alternative avenue for Plaintiffs to bring suit in federal court. *See id.*; *Schreiber*, 407 F.3d at 49.

IV. CONCLUSION

For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

APPENDIX E — EXCERPTS OF THE DECISION OF COMMERCIAL COURT NO. 9 OF BUENOS AIRES, ARGENTINA, DATED JUNE 21, 2023

Judiciary of the Nation
Commercial Court No. 9

TRANSLATION

10733/2023—BUGLIOTTI, EUCLIDES B. AND OTHERS v. CAJA DE VALORES on/SUMMARY PROCEDURE—

In the City of Buenos Aires, on June 21, 2023, at 10:00 a.m., the following individuals appear before Your Honor at the hearing scheduled for today's date:

ON BEHALF OF THE PLAINTIFFS: Dr. Horacio Tomas Liendo (CPACF T° 11 F° 303);

ON BEHALF OF CAJA DE VALORES S.A.: Dr. Efrain Diego Carvajal -according to the power of attorney herein incorporated into the computer system- (CPACF T° 55 F° 713);

The act is opened and the parties are informed of the purpose of the hearing. Caja de Valores S.A. states that it does not modify its position regarding the fact that it will not pursue enforcement of any rights related to the instruments under the Trust, and does not oppose the judicial authorization requested by the trustors and/or beneficiaries in these proceedings, further ratifying the terms of the 2017 and 2022 Certifications, which were mutually agreed upon between the parties within the framework of the Trust Agreements.

The plaintiffs confirm the terms of the 2017 and 2022 Certifications, which were mutually agreed upon between the parties within the framework of the Trust Agreements.

* * *

V.- Therefore, it is **RESOLVED**:

1°.- Authorize Euclides Bartolome Bugliotti and María Cristina De Biasi (32,763,000), Roxana Ines Rojas (1,527,000), and Denise Lauret (917,000)—in the proportion that corresponds to each one—to exercise and/or continue the relevant actions and all necessary acts for that purpose, in any jurisdiction and at all levels, including the enforcement of the issued judgment, in substitution of the Trustee of the Trust Agreements signed on November 23, 2001, with Caja de Valores S.A., in order to sue the issuer for the collection of the bonds or public securities that constitute the underlying assets of the mentioned trusts and their accessories, in their capacity as trustors and beneficiaries.

2°.- Order costs to be paid in the manner they were incurred, given the lack of opposition (see art. 68, final provision, of the Procedural Code).

3°.- Issue a certified copy of the proceedings, as necessary.

4°.- Register and notify through the Secretariat.

With which the act concluded, and the appearing parties signed after me, the undersigned, following its reading and ratification, which I attest to.

PAULA M. HUALDE
JUDGE

AFFIDAVIT OF TRANSLATOR
REGARDING ACCURACY OF TRANSLATION

CITY OF CORDOBA
PROVINCE OF CORDOBA
ARGENTINE REPUBLIC
July 3, 2023

MARIA LUZ CAPDEVILA, being duly sworn, deposes and says:

I am a Public Translator, Professional Registration N° 382, Province of Cordoba, Argentine Republic, presently residing in Cordoba, Argentina and declare:

I am proficient with the English language and the Spanish language, have has prior experience in translating documents in those languages, have reviewed the foregoing document (RESOLUTION 06.21.2023 – COMMERCIAL COURT No. 9 – BUENOS AIRES, ARGENTINA), translated from Spanish into English and believe the translation is complete and accurate.

/s/________________________
Maria Luz Capdevila
MARÍA LUZ CAPDEVILA
Traductora Pública de Inglés
M.P. 382

APPENDIX F — STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1605—General exceptions to the jurisdictional immunity of a foreign state.

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

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

* * *

Appendix F

8 U.S.C. § 1254: Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; * * *

* * *

Civil Practice Law & Rules

§ 205. Termination of action.

(a) New action by plaintiff. If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff, or, if the plaintiff dies, and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period. Where a dismissal is one for neglect to prosecute the action made pursuant to rule thirty-two hundred sixteen of this chapter or otherwise, the judge shall set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation. * * *

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New York Civil Practice Law & Rules

§ 213. Actions to be commenced within six years: where not otherwise provided for; on contract; on sealed instrument; on bond or note, and mortgage upon real property; by state based on misappropriation of public property; based on mistake; by corporation against director, officer or stockholder; based on fraud.

The following actions must be commenced within six years:

1. an action for which no limitation is specifically prescribed by law;

2. an action upon a contractual obligation or liability, express or implied, except as provided in section two hundred thirteen-a or two hundred fourteen-i of this article or article 2 of the uniform commercial code or article 36-B of the general business law; * * *

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New York Court of Appeals, Part 500. Rules of Practice (22 NYCRR Part 500)

CERTIFIED QUESTIONS

§ 500.27 Discretionary Proceedings to Review Certified Questions from Federal Courts and Other Courts of Last Resort.

(a) Whenever it appears to the Supreme Court of the United States, any United States Court of Appeals, or a court of last resort of any other state that determinative questions of New York law are involved in a case pending before that court for which no controlling precedent of the Court of Appeals exists, the court may certify the dispositive questions of law to the Court of Appeals. * * *

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Argentina Civil and Commercial Code, Third Book—Individual Rights, Title IV—Contracts in Particular

Chapter 30—Trusts

Article 1689: Actions

The trustee has standing to exercise all actions necessary to defend the trust assets, against third parties, the trustors, the beneficiary, or the residual beneficiary.

The judge may authorize the trustor, the beneficiary or the residual beneficiary to exercise actions instead of the trustee, when the latter fails to do so without sufficient cause.