

Syllabus

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SUPREME COURT OF THE UNITED STATES

Syllabus

REPUBLIC OF ARGENTINA *v.* NML CAPITAL, LTD.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

No. 12–842. Argued April 21, 2014—Decided June 16, 2014

After petitioner, Republic of Argentina, defaulted on its external debt, respondent, NML Capital, Ltd. (NML), one of Argentina’s bondholders, prevailed in 11 debt-collection actions that it brought against Argentina in the Southern District of New York. In aid of executing the judgments, NML sought discovery of Argentina’s property, serving subpoenas on two nonparty banks for records relating to Argentina’s global financial transactions. The District Court granted NML’s motions to compel compliance. The Second Circuit affirmed, rejecting Argentina’s argument that the District Court’s order transgressed the Foreign Sovereign Immunities Act of 1976 (FSIA or Act).

Held: No provision in the FSIA immunizes a foreign-sovereign judgment debtor from postjudgment discovery of information concerning its extraterritorial assets. Pp. 4–12.

(a) This Court assumes without deciding that, in the ordinary case, a district court would have the discretion under Federal Rule of Civil Procedure 69(a)(2) to permit discovery of third-party information bearing on a judgment debtor’s extraterritorial assets. Pp. 4–5.

(b) The FSIA replaced an executive-driven, factor-intensive, loosely common-law-based immunity regime with “a comprehensive framework for resolving any claim of sovereign immunity.” *Republic of Austria v. Altmann*, 541 U. S. 677, 699. Henceforth, any sort of immunity defense made by a foreign sovereign in an American court must stand or fall on the Act’s text. The Act confers on foreign states two kinds of immunity. The first, jurisdictional immunity (28 U. S. C. §1604), was waived here. The second, execution immunity, generally shields “property in the United States of a foreign state” from attachment, arrest, and execution. §§1609, 1610. See also §1611(a), (b)(1), (b)(2). The Act has no third provision forbidding or

Syllabus

limiting discovery in aid of execution of a foreign-sovereign judgment debtor's assets. Far from containing the "plain statement" necessary to preclude application of federal discovery rules, *Société Nationale Industrielle Aérospatiale v. United States Dist. Court for Southern Dist. of Iowa*, 482 U.S. 522, 539, the Act says not a word about postjudgment discovery in aid of execution.

Argentina's arguments are unavailing. Even if Argentina were correct that §1609 execution immunity implies coextensive discovery-in-aid-of-execution immunity, the latter would not shield from discovery a foreign sovereign's extraterritorial assets, since the text of §1609 immunizes only foreign-state property "in the United States." The prospect that NML's general request for information about Argentina's worldwide assets may turn up information about property that Argentina regards as immune does not mean that NML cannot pursue discovery of it. Pp. 5–10.

695 F. 3d 201, affirmed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, BREYER, ALITO, and KAGAN, JJ., joined. GINSBURG, J., filed a dissenting opinion. SOTOMAYOR, J., took no part in the decision of the case.

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 12–842

REPUBLIC OF ARGENTINA, PETITIONER *v.* NML
CAPITAL, LTD.

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

[June 16, 2014]

JUSTICE SCALIA delivered the opinion of the Court.

We must decide whether the Foreign Sovereign Immunities Act of 1976 (FSIA or Act), 28 U. S. C. §§1330, 1602 *et seq.*, limits the scope of discovery available to a judgment creditor in a federal postjudgment execution proceeding against a foreign sovereign.

I. Background

In 2001, petitioner, Republic of Argentina, defaulted on its external debt. In 2005 and 2010, it restructured most of that debt by offering creditors new securities (with less favorable terms) to swap out for the defaulted ones. Most bondholders went along. Respondent, NML Capital, Ltd. (NML), among others, did not.

NML brought 11 actions against Argentina in the Southern District of New York to collect on its debt, and prevailed in every one.¹ It is owed around \$2.5 billion,

¹The District Court’s jurisdiction rested on Argentina’s broad waiver of sovereign immunity memorialized in its bond indenture agreement, which states: “To the extent that [Argentina] or any of its revenues, assets or properties shall be entitled . . . to any immunity from suit . . . from attachment prior to judgment . . . from execution of a judgment or

Opinion of the Court

which Argentina has not paid. Having been unable to collect on its judgments from Argentina, NML has attempted to execute them against Argentina's property. That postjudgment litigation "has involved lengthy attachment proceedings before the district court and multiple appeals." *EM Ltd. v. Republic of Argentina*, 695 F. 3d 201, 203, and n. 2 (CA2 2012) (referring the reader to prior opinions "[f]or additional background on Argentina's default and the resulting litigation").

Since 2003, NML has pursued discovery of Argentina's property. In 2010, "[i]n order to locate Argentina's assets and accounts, learn how Argentina moves its assets through New York and around the world, and accurately identify the places and times when those assets might be subject to attachment and execution (whether under [United States law] or the law of foreign jurisdictions)," *id.*, at 203 (quoting NML brief), NML served subpoenas on two nonparty banks, Bank of America (BOA) and Banco de la Nación Argentina (BNA), an Argentinian bank with a branch in New York City. For the most part, the two subpoenas target the same kinds of information: documents relating to accounts maintained by or on behalf of Argentina, documents identifying the opening and closing dates of Argentina's accounts, current balances, transaction histories, records of electronic fund transfers, debts owed by the bank to Argentina, transfers in and out of Argentina's accounts, and information about transferors and transferees.

Argentina, joined by BOA, moved to quash the BOA subpoena. NML moved to compel compliance but, before

from any other legal or judicial process or remedy, . . . [Argentina] has irrevocably agreed not to claim and has irrevocably waived such immunity to the fullest extent permitted by the laws of such jurisdiction (and consents generally for the purposes of the [FSIA] to the giving of any relief or the issue of any process in connection with any Related Proceeding or Related Judgment)" App. 106–107.

Opinion of the Court

the court ruled, agreed to narrow its subpoenas by excluding the names of some Argentine officials from the initial electronic-fund-transfer message search. NML also agreed to treat as confidential any documents that the banks so designated.

The District Court denied the motion to quash and granted the motions to compel. Approving the subpoenas in principle, it concluded that extraterritorial asset discovery did not offend Argentina's sovereign immunity, and it reaffirmed that it would serve as a "clearinghouse for information" in NML's efforts to find and attach Argentina's assets. App. to Pet. for Cert. 31. But the court made clear that it expected the parties to negotiate further over specific production requests, which, the court said, must include "some reasonable definition of the information being sought." *Id.*, at 32. There was no point, for instance, in "getting information about something that might lead to attachment in Argentina because that would be useless information," since no Argentinian court would allow attachment. *Ibid.* "Thus, the district court . . . sought to limit the subpoenas to discovery that was reasonably calculated to lead to attachable property." 695 F. 3d, at 204–205.

NML and BOA later negotiated additional changes to the BOA subpoena. NML expressed its willingness to narrow its requests from BNA as well, but BNA neither engaged in negotiation nor complied with the subpoena.

Only Argentina appealed, arguing that the court's order transgressed the Foreign Sovereign Immunities Act because it permitted discovery of Argentina's extraterritorial assets. The Second Circuit affirmed, holding that "because the Discovery Order involves discovery, not attachment of sovereign property, and because it is directed at third-party banks, not at Argentina itself, Argentina's sovereign immunity is not infringed." *Id.*, at 205.

We granted certiorari. 571 U. S. ____ (2014).

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