IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PAO TATNEFT, *Petitioner*, v. UKRAINE, *Respondent*.	Civil Action No. 1:17-cv-582-CKK

STATEMENT OF INTEREST OF THE UNITED STATES

The United States, by and through undersigned counsel, respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517,[1] to inform the Court of its interests concerning post-judgment discovery in this matter. The United States makes this request in light of the current extraordinary circumstances of Russian's invasion of Ukraine, which profoundly implicate Ukraine's territorial integrity and United States foreign policy interests. Ukraine has credibly asserted that the U.S. discovery process in this case risks being misused for non-litigation purposes that undermine Ukraine's national security and the foreign policy and national security interests of the United States. This risk is further accentuated now, where the disclosure of sensitive information could adversely impact active peace negotiations between the parties.

The United States respectfully submits that the Court should maintain the stay on post-judgment discovery for the duration of the Russia-Ukraine war. Alternatively, if the Court determines that lifting the stay is appropriate, the United States respectfully submits that the Court should first reconsider the appropriate scope of post-judgment discovery.

[1] Pursuant to 28 U.S.C. § 517, the United States may appear in any court in the United States "to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

BACKGROUND

As the Court knows, this litigation concerns Petitioner PAO Tatneft's ("Tatneft") efforts to enforce a 2014 foreign arbitral award against Ukraine, which this Court confirmed in 2020. *See* ECF No. 50. On January 11, 2021, this Court entered Judgment in favor of Tatneft in the amount of $172.9 million, inclusive of interest. *See* ECF No. 61. On February 23, 2021, after expiration of the automatic stay provided by Rule 62(a) of the Federal Rules of Civil Procedure, Tatneft commenced broad-ranging discovery in aid of execution against Ukraine and nineteen "State Controlled Entities" that Tatneft defined as equivalent to Ukraine for purposes of satisfying the judgment. *See* ECF Nos. 76-2 at 3, 76-3 at 3–4.

On March 29, 2021, Ukraine moved for a stay of execution of the Judgment, and the Court denied that request. *See* ECF No. 74. Tatneft then filed a Motion to Compel to obtain information it sought in discovery, *see* ECF No. 76, which the Court granted in October 2021, *see* ECF No. 83. At that time, the Court noted that Ukraine's claim that the information sought by Tatneft was sensitive and could not be shared with the Russian Federation had "not been substantiated in any way by Ukraine" and that "Ukraine's proffered 'rationale' for why a confidentiality agreement or protective order would not resolve any privacy/secrecy concerns is flimsy at best." ECF No. 83 at 16.

On December 13, 2021, after Ukraine provided a first tranche of uncontested information to Tatneft in response to Tatneft's requests for production, the Court established a schedule for Ukraine to complete document productions. *See* ECF No. 89. On January 21, 2022, Ukraine moved for a protective order to restrict access to documents produced in discovery. *See* ECF No. 90. Ukraine advised the Court that Tatneft's discovery requests had "drawn attention and caused concern at the highest levels of the Ukrainian Government" and, in the absence of its proposed protective order, would put Ukraine's physical and economic security at risk. *See, e.g.*, *id.* at 7.

Supported now by declarations of the Ukrainian Minister of Defense and Ukraine's Ambassador to the United States, ECF Nos. 90-7, 90-5, Ukraine represented that the requested protective order was necessary due to newly heightened concerns that Russia was preparing to attempt a devastating invasion of Ukraine. ECF No. 90 at 6. Ukraine further represented that "disclosure to Tatneft is a disclosure to [Russian] government officials who are in Tatneft leadership" (e.g., the chairman of the company is Head of Tatarstan, a Russian republic), and that the discovery responses would reveal Ukrainian military and defense funding and expenditures. *Id.* at 10. Tatneft opposed Ukraine's proposed protective order, arguing that Ukraine was delaying discovery, that Tatneft's own proposed protective order addressed Ukraine's concerns, and that Ukraine lacked good cause for its proposed restrictions. *See* ECF No. 92.

Ukraine's motion for a protective order was pending, and the rolling discovery schedule was ongoing, when Russia commenced its full-scale invasion of Ukraine in February 2022. In light of the invasion, on March 4, 2022, the parties jointly moved "for a moratorium on discovery and all related proceedings before this Court, consistent with the parties' right to modify ordinary discovery procedures by stipulation, pursuant to the inherent authority of the Court, and in the interest of justice." ECF No. 104. The Court granted the motion that same day. ECF No. 105.

This case remained stayed until June 16, 2025, when Tatneft filed a motion to lift the stay, arguing that the moratorium on discovery should be vacated because Tatneft no longer consents. *See* ECF No. 118. Ukraine opposed. ECF No. 122.

On December 10, 2025, the Court held Tatneft's motion in abeyance and directed the parties to file a joint status report indicating the posture of related proceedings in the U.S. District Court for the Southern District of New York, including whether that court has entered a protective order. *See* ECF No. 127. The Court noted that post-execution discovery will not commence "at least until the United States is given an opportunity to file a Statement of Interest and a protective

order/confidentially agreement is put in place." *Id.* at 8 (emphasis omitted). The Court also indicated it may reconsider the scope of discovery due to the events that have transpired during the three-year stay. *Id.* The Court directed the United States to indicate whether it intends to file a Statement of Interest by March 10, 2026, and subsequently granted the United States' request for an extension of time until May 11, 2026. *See id.*; *see also* February 26, 2026 Min. Order.

The Parties filed a joint status report on March 10, 2026, indicating the posture of the S.D.N.Y. proceedings. ECF No. 132 (reformatted). On the same day, the Court denied Tatneft's motion to lift the stay without prejudice, noting that the stay had been pending for almost four years and the briefing on the protective orders was likely stale. ECF No. 130. The Court further noted that "the resolution of the issue of a protective order in the SDNY case may facilitate resolution of a protective order in this case," and that "a possible Statement of Interest by the Government may well bear on both the scope of the underlying discovery requests and any proposed protective order." *Id.* at 3. Tatneft appealed the Court's order. *See* ECF No. 133. On May 12, 2026, the D.C. Circuit denied Tatneft's motion to expedite the appeal and ordered the parties to address in their briefs whether the court has jurisdiction under 28 U.S.C. § 1291. Order, *PAO Tatneft v. Ukraine*, No. 26-7042 (D.C. Cir. May 12, 2026) Doc. #2172891.

Southern District of New York Cases

As this Court is aware, in March 2021, separate from the discovery in aid of execution in this case, Tatneft served third-party subpoenas on various financial institutions seeking broad-ranging discovery in aid of execution of the Judgment against Ukraine, defined to again encompass nineteen "State Controlled Entities." *See Ukraine v. PAO Tatneft*, 1:21-mc-376 (S.D.N.Y.), ECF No. 3. Ukraine moved to quash the subpoenas in the U.S. District Court for the Southern District of New York. *Id.*, ECF No. 1. In February 2022, Ukraine also moved to quash an additional fifty-two subpoenas that Tatneft served on third-party financial institutions. *See Ukraine v. PAO Tatneft*,

1:22-mc-36 (S.D.N.Y.), ECF No. 1.

On March 4, 2022, the parties filed joint motions in the S.D.N.Y., seeking "a moratorium on discovery and all related proceedings" due to Russia's invasion of Ukraine. *See* 1:21-mc-376, ECF No. 56. The S.D.N.Y. court entered an order imposing the moratorium on the same day. *Id.*, ECF No. 57. In September 2024, Tatneft moved to lift the stay in the S.D.N.Y. *Id.* ECF Nos. 93–94. The United States filed a statement of interest on December 20, 2024, opposing Tatneft's motion to lift the stay. *See id.* ECF No. 103. The S.D.N.Y. court granted the motion in May 2025. *Id.* ECF No. 108.

Since then, the parties have engaged in robust litigation in the S.D.N.Y. court regarding the third-party discovery, and the United Stated filed a second statement of interest in October 2025 on the scope of post-judgment discovery, *id.* ECF No. 136. The S.D.N.Y. court ultimately consolidated the related cases, including cases concerning additional third-party subpoenas issued by Tatneft to various law firms, *see* 1:26-mc-71 (S.D.N.Y.); 1:26-mc-72 (S.D.N.Y.); 1:26-mc-76 (S.D.N.Y.); 1:26-mc-77 (S.D.N.Y.), and other financial institutions, *see* 1:25-mc-212 (S.D.N.Y.), (collectively "S.D.N.Y. Cases"). Ukraine and Tatneft filed a joint motion for a protective order on May 1, 2026, *see Ukraine v. PAO Tatneft*, 1:21-mc-376 (S.D.N.Y.), ECF No. 151, which the S.D.N.Y. court entered on May 4, 2026, *see id.* ECF No. 154.

DISCUSSION

The United States and its allies and partners have been steadfast supporters of Ukrainian sovereignty in the face of Russia's invasion of Ukraine. Broad international effort has been underway to support Ukraine's survival and defense in the largest war in Europe since World War II. Ukraine has raised credible concerns that Tatneft is seeking this post-judgment discovery—worldwide information from Ukraine and from what Tatneft identifies as "State Controlled Entities," related to Ukrainian accounts, assets, and account transfers—to compromise Ukraine's

national security by revealing sensitive military and economic information; in addition, the close ties between Tatneft and the Russian government make it likely that the discovery materials will end up in the hands of Ukraine's adversary. The United States shares Ukraine's concerns about the risks stemming from disclosure of the information sought here by Tatneft and agrees that a protective order is insufficient to fully guard against these serious risks.

As discussed below, information obtained through the U.S. discovery process that furthers Russia's war would undermine both Ukraine's security and worldwide efforts to bring about a lasting peace, as well as the foreign policy and national security interests of the United States. Given these extraordinary circumstances and the potential implications of post-judgment discovery in this case, the United States supports maintaining the stay on post-judgment discovery for the duration of the Russia-Ukraine war. A stay of this nature is warranted here, as compared to the S.D.N.Y. Cases, because direct discovery on a foreign sovereign raises greater sensitivities as compared to third-party discovery and Tatneft may fully recover the Judgment through the ongoing proceedings actively being litigated in the S.D.N.Y. Alternatively, if the Court determines that lifting the stay is appropriate, the United States respectfully submits that the Court should first reconsider the appropriate scope of post-judgment discovery, and it should limit discovery to the proportional needs of this case based on comity, national security concerns, and foreign relations interests.

I. The interests of the United States support maintaining the stay on post-judgment discovery for the duration of the Russia-Ukraine war.

As an initial matter, the Court has the authority to maintain the stay. "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936); *accord Clinton v. Jones*, 520 U.S. 681, 706

(1997) ("The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket."). In exercising this judgment, a court must "weigh competing interests and maintain an even balance between the court's interests in judicial economy and any possible hardship to the parties." *Belize Soc. Dev. Ltd. v. Gov't of Belize*, 668 F.3d 724, 732–33 (D.C. Cir. 2012) (citation omitted). A court's stay order "must be supported by 'a balanced finding that such need overrides the injury to the party being stayed.'" *Id.* at 732 (quoting *Dellinger v. Mitchell*, 442 F.2d 782, 787 (D.C. Cir. 1971)). Staying proceedings "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis*, 299 U.S. at 254–55. The court only "abuses its discretion in ordering a stay 'of indefinite duration in the absence of a pressing need.'" *Belize Soc. Dev. Ltd.*, 668 F.3d at 731–32 (quoting *Landis*, 299 U.S. at 255).

The absence of a bond under Federal Rule of Civil Procedure 62 does not prohibit a continued stay. Rule 62 "in no way necessarily implies that filing a bond is the only way to obtain a stay." *Fed. Prescription Serv., Inc. v. Am. Pharm. Ass'n*, 636 F.2d 755, 759 (D.C. Cir. 1980). Rather, Rule 62, "speaks only to stays granted as a matter of right, it does not speak to stays granted by the court in accordance with its discretion." *Id.*

The United States has a substantial interest in ensuring that U.S. courts supervising post-judgment discovery into a foreign State's property are sensitive to the significant comity, reciprocity, and foreign relations concerns raised by overbroad and burdensome discovery that could upset efforts to end the Russia-Ukraine war. This interest is profoundly acute here where Ukraine has credibly asserted that the U.S. discovery process risks being misused by Russia for non-litigation purposes that undermine the national security interests of the United States. This risk is even further accentuated now, where the disclosure of sensitive information could impact active peace negotiations between the parties.

Ukraine has credibly asserted that the discovery sought by Tatneft in this matter implicates

national security concerns for Ukraine and the United States through the risk of revealing in exacting detail the global support for Ukraine including "military supplies on their way to the war" and Ukraine's external intelligence networks. *See, e.g.*, Decl. of Ambassador Markarova, ECF No. 122-3 at 6, ("Markarova Decl."). Specifically, the United States credits then-Ambassador Markarova's assertions that Tatneft's discovery requests "demand[] sweeping disclosures concerning Ukraine's military and its largest military contractors" including "SC Ukroboronprom, the largest arms manufacturer in Ukraine" and "numerous other entities of critical importance to Ukraine's defense." *Id.* ¶ 10. The United States also supports the Ambassador's concerns related to Tatneft's requests for disclosures "of the identity and office location of all senior officials of Ukraine, its legislature, its largest military contractors, and many companies vital to the Ukrainian economy." *Id.* ¶ 13. The broad scope of Tatneft's subpoenas, and their sweeping definition of Ukraine to include what Tatneft defines as "State Controlled Entities," *see, e.g.*, ECF No. 76-3 at 2–3, lend support to Ambassador Markarova's assertions that "the Discovery Requests are a transparent effort to gather military intelligence in aid of Russia's ongoing aggression against Ukraine" and "a chilling effort to identify targets." Markarova Decl. ¶¶ 10, 13.

The United States also credits Ukraine's identification of a near-certain risk that information provided to Tatneft in discovery could find its way to the Russian government and be used in ways that would harm Ukraine's national security and, by extension, the interests of the United States. *See, e.g.*, *id.* ¶ 29. Ample public information exists reflecting a close relationship between Tatneft and the Russian government. *See, e.g.*, *id.* ¶¶ 20–25. For example, Tatneft's management board chairman, Rustam Nurgalievich Minnikhanov, is the President of the Republic of Tatarstan, and was sanctioned by the United States in 2023 for being a leader or official of the Russian Federation. *See, e.g.*, *id.* ¶ 20. Under the Russian constitution, republics are federal subjects of the Russian government and not separate states or entities. Even the arbitration panel,

while concluding that Tatneft was a private entity, recognized that "[t]here is undoubtedly a government presence in Tatneft's governing bodies and some features of its operations." ECF No. 27-3 at 48 (Arbitral Award).

The Russian Federation has increasingly become a surveillance state with severely eroded rule of law protections where, even if an entity such as Tatneft wanted to keep information from other governmental actors (and there is no confidence in Tatneft wanting to do so), it might not be possible to keep such information from the Russian government. In the United States's view, the Russian Federation has moved to a war economy, and the energies of the Russian government, and broader economy, are directed in significant part to its prosecution of the war against Ukraine. These facts show that Tatneft has close ties to the Russian government and, if Tatneft were to obtain sensitive information through the discovery process in these matters, such information would ultimately find its way to the Russian government. The Russian government could then use it to further undermine Ukraine's sovereignty and, by extension, the foreign policy interests of the United States. Ukraine has provided credible evidence to this effect.

The United States credits Ukraine's position that a protective order is unlikely to ameliorate these concerns. As Ambassador Markarova explains, "merely gathering Ukraine's sensitive records in a single place would leave it highly vulnerable to Russian intelligence." Markarova Decl. ¶ 28. Other declarations Ukraine submitted in this matter further explain how Russian intelligence uses cyber-attacks and other incentive strategies to obtain sensitive information (like the information demanded by Tatneft's subpoenas) to use against foreign adversaries. *See, e.g.*, ECF No. 90-7, ¶¶ 15–17, 35–40 (Declaration from Oleksii Reznikov, former Minister of Defense of Ukraine). The evidence of close ties between Tatneft and the Russian government discussed above lends further credence to Ukraine's view that a protective order would be insufficient to guard against disclosure of sensitive discovery material to the Russian government, which would

undermine both Ukraine's and the United States' interests. Indeed, given the geopolitical situation, the United States shares Ukraine's concern that Tatneft has no incentive to honor a protective order and cannot be expected to do so. *See* Markarova Decl. ¶ 27. And even if Tatneft did honor such an order, the United States believes Ukraine's declarations credibly assert a risk that Russia could obtain this information once it is in Tatneft's possession through Russian cyber-operations or through other Russian intelligence strategies.

Discovery into information regarding Ukraine's economic and national security-related transactions, which are implicated by the subpoenas, also implicates the national security of the United States and its allies. The United States, its partners, and its allies have been committed to Ukraine's sovereignty and have provided substantial economic and security assistance to Ukraine. As Ambassador Markarova notes, information related to Ukraine's economic links to the outside world would "reveal in exacting detail the sources and nature of the world's support for Ukraine." *Id.* ¶ 14. Were Russia to use this sensitive information obtained as part of U.S. discovery to further its war in Ukraine, not only would it undermine the national security interests of the United States and its allies, but it could also impact active peace negotiations between the parties. Accordingly, it is imperative to the interests of the United States, and its partners supporting the defense of Ukraine, that the U.S. discovery process is not misused by foreign adversaries for non-litigation related purposes that undermine the national security interests of the United States and our partners. Maintaining the stay that has been in place since the start of Russia's invasion safeguards these important interests.

Notwithstanding the serious threats to Ukraine and the United States that discovery raises in this matter, related proceedings in the S.D.N.Y. are actively underway where Tatneft is pursuing third-party discovery aimed at locating assets to satisfy the Judgment. *See, e.g.*, *Ukraine v. PAO Tatneft*, 1:21-mc-376 (S.D.N.Y.). Thus, discovery in this action may not only be duplicative, but

the fact that discovery here is aimed directly at Ukraine—a foreign sovereign operating under conditions of active armed conflict—raises additional sensitives compared to third-party discovery sought in the S.D.N.Y. Cases. *See* discussion *infra* §II.B. In this context, the marginal benefit of immediate sovereign-directed discovery is limited relative to the burden and risk it entails.

Ultimately, the United States, its allies and partners, and the public have strong interests in supporting Ukrainian sovereignty in the face of continued Russian aggression. A critical part of that interest is ensuring that U.S. discovery procedures are not used to compromise Ukraine's national security through the production of sensitive information related to Ukraine's defense and economy. Ukraine has proffered credible evidence that Tatneft's discovery implicates information that is sensitive to national security, that the close relationship between Tatneft and the Russian government makes it likely that sensitive information will end up in the hands of a hostile foreign power, and that a protective order is unlikely to safeguard that information. Thus, the interests of the United States weigh heavily in favor of maintaining the stay for the duration of the Russia-Ukraine war, which the Court has the discretion to order. *See Landis*, 299 U.S. at 254.

II. If the Court determines the stay should be lifted, it should first reconsider the proper scope of post-judgment discovery.

The United States continues to seek durable peace and an end to the Russia-Ukraine war, and every effort should be made to avoid compromising Ukraine's national security by revealing sensitive military and economic information. Should the Court decide to lift the stay, the United States respectfully requests that the Court limit or narrow the scope of any post-judgment discovery based on comity interests and the burden of discovery on Ukraine.[2] Ukraine has raised

[2] For example, the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602 *et seq.*, which reflects the customary international law of sovereign immunity, limits exceptions to immunity of State-owned property from attachment or execution to property used for a commercial activity in the United States.

credible concerns that the post-judgment discovery sought by Tatneft is not only overly broad, but is also likely to compromise Ukraine's national security, a dangerous possibility in light of Tatneft's close ties to the Russian government and Ukraine's war with Russia. *See supra* §I. In addition, litigation in U.S. courts against foreign states can have significant foreign affairs implications for the United States and can affect the reciprocal treatment of the U.S. government in the courts of other nations. Given these concerns, the interests of the United States weigh in favor of limiting the scope of the requested post-judgment discovery.

A. The Court should consider limitations on post-judgment discovery in light of the unique circumstances presented in this case.

While the Supreme Court in *NML Capital* held that the Foreign Sovereign Immunities Act ("FSIA") provides no categorical limitation on post-judgment discovery into foreign state property, it also recognized that there may be other reasons to limit such discovery. *Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134, 146 n.6 (2014). There is no right to boundless post-judgment discovery on foreign sovereigns. Rather, post-judgment discovery is entrusted to the sound discretion of lower courts, which should consider whether to limit such discovery on a case-by-case basis. *Id.*

The *NML Capital* Court addressed only the "single, narrow question" of whether the FSIA "specifies a different rule" for post-judgment discovery where the judgment debtor is a foreign state. *Id.* at 140. The Court concluded that no provision of the FSIA explicitly "forbid[s] or limit[s] discovery in aid of execution." *Id.* at 142. Acknowledging that its holding pertained only to its interpretation of the FSIA, the Court further advised that "other sources of law ordinarily will bear on the propriety of discovery requests of this nature and scope," including "the discretionary determination by the district court whether the discovery is warranted, which may appropriately consider comity interests and the burden that the discovery might cause to the foreign state." *Id.* at

146 n.6 (citation omitted). The Court also explicitly stated that it did not determine the question of whether "the scope of Rule 69 discovery in aid of execution is limited to assets upon which a United States court can execute." *Id.* at 140 n.2. Thus, while the Court in *NML Capital* held that the FSIA provides no categorical limitation on post-judgment discovery into foreign state property, it also recognized that there may be other reasons to limit such discovery, which should be examined on a case-by-case basis.

When reconsidering the appropriate scope of post-judgment discovery, the Court should consider the unique and extraordinary circumstances presented in this case, including the developments between Ukraine and Russia in the years since the Court last considered the scope of discovery.

B. The Court should consider the national security, foreign relations, and comity concerns presented by broad post-judgment discovery in this case.

This case does not involve "ordinary course post-judgment discovery." *Contra* ECF No. 124 at 8. As discussed, the overly broad discovery requested in this case would not only disclose information about Ukraine's financial transactions but also disclose information about the United States and its instrumentalities and contractors who may be identified as Ukraine's counterparties. *See supra* §I. The United States does not believe that Ukraine is overstating the threat posed by disclosure of the information sought here by Tatneft, or its concerns that a protective order is insufficient to fully guard against these serious risks, particularly at a time when the two countries are at war. *See* Markarova Decl. ¶ 17–29. The United States shares Ukraine's concern that Russia could obtain and misuse the information obtained in post-judgment discovery. As discussed, information obtained through U.S. discovery that furthers Russia's war would undermine not only Ukraine's security and efforts to bring about a lasting peace, but also the foreign policy and national security interests of the United States. In determining the proper scope of discovery, the

Court should consider these pressing national security concerns.

In addition, the Court should also consider comity and foreign relations concerns. The Supreme Court has recognized that there are sensitivities involved in conducting extraterritorial discovery on foreign states. *See Société Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for the Dist. of Iowa*, 482 U.S. 522, 567–68 (1987). In addressing pretrial discovery, the Court provided the following guidance on comity considerations:

> Judicial supervision of discovery should always seek to minimize its costs and inconvenience and to prevent improper uses of discovery requests. When it is necessary to seek evidence abroad, however, the district court must supervise pretrial proceedings particularly closely to prevent discovery abuses . . . . Objections to "abusive" discovery that foreign litigants advance should therefore receive the most careful consideration. In addition, we have long recognized the demands of comity in suits involving foreign states, either as parties or as sovereigns with a coordinate interest in the litigation. *See Hilton v. Guyot*, 159 U.S. 113 (1895). American courts should therefore take care to demonstrate due respect for any special problem confronted by the foreign litigant on account of its nationality or the location of its operations, and for any sovereign interest expressed by a foreign state.

Id. at 546.

Under the circumstances here, the appropriateness of worldwide discovery directly from a foreign state during active wartime warrants careful scrutiny. Given the significant and credible concerns raised by Ukraine, the developments between Ukraine and Russia in the years since the Court last considered the scope of discovery, and the U.S. foreign policy interests implicated, the Court should significantly narrow the scope of permitted discovery.

C. The Court should limit discovery to the proportional needs of the case.

The Federal Rules of Civil Procedure provide limits on post-judgment discovery which are applicable to private litigants and foreign states alike. While post-judgment discovery in aid of execution made available under Rule 69 is broad, courts have recognized that "[t]he scope of

discovery under Rule 69(a)(2) is constrained principally in that it must be calculated to assist in collecting on a judgment." *See, e.g.*, *Mwani v. Al Qaeda*, No. 99-CV-125 (GMH), 2021 WL 5800737, at *11 (D.D.C. Dec. 7, 2021) (quoting *EM Ltd. v. Republic of Argentina*, 695 F.3d 201, 207 (2d Cir. 2012), *aff'd sub nom.*, *Republic of Argentine v. NML Cap, Ltd.*, 573 U.S. 134 (2014)); *Cruise Connections Charter Mgmt. 1, LP v. Att'y Gen. of Canada*, No. CV 08-2054 (RMC), 2014 WL 12778302, at *1 (D.D.C. Oct. 1, 2014) ("Of course, as in all matters relating to discovery, the district court has broad discretion to limit discovery in a prudential and proportionate way." (*quoting EM Ltd.*, 695 F.3d at 207)).

Indeed, as the Supreme Court explained in *NML Capital*, "information that could not possibly lead to executable assets is simply not 'relevant' to execution in the first place." 573 U.S. at 144–45 (quoting Fed. R. Civ. P. 26(b)(1)). Rule 26(b)(1) itself provides that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." As paramount to proportional discovery here, the Court should closely examine Tatneft's request for discovery on what it describes as "State Controlled Entities," and consider the need for post-judgment discovery of assets presumptively immune from execution.

1. Discovery should not include "State Controlled Entities" without a threshold alter ego showing.

Demanding that a foreign state produce broad and detailed information relating to assets and transactions of numerous legally distinct entities, without any threshold showing that such entities would be responsible for paying a judgment against the state, presents legal and policy complications. To the extent the "State Controlled Entities," *see* ECF Nos. 76-2 at 3, 76-3 at 3–4, are legally separate from Ukraine, the assets of such entities may not be used to enforce a judgment against Ukraine, and records related to those entities' accounts are therefore unlikely to assist in

collecting on Tatneft's Judgment.

"A government instrumentality established as a juridical entity distinct and independent from its sovereign should normally be treated as such; thus, it is presumed to have legal status separate from that of the sovereign." *Transamerica Leasing, Inc. v. La Republica de Venezuela*, 200 F.3d 843, 847 (D.C. Cir. 2000) (citation modified) (quoting *First Nat. City Bank v. Banco Para El Comercio Exterior de Cuba* ("*Bancec*"), 462 U.S. 611, 628 (1983)); *see also Helmerich & Payne Int'l Drilling Co. v. Venezuela*, 153 F.4th 1316, 1329 (D.C. Cir. 2025) ("[G]overnment corporations established as separate legal persons are generally treated as entities separate from the government itself." (citing *Bancec*, 462 U.S. at 626–27)). As a result of this presumption, the assets of a separate juridical entity cannot be executed against to satisfy a judgment against the foreign state unless the party seeking attachment overcomes the presumption of juridical separateness. *Foremost-McKesson, Inc. v. Islamic Republic of Iran*, 905 F.2d 438, 448 (D.C. Cir. 1990) (burdening plaintiff to overcome presumption of juridical separateness); *see also Walters v. Indus. & Com. Bank of China, Ltd.*, 651 F.3d 280, 298 (2d Cir. 2011); *Alejandre v. Telefonica Larga Distancia de Puerto Rico, Inc.*, 183 F.3d 1277, 1285 (11th Cir. 1999). Courts have concluded that it would be inconsistent with *Bancec* and comity principles to order discovery into the property and finances of a separate instrumentality of a foreign-state judgment debtor without some threshold showing by a litigant that there is a reasonable basis to believe a separate juridical entity is an alter ego of the state and accordingly liable for a judgment against the state. *See, e.g.*, *Seijas v. Republic of Argentina*, 502 F. App'x 19, 20–21 (2d Cir. 2012); *NML Cap., Ltd. v. Republic of Argentina*, No. C 12–80185 JSW (MEJ), 2013 WL 655211, at *1–2 (N.D. Cal. Feb. 21, 2013).

A cautious approach to permitting discovery into the assets of a foreign state's instrumentality corresponds with the general principle that "[o]rdinarily third persons can be examined only about the assets of the judgment debtor and cannot be required to disclose their

own." 12 Wright & Miller's Federal Practice and Procedure § 3014 (3d ed. 1998). Courts have consistently held that discovery related to the assets of a non-judgment debtor is permissible only "when there is a reasonable belief that they have received assets transferred from the judgment-debtor, or a third party is believed to be the alter ego of the judgment debtor." *Integrated Control Sys., Inc. v. Ellcon- Nat'l, Inc.*, No. Civ.3:00CV1295(PCD), 2002 WL 32506291, at *1 (D. Conn. Dec. 30, 2002) (citations omitted); *see also, e.g.*, *Fed. Trade Comm'n v. Trudeau*, No. 1:12–mc–022, 2012 WL 6100472, at *4 (S.D. Ohio Dec. 7, 2012) (party seeking post-judgment discovery regarding a third party "must make a threshold showing of the necessity and relevance of the information sought" (citation omitted)).

The case of *Amduso v. Republic of Sudan*, 288 F. Supp. 3d 90 (D.D.C. 2017) is distinguishable from this matter. *Amduso* concerned a terrorism-related judgment, and Congress imposed a specific regime governing execution of such judgments against agencies or instrumentalities by statute. *See* 28 U.S.C. § 1610(g). The Supreme Court has explained that Section 1610(g) "abrogate[s] *Bancec* with respect to the liability of agencies and instrumentalities of a foreign state where a § 1605A judgment holder seeks to satisfy a judgment held against the foreign state." *Rubin v. Islamic Republic of Iran*, 583 U.S. 202, 211 (2018) (citing *Bancec*, 462 U.S. at 611). In that context, post-judgment discovery into the assets of an agency or instrumentality of Sudan (then designated as a State Sponsor of Terrorism ("SST")), would have been governed by laws designed to facilitate attachment of assets of agencies and instrumentalities to satisfy judgments against SSTs. The statutory framework applicable in that context is not relevant to post-judgment discovery in this case.

2. Assets presumably immune from execution are not within the scope of reasonable post-judgment discovery.

Discovery of accounts and assets held by Ukraine worldwide would inevitably be

discovery into a vast set of assets that are presumptively immune from attachment under both the FSIA and accepted principals of international law.[3] Broad post-judgment discovery into presumptively immune assets is not within the scope of reasonable discovery given the burden of such discovery, the miniscule likelihood that such discovery will lead to an exception to that immunity to aid in executing a judgment, and the foreign policy interests of the United States in avoiding the tension with foreign states caused by such discovery and reciprocal interests in not having foreign courts impose similar discovery burdens on the United States. Instead, appropriate measures should be considered to carve out these categories of immune property from the scope of discovery.

First, the FSIA requires that a court make a threshold determination as to whether the property at issue is "property in the United States of a foreign state . . . used for a commercial activity in the United States," 28 U.S.C. § 1610(a), prior to determining whether such property is subject to the limited exceptions to immunity from execution. Every decision of a court of appeals that has addressed the issue, apart from the Second Circuit's now-vacated opinion in *Peterson v. Islamic Republic of Iran*, 876 F.3d 63 (2d Cir. 2017), has treated the presence of foreign sovereign property in the United States as a prerequisite to execution in U.S. courts. *See Rubin v. Islamic Republic of Iran*, 830 F.3d 470, 475 (7th Cir. 2016) (identifying as one of the "basic criteria" for attachment that the foreign sovereign property "must be within the territorial jurisdiction of the district court"), *aff'd*, 583 U.S. 202 (2018); *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1131–32 (9th Cir. 2010) (foreign state property abroad is "not 'property in the United States'" and

[3] For example, diplomatic, central bank, and military property are recognized as immune from execution under the United Nations Convention on Jurisdictional Immunities of States and Their Property. *See* G.A. Res. 59/38, art. 2l(l)(a-c), U.N. Doc. A/RES/59/38 (Dec. 2, 2004). Although the United States is not a party to that Convention and it has not yet entered force, it is the view of the United States that many of the Convention's protections, including these, reflect accepted international principles and practices regarding foreign-state immunity.

is therefore "immune from execution" (quoting 28 U.S.C. § 1610(a)(7))); *EM Ltd.*, 695 F.3d at 208 ("[A] district court sitting in Manhattan does not have the power to attach Argentinian property in foreign countries."); *Aurelius Cap. Partners, LP v. Republic of Argentina*, 584 F.3d 120, 130 (2d Cir. 2009) ("[P]roperty that is subject to attachment and execution must be property in the United States of a foreign state." (citation omitted)); *Conn. Bank of Com. V. Republic of Congo*, 309 F.3d 240, 247 (5th Cir. 2002) (U.S. courts "may execute only against property that meets" specified criteria, including that the property be "'in the United States'" (quoting 28 U.S.C. § 1610(a)(1))); *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1477 (9th Cir. 1992) ("[S]ection 1610 does not empower United States courts to levy on assets located outside the United States."). Therefore, information related to extraterritorial property of Ukraine—property that is not present in the United States and used for commercial activity—is irrelevant to the execution of the Judgment in the United States under the FSIA and is not properly subject to post-judgment discovery to that end.

Moreover, there are categories of property entitled to immunity even if present in the United States and used for commercial activity within the meaning of 28 U.S.C. § 1610(a). 28 U.S.C. §§ 1604, 1611. The first category of property is diplomatic property, which is categorically immune from execution under both the FSIA and international law. The Vienna Convention on Diplomatic Relations, to which the United States is a party, mandates that "premises" and "property" of a diplomatic mission "shall be immune from . . . attachment or execution." Vienna Convention on Diplomatic Relations and Optional Protocol on Disputes Done at Vienna, art. 22(3), Apr. 18, 1961, 23 U.S.T. 3227. The FSIA's execution provisions are "[s]ubject to existing international agreements to which the United States is a party," 28 U.S.C. § 1604, and courts have applied these provisions in determining that assets used for diplomatic purposes are not subject to execution. The second category of property is central bank property. The FSIA provides that "the

property . . . of a foreign central bank or monetary authority held for its own account" is absolutely immune from execution except where the central bank's immunity has been "explicitly waived." *Id.* § 1611(b)(l). Finally, the FSIA also exempts from execution property that "is, or is intended to be; used in connection with a military activity" where the property is "of a military character" or "is under the control of a military authority or defense agency." *Id.* § 1611(b)(2). The long-recognized immunity of these categories of property makes information related to this property irrelevant to the execution of the Judgment, particularly in the United States.

Further, the burdens imposed by this type of discovery are significant and unique to foreign states, making discovery covering these assets even more immaterial, especially given the irrelevance of the information to the execution of the Judgment. With respect to diplomatic property, a foreign state's footprint may be expected to span the entire globe, resulting in a massive undertaking to produce information on diplomatic property and assets. Information on a foreign state's worldwide military assets would prove extraordinarily sensitive even under the most favorable circumstances—let alone during an active war where there is a risk such information could fall into adversarial hands. And the provision of central bank information would reveal information on sovereign bond offerings and other confidential financial information. The heavy burden and minimal benefit of discovery on these three categories of assets warrant tailored discovery to accommodate these concerns, as Ukraine suggested in indicating that the Court should "prioritize discovery of those documents that are unlikely to prove invasive of sovereign dignity." ECF No. 81, at 12 (quoting *Aurelius Cap. Master, Ltd. v. Republic of Argentina*, 589 F. App'x 16, 18 (2d Cir. 2014)).

Discovery into foreign State property that is broadly not in the United States and used for commercial activity, including categories of assets that are excluded from the exception to execution immunity under the FSIA, also implicates foreign policy concerns. In addition to being

a bilateral irritant with the foreign state, overly broad discovery of this nature can also lead to reciprocal adverse treatment of the United States in foreign courts. *See Aquamar S.A. v. Del Monte Fresh Produce NA., Inc.*, 179 F.3d 1279, 1295 (11th Cir. 1999). For a variety of reasons, the U.S. government may decide not to pay judgments entered in foreign courts (e.g., where service did not comport with the requirements of customary international law, the court lacked jurisdiction over the dispute, payment of the judgment would conflict with a U.S. law, or the judgment is inconsistent with fundamental U.S. sovereign interests). In some cases, private litigants have sought post judgment discovery to enforce such judgments. The United States would have serious concerns should a foreign court require it to respond to similarly intrusive inquiries from a private judgment creditor attempting to obtain worldwide information on sovereign accounts and assets that may not be subject to execution under domestic or international law. Accordingly, the Court should consider these interests and appropriately limit the scope of post-judgment discovery.

CONCLUSION

For the forgoing reasons, the Court should maintain the stay for the duration of the Russia-Ukraine war. In the alternative, if the Court determines to lift the stay, it should first reconsider the appropriate scope of post-judgment discovery.

Dated: May 13, 2026

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