

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

AF-CAP, INC.,  
Plaintiff-Appellee,

v.

REPUBLIC OF CONGO,  
Defendant-Appellant.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

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BRIEF OF THE UNITED STATES AS AMICUS CURIAE  
IN SUPPORT OF DEFENDANT-APPELLANT

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No. 05-51168

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**INTRODUCTION AND STATEMENT OF INTEREST**

The Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602 *et seq.*, provides the sole basis for obtaining jurisdiction over a foreign state in civil cases in United States courts. The Act provides that foreign states are immune from jurisdiction unless they fall within one of the narrow exceptions to foreign sovereign immunity, *see* 28 U.S.C. § 1605, and sets out a comprehensive and exclusive scheme for obtaining and enforcing judgments against a foreign

government. *See generally Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434-435 (1989).

In this case, despite the lack of any explicit authorization or enforcement mechanism in the FSIA for monetary contempt sanctions, the district court imposed such sanctions upon the Republic of Congo in an effort to coerce compliance with the district court's turnover order.<sup>1</sup> The United States has a substantial interest in the proper interpretation and application of the FSIA because of the potential foreign policy implications of U.S. litigation involving a foreign state. Those foreign policy interests are particularly significant in this case, in which the district court's order is likely to be viewed as inconsistent with the dignity afforded sovereigns by other sovereigns. In addition, the treatment of foreign states in U.S. courts has significant implications for the treatment of the United States Government by the courts of other nations. Accordingly, the United States participates in this litigation to express its position that the district court erred in imposing monetary contempt sanctions upon the Republic of Congo.

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<sup>1</sup> The turnover order, which is currently on appeal to this Court (No. 05-51168), required the Republic of Congo to turn over to the registry of the district court certain royalty payments due to the Republic of Congo under a Convention governing petroleum development in that country.

The United States does not condone a foreign state's failure to comply with the order of a U.S. court validly exercising jurisdiction over that state.<sup>2</sup>

Nevertheless, the legal framework established by Congress for litigation against foreign states does not permit enforcement of monetary contempt sanctions against a state. The imposition of such sanctions also contravenes international practice, and could adversely affect our nation's relations with foreign states as well as open the door to sanctions against the United States abroad.

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**STATEMENT OF THE ISSUE PRESENTED**

Whether a U.S. district court act without authority or abuses its discretion when it orders monetary contempt sanctions against a foreign state under the Foreign Sovereign Immunities Act.

**SUMMARY OF ARGUMENT**

A. The Foreign Sovereign Immunities Act sets out the exclusive means for obtaining and enforcing judgments against a foreign state in a civil case. Under the statute, a foreign state is immune from execution of any judgment — including a monetary judgment for contempt sanctions — except as provided

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<sup>2</sup> We take no position in this litigation on the questions whether the district court correctly exercised jurisdiction over the plaintiffs' claims under the FSIA waiver provision, 28 U.S.C. § 1605(a)(1), and whether the district court's authority extended to entry of the turnover order with which the Republic of Congo failed to comply.

under the attachment and execution provisions, 28 U.S.C. §§ 1609-1611. Any ambiguity on this point in the statutory text is eliminated by the legislative history, which explains that contempt sanctions may be enforced, if at all, only pursuant to those provisions. Although the FSIA modified the prior rule of absolute foreign sovereign immunity from execution, it did so only partially. The FSIA restricted courts' execution and enforcement authority to those circumstances set forth in Section 1609-1611. Regardless of whether the FSIA might arguably permit a district court to use its equitable powers to order monetary contempt sanctions against a foreign state, the statute does not permit enforcement of such an order.

B. Compelling equitable and foreign-policy interests weigh against an order of monetary contempt sanctions. Such an order is likely to be viewed as a significant affront to the dignity and sovereignty of the foreign state. Imposing sanctions for noncompliance with a court's injunctive order is also inconsistent with international practice and the laws of other nations. In light of the potential harm to foreign relations and the potential to give rise to similar sanctions against the United States, as well as the lack of any countervailing benefit from an unenforceable order, a district court should not order monetary contempt sanctions against a foreign state.

## ARGUMENT

### UNITED STATES COURTS SHOULD NOT IMPOSE MONETARY CONTEMPT SANCTIONS ON FOREIGN STATES

#### A. The Foreign Sovereign Immunities Act Precludes Enforcement Of Monetary Contempt Sanctions Against A Foreign State.

“[T]he subject-matter jurisdiction of the lower federal courts is determined by Congress ‘in the exact degrees and character which to Congress may seem proper for the public good.’” *Amerada Hess*, 488 U.S. at 433 (quoting *Cary v. Curtis*, 44 U.S. (3 How.) 236, 245 (1845)). With respect to foreign states, Congress intended that the civil jurisdiction of U.S. courts would be governed exclusively by the FSIA, which sets out a comprehensive scheme for obtaining and enforcing judgments against foreign sovereigns in civil litigation. *See Republic of Austria v. Altmann*, 541 U.S. 677, 691 (2004); *Amerada Hess*, 488 U.S. at 434, 437. As we next show, the text, history, and structure of the FSIA establish that the statute bars enforcement of monetary contempt sanctions against a foreign state.

The FSIA provides that a foreign state is immune from jurisdiction except as immunity is removed by statute. *See* 28 U.S.C. § 1604. The statute further provides that a foreign state’s property is immune from attachment, arrest, or

execution except in the limited circumstances set forth in the Act. *See id.* § 1609. We explain below (at pp. 9-10) that the waiver exception to immunity from execution is inapplicable to the district court's order of monetary sanctions for contempt, and the remaining statutory exceptions are inapplicable on their face. *See* 28 U.S.C. §§ 1610(a), 1605(a)(7); *De Letelier v. Republic of Chile*, 748 F.2d 790, 798-799 (2d Cir. 1984) (FSIA does not permit execution against foreign state's property of judgment resulting from non-commercial tortious conduct), *cert. denied*, 471 U.S. 1125 (1985). Thus, there is no mechanism for a U.S. court to enter an enforceable order for monetary contempt sanctions against an unwilling foreign state.

The conclusion that contempt sanctions may not be enforced against a foreign state except in accordance with the FSIA's execution provisions is confirmed by the statute's legislative history. As set out in the House Report accompanying the legislation, Congress intended that, for a foreign state subject to jurisdiction under the FSIA,

liability exists as it would for a private party under like circumstances. \* \* \* Consistent with this section, a court could, when circumstances were clearly appropriate, order an injunction or specific performance. ***But this is not determinative of the power of the court to enforce such an order.*** For example, a foreign diplomat or official could not be imprisoned for contempt because of his government's violation of an injunction. *See* 22 U.S.C. 252. ***Also a***

***fine for violation of an injunction may be unenforceable if immunity exists under sections 1609-1610.***

H.R. Rep. No. 94-1487, at 22 (1976) (emphasis added), *reprinted in* 1976

U.S.C.C.A.N. 6604, 6621.

Subsequent legislative history further demonstrates that the FSIA does not permit enforcement of monetary contempt sanctions against a foreign state. In considering proposed amendments to the FSIA in 1987, Congress heard testimony at a subcommittee hearing by Elizabeth Verville, Deputy Legal Adviser in the State Department, that the statute would not permit “imposition of a fine on a foreign state \* \* \* for a state’s failure to comply with a court order.” Hearing on H.R. 1149, H.R. 1689, and H.R. 1888, before the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee, 100th Cong., 1st Sess., at 19 (1987). Deputy Legal Adviser Verville explained that, although the FSIA does not “explicitly preclud[e] a court from imposing a fine on a foreign state \* \* \* [for] failure to comply with a court order,” the statute’s legislative history makes clear that sanctions of this sort are impermissible, a position that “is consistent with state practice” internationally. *Id.* at 36.

Finally, the structure of the FSIA and the legal landscape against which it was enacted support the conclusion that a U.S. court may not enforce monetary

contempt sanctions against a foreign state. Enforcement of contempt sanctions cannot be justified by the notion that such action is necessary to give effect to the jurisdiction conferred by Congress under the FSIA. As this Court recognized in *Connecticut Bank of Commerce v. Republic of Congo*, 309 F.3d 240 (5th Cir. 2002), the fact that a court has jurisdiction over a plaintiffs' claim under the FSIA does not mean that the court has authority to enforce its judgment. *Id.* at 252; *see also De Letelier*, 748 F.2d at 798-799 (rejecting argument that Congress could not have intended in the FSIA "to create a right without a remedy").

Congress adopted the FSIA against background immunity principles articulated in the 1952 "Tate" Letter issued by the Department of State and the European Convention on State Immunity, adopted by the Council of Europe in 1972. *See Connecticut Bank*, 309 F.2d at 252, 255-256; *see also* H.R. Rep. No. 94-1487, at 23 (referencing European Convention). Under international law and pre-1976 U.S. law, a litigant could obtain a judgment against a foreign state under certain circumstances, but could not enforce that judgment against a foreign state's property, which was immune from attachment. *See Connecticut Bank*, 309 F.3d at 251-252. In seeking enforcement, a litigant was left to seek diplomatic intercession by the United States Government or to rely on the willingness of a foreign state to honor judgments against it. *See id.* at 255-256.

Congress changed that rule in part in enacting the FSIA, but did not provide for plenary enforcement of the orders of U.S. courts, choosing instead to cabin courts' enforcement authority in 28 U.S.C. §§ 1609-1611. As this Court explained in *Connecticut Bank*, the disjunct in the FSIA between jurisdiction and execution reflected the view of the international community at the time that “execution against a foreign state’s property [was] a greater affront to its sovereignty than merely permitting jurisdiction over the merits of an action.” 309 F.3d at 255-256. The statutory text, history, and structure of the FSIA thus demonstrate that Congress intended to bar enforcement of monetary sanctions for contempt against a foreign state that has not waived its immunity from execution of those sanctions.

Notably, the fact that a foreign state has waived its sovereign immunity to suit under Section 1605(a)(1) of the FSIA — the basis on which the New York state court exercised jurisdiction over the Republic of Congo to enter the underlying default judgment sought to be enforced — does *not* establish that the state is subject to enforcement of monetary contempt sanctions under Section 1609 and 1610(a). A foreign sovereign’s waiver of immunity from jurisdiction does not permit a court to enforce any resulting judgment, absent the sovereign’s additional waiver of “immunity from attachment in aid of execution or from execution” and the plaintiffs’ satisfaction of statutory criteria for attachment or execution. *See* 28

U.S.C. § 1610(a). As a matter of practice, furthermore, a foreign state would be extremely unlikely to waive its immunity from enforcement of punitive, quasi-criminal sanctions of this type. As discussed below (at pp. 13-17, *infra*), under the laws and practices of other nations, a state may not be subject to coercive sanctions for noncompliance with a judicial order. Indeed, the laws of other nations bar a court even from ordering a foreign sovereign to take specific action. The significant and intentional disjunct between the jurisdictional and enforcement provisions of the FSIA precludes a court from finding a waiver of immunity from enforcement of contempt sanctions simply because a foreign sovereign has waived its immunity from jurisdiction with respect to particular claims.

**B. Monetary Contempt Sanctions Against A Foreign State Contravene Equitable Principles And International Practice, And Could Have Significant Adverse Foreign Policy Consequences.**

Regardless whether a U.S. court has the power to order monetary sanctions order against a foreign state — a question that this Court need not decide — basic principles of equity and comity should preclude such an order.

1. As we have explained, monetary contempt sanctions against a foreign state cannot be enforced because no statutory exception to immunity from execution of those sanctions applies. “A court should not issue an unenforceable

injunction” against a foreign state. *In re Estate of Marcos Human Rights Litig.*, 94 F.3d 539, 545, 548 (9th Cir. 1996). In exercising its equitable authority, a court should be cautious that its orders will be effective and that they will utilize the least amount of force necessary to achieve the desired end. *See, e.g., Shillitani v. United States*, 384 U.S. 364, 371 (1966); *cf. Virginian Ry. Co. v. System Fed’n No. 40*, 300 U.S. 515, 550 (1937) (“[A] court of equity may refuse to give any relief when it is apparent that that which it can give will not be effective or of benefit to the plaintiff.”).

The United States Government does not condone a foreign state’s failure to comply with the order of a U.S. court. But compliance must be sought by other means. A district court may direct an adverse evidentiary presumption against a recalcitrant foreign state or, if the claimant can “establish[] his claim or right to relief by evidence satisfactory to the court,” may even enter a default judgment against the state. 28 U.S.C. § 1608(e). An aggrieved litigant may also pursue non-judicial remedies, including diplomatic intercession. As an equitable matter, however, a U.S. court should not enter an order of monetary sanctions against a foreign state that is immune from execution of any such order.

2. Foreign policy considerations and international law and practice also weigh strongly against imposing monetary contempt sanctions in response to a foreign state's failure to comply with a court's injunctive order.

In considering the appropriate response to a foreign state's failure to comply with an injunction, it is important to recognize the strongly held view of many foreign states that they are not subject to coercive orders by a U.S. court. Absent specific evidence to the contrary, the refusal of a sovereign state to conform to a judicial directive should not be considered as an expression of scorn or contempt for which such sanctions are normally imposed. Rather, such a refusal may reflect a determination by that foreign state that a U.S. court lacks power to control its conduct. Foreign nations that have statutes governing sovereign immunity do not permit a court to enter an injunction against a foreign state, and the foreign state may expect the United States to extend to it the same respect and courtesy.<sup>3</sup> The potential for affront may be particularly acute where the district court issues an

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<sup>3</sup> Although there is widespread acceptance in modern international law that foreign states' immunity from adjudication may be restricted, "immunity from enforcement jurisdiction remains largely absolute," and "a foreign State continues largely immune from forcible measures of execution against its person or property." H. Fox, "International Law and the Restraints on the Exercise of Jurisdiction by National Courts of States," in M. Evans, ed., International Law 364, 366, 371 (2003); *see also id.* at 371 ("Nor may an injunction or order for specific performance be directed by a national court against a foreign State on pain of penalty if not obeyed.").

injunctive order, such as the turnover order in this case, that purports to control the foreign state's conduct within its own borders. *Cf.* Record Excerpt 8, *Republic of Congo v. Af-Cap Inc.*, No. 05-50782 (5th Cir.) (Mar. 3, 2005, letter from Congolese Minister of Foreign Affairs and Francophony) (stating that U.S. litigation “is premised on the erroneous notion that an American court may transfer the rights of a sovereign nation — the Republic of Congo — to dispose of its resources within its borders,” and the court’s erroneous assertion of authority to “supersede the Congo’s sovereign authority to prescribe and enforce its own laws within its own territory”).

Furthermore, general principles of foreign and international law shed light on the proper treatment of foreign sovereigns in U.S. courts. *See Aquamar, S.A. v. Del Monte Fresh Produce N.A., Inc.*, 179 F.3d 1279, 1295 (11th Cir. 1999). Where U.S. practice diverges from international practice, other governments may react by subjecting the United States to similar enforcement mechanisms when our Government litigates abroad. Under the laws and practices of other nations, monetary sanctions may not be imposed on a foreign state even if the state violates a court order.

Thus, for example, the European Convention on State Immunity bars a court from imposing monetary sanctions on a foreign state for refusal “to comply with a

court order to produce evidence (contempt of court).”<sup>4</sup> Under the Convention, a court faced with a foreign state’s noncompliance is limited to remedies involving “whatever discretion [the court] may have under its own law to draw the appropriate conclusions from a State’s failure or refusal to comply.” European Convention on State Immunity, (E.T.S. No. 074), Explanatory Report, Point 70 (discussing Article 18) (convention entered into force June 11, 1976).<sup>5</sup>

In a similar vein, the United Nations Convention on Jurisdictional Immunities of States and their Property, adopted in 2004, provides that “[a]ny failure or refusal by a State to comply with an order of a court of another State enjoining it to perform or refrain from performing a specific act \* \* \* shall entail no consequence other than those which may result from such conduct in relation to the merits of the case. In particular, no fine or penalty shall be imposed on the State by reason of such failure or refusal.” United Nations Convention on Jurisdictional Immunities of States and Their Properties, Article 24(1).

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<sup>4</sup> For the convenience of the Court, the United States has attached an addendum to this brief that includes the European Convention and several other international- and foreign-law sources relied upon.

<sup>5</sup> Because the European Convention does not provide for any mechanism to enforce a judgment against a foreign state, *a fortiori* courts lack power under the Convention to enter coercive sanctions for non-compliance with their judgments.

The United Nations Convention is not yet in force, and the United States is not a signatory to the Convention. Nevertheless, a number of its provisions, including Article 24(1), generally reflect current international norms and practices regarding foreign state immunity. Notably, the principle reflected in Article 24 of the Convention was uniformly supported by member states, which disagreed only about whether to extend even further a state's immunity from coercion. In the early 1986 formulation of the draft Articles, the International Law Commission proposed two provisions barring courts from imposing coercive measures on foreign states, one of which recognized a state's immunity "from any [judicial] measure of coercion requiring it to perform or to refrain from performing a specific act on pain of suffering a monetary penalty." Yearbook of the International Law Commission, 1986, Vol. II, Part Two, pp. 12, UN Doc. A/41/10, chap. II.D. Some states considered that formulation too narrow, with Mexico complaining that coercive measures "do not consist solely in monetary penalties," and the United Kingdom protesting that the Articles should recognize state "immunity from the very possibility of having such an order made against it." *International Law Commission: Jurisdictional Immunities of States and Their Property, Comments and Observations Received from Governments*, UN Doc. A/CN.4/410, at 33 (Feb. 17, 1988). As the United Kingdom elaborated, it is not

“appropriate for a domestic court to order the Government of another State, without its consent, to do or not to do particular acts whether or not any penalty is threatened,” and “[i]n any event, there is in general no method of enforcing such a penalty against a foreign State \* \* \*.” *Id.*, UN Doc. A/CN.4/410, at 58; *see also id.* at 24 (comments of German Democratic Republic) (“[I]t is not permissible as a matter of principle to exercise judicial compulsion against another State.”). As noted above, the final Convention directed that states would be immune from fines or penalties for failure to comply with an injunctive order, and that the only permissible consequences would be “those which may result from such conduct in relation to the merits of the case.” United Nations Convention on Jurisdictional Immunities of States and Their Properties, Article 24(1).

Finally, individual nations other than the United States that have codified foreign sovereign immunity law, although relatively few in number, uniformly have protected foreign states from monetary sanctions for failure to comply with an injunctive order. Canadian law provides, for example, that “[n]o penalty or fine may be imposed by a court against a foreign state” for its failure to produce documents or other information to the court, and further provides that a state shall be immune *in toto* from any “injunction, specific performance or the recovery of land or other property.” Canadian State Immunity Act, §§ 12(1), 10(1). The

United Kingdom State Immunity Act similarly provides that a foreign state may not be penalized with monetary sanctions for its failure to disclose or produce any document or other information in court proceedings, and also may not be subject to any “injunction or order for specific performance,” absent narrow circumstances not present here. UK State Immunity Act, § 13.

Singapore and Pakistan have also enacted immunity provisions essentially identical to those of Canada and the United Kingdom. *See* Singapore State Immunity Act, § 15; Pakistan State Immunity Ordinance, § 14. And Australian law provides that “[a] penalty by way of fine or committal shall not be imposed in relation to a failure by a foreign State or by a person on behalf of a foreign State to comply with an order made against the foreign State by a court.” Australian Foreign States Immunities Act of 1985, § 34. In sum, the international practice is to bar monetary contempt sanctions of the type ordered by the district court.

3. There is virtually no precedent in U.S. law for the district court’s contempt orders. Although a small number of U.S. courts have ordered monetary contempt sanctions against an *agency or instrumentality* of a foreign state, those courts have done so without considering whether the FSIA permits the enforcement of such sanctions. *See, e.g., First City, N.A. v. Rafidain Bank*, 281 F.3d 48, 52-55 (2d Cir.) (affirming sanctions order for failure to comply with post-

judgment discovery order, but addressing only question whether court had authority to order discovery), *cert. denied*, 537 U.S. 813 (2002); *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1477-1478 (9th Cir.) (upholding monetary contempt sanctions for failure to comply with post-judgment discovery order, but limiting analysis to whether FSIA permitted requirement of supersedeas bond or letter of credit pending appeal), *cert. dismissed*, 506 U.S. 948 (1992).

The one district court to consider the enforceability of coercive monetary sanctions against a foreign state agency or instrumentality has recognized that such sanctions likely would not be enforceable. *United States v. Crawford Enters., Inc.*, 643 F. Supp. 370, 381-382 (S.D. Tex. 1986), *aff'd*, 826 F.2d 392 (5th Cir. 1987). Sanctions against a foreign state agency or instrumentality are distinguishable, in any event, because the potential affront to the dignity and sovereignty of the foreign state are considerably lessened where the order is not against the state itself, as is the likelihood of conflict with United States foreign policy interests.

To our knowledge, *no* court of appeals has ever considered whether a monetary contempt order may be enforced against a foreign state under the FSIA attachment provisions. *Cf. Republic of Philippines v. Westinghouse Elec. Corp.*, 43 F.3d 65, 79-80 (3d Cir. 1994) (vacating injunctive order against foreign state

but suggesting in *dictum* that court could impose monetary sanctions for contumacious conduct). Only one other district court of which we are aware has entered such an order, but that order has not yet become final, and a motion to vacate the order is currently pending before the district court that entered it. *See Belize Telecom Ltd. v. Government of Belize*, No. 05-CV-20470 (S.D. Fla.). It is the position of the United States, as set forth in a proposed amicus brief in the appeal of that ruling (an appeal that was subsequently dismissed for lack of appellate jurisdiction), that the district court erred and abused its discretion in *Belize Telecom* in ordering monetary contempt sanctions against the Government of Belize.

The conclusion that monetary contempt sanctions should not be imposed against foreign states gains support from the analogous context of courts' treatment of the United States Government. The United States Government is immune from the jurisdiction of U.S. courts except to the extent that its immunity has been abrogated by Congress. Numerous courts have recognized that, even where Congress has waived the United States's immunity to suit, the Government may not be ordered to pay monetary sanctions for violation of a court order absent an explicit waiver of sovereign immunity for such sanctions. *See, e.g., Yancheng Baolong Biochem. Prods. Co. v. United States*, 406 F.3d 1377, 1382-1383 (Fed.

Cir. 2005); *Coleman v. Espy*, 986 F.2d 1184, 1190-1192 (8th Cir.), *cert. denied*, 510 U.S. 913 (1993); *see also In re Sealed Case No. 98-3077*, 151 F.3d 1059, 1070 (D.C. Cir. 1998) (holding that sovereign immunity would prevent a litigant from seeking monetary damages or attorneys' fees and costs from contumacious federal official). The basic premise of foreign sovereign immunity is that other nations are the juridical equals of the United States. *See, e.g., The Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116, 137 (1812) (noting theory of "perfect equality and absolute independence of sovereigns"). Accordingly, decisions regarding the treatment of the United States Government may properly inform the treatment of foreign Governments in our courts.

Finally, in determining the propriety of an order of contempt sanctions, it is significant that, even if the order is unenforceable, it would likely be viewed by the foreign state as a suggestion of purposeful wrongdoing, and could offend the dignity of the foreign State. *Cf. In re Papandreou*, 139 F.3d 247, 251 (D.C. Cir. 1998) (noting that contempt order against high-level Greek officials "offends diplomatic niceties even if it is ultimately set aside on appeal"). Were a foreign court to assert the same power over the United States Government that the district court has asserted in this litigation over the Republic of Congo, ordering the United States Government to turn over assets within this country to a foreign

plaintiff in direct contravention of our nation's foreign policy, it would undoubtedly lead to great public outcry. In interpreting and applying the FSIA, it is vital to "consider[] the potential impact of our FSIA interpretations on foreign litigation involving the United States and its interests." *Aquamar, S.A.*, 179 F.3d at 1295.

\* \* \* \* \*

The United States urges this Court to reject monetary sanctions as a means for coercing compliance with a U.S. court order against a foreign state. An order of monetary contempt sanctions such as that entered by the district court in this case has the potential to harm our foreign relations and to open the door to the imposition of sanctions upon our Government by foreign courts. Imposing contempt sanctions on a foreign state is at odds with the practice of the international community and the treatment of our own Government by courts here and abroad. Stacked against those compelling policy considerations are nonexistent benefits from an award that is, as we have shown, unenforceable under the FSIA. Under these circumstances, a district court errs and abuses its discretion when it orders monetary contempt sanctions against a foreign state.

## CONCLUSION

For the foregoing reasons, this Court should vacate the orders of the district court.

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MARCH 2006

**CERTIFICATE OF COMPLIANCE WITH  
FEDERAL RULE OF APPELLATE PROCEDURE 32(a)**

I hereby certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 4,645 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared with Word Perfect 12 in a proportional typeface with 14 characters per inch in Times New Roman.

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## CERTIFICATE OF SERVICE

I hereby certify that two paper copies of the foregoing Brief Of The United States As Amicus Curiae In Support Of Defendant-Appellant and a computer disk containing an electronic copy of the brief in PDF format were served on the following counsel by overnight delivery, postage prepaid, on March 10, 2006:

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