

# EXHIBIT C

Capital Reporting Company  
Aurelius Capital Master, Ltd., et al. v. Republic of Argentina 09-18-2014

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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AURELIUS CAPITAL MASTER, : No. 14-2689
LTD., ET AL.,             :
                           :
    Plaintiffs-Appellees, : HON. REENA RAGGI
                           :
                v.         : HON. ROSEMARY POOLER
                           :
REPUBLIC OF ARGENTINA,    : HON. BARRINGTON PARKER
                           :
    Defendant-Appellant.  :
-----:

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New York, New York

Thursday, September 18, 2014

The hearing in the above-entitled matter was heard at the United States Court of Appeals for the Second Circuit, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007, when were present on behalf of the respective parties:

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1 A P P E A R A N C E S

2 On behalf of Plaintiffs-Appellees:

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1 C O N T E N T S

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3 Karen Wagner,  
Counsel for Citibank 4

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4 Carmine Boccuzzi,  
Counsel for Republic of Argentina 19

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6 Roy Englert,  
Counsel for Funds 31

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7 Mr. Boccuzzi,  
Rebuttal 46

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9 Ms. Wagner,  
Rebuttal 64

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10 Mr. Englert,  
Rebuttal 84

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22 (No exhibits marked.)

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1 P R O C E E D I N G S

2 CLERK OF COURT: Judges of the United  
3 States Court of Appeals for the Second Circuit.  
4 Hear ye, hear ye, hear ye. All persons having  
5 business before this, a stated term of the United  
6 States Court of Appeals for the Second Circuit  
7 draw near, give your attention and ye shall be  
8 heard.

9 JUDGE POOLER: Thank you. Good  
10 afternoon. Please be seated. I am informed that  
11 all parties are here. We have several matters,  
12 several docket numbers. The movant, I think, is  
13 Citibank. Is that correct?

14 MS. WAGNER: Yes, Your Honor.

15 JUDGE POOLER: You may take the podium.

16 MS. WAGNER: Thank you, Your Honor.  
17 Good afternoon, Your Honors. May it please the  
18 Court, my name is Karen Wagner. I'm a member of  
19 the firm of Davis Polk & Wardwell, and I'm here  
20 representing Citibank.

21 JUDGE PARKER: Now, do you represent  
22 Citibank Argentina?

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1 MS. WAGNER: Yes, I do, Your Honor.

2 Your Honor, thank you -- Your Honors, thank you

3 very much for hearing us on an expedited basis.

4 As we have explained to the Court, Citibank

5 Argentina faces serious and imminent hazard. On

6 or before September 30, 12 days from now, Citibank

7 Argentina will undoubtedly receive a payment

8 through Argentina and that payment as a matter of

9 Argentine law will have to be paid on to Citibank

10 Argentina's customers.

11 JUDGE RAGGI: May I ask why you have to

12 accept the money? I mean, what would -- what's

13 your ability to say please don't transfer that

14 money to us unless it can -- unless it's

15 accompanied by a showing of compliance with the

16 District Court's injunction?

17 MS. WAGNER: Your Honor, we have

18 accounts for customers, and the system is pretty

19 much automated at this point. The money will just

20 come in. It will come in from Argentina, through

21 the central bank, to the Caja de Valores and --

22 JUDGE RAGGI: Right. But the question

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1 is can you stop it. Can you?

2 MS. WAGNER: To the best of my  
3 understanding, Your Honor, we cannot stop it  
4 unless --

5 JUDGE RAGGI: Ever?

6 MS. WAGNER: We have to move customer  
7 accounts in order to stop it.

8 JUDGE RAGGI: Customers?

9 MS. WAGNER: Customers have to be the  
10 ones to move their account.

11 JUDGE RAGGI: So you would have to tell  
12 your customers, look --

13 MS. WAGNER: Yes.

14 JUDGE RAGGI: We are going to tell  
15 Argentina we can't accept this money without a  
16 showing.

17 MS. WAGNER: Correct.

18 JUDGE RAGGI: If that's not -- if that's  
19 troubling to you, you're going to have to move  
20 your accounts.

21 MS. WAGNER: Correct, Your Honor.

22 JUDGE RAGGI: Okay. So it can be done.

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1 MS. WAGNER: It can be done.

2 JUDGE RAGGI: It's just a matter that it  
3 involves several steps.

4 MS. WAGNER: It involves several steps,  
5 and it's not entirely in Citibank's control. But  
6 yes, it can be done.

7 JUDGE RAGGI: Well, it's entirely within  
8 your control to say don't send us the money and  
9 then to give your customers notice of it, or am I  
10 missing something?

11 MS. WAGNER: Your Honor, given our  
12 obligations to customers, I don't think it's  
13 within our power to say don't send us the money  
14 until our customers have moved their account.

15 JUDGE RAGGI: All right. So it's just a  
16 matter of which comes first in terms of the notice  
17 or the -- I ask this because we've seen a lot in  
18 your papers about fear that you're going to be  
19 criminally held accountable in Argentina, and I'm  
20 trying to see what steps you could take that would  
21 avoid that problem for you. So that's why I ask  
22 these questions. All right.



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1 MS. WAGNER: Perfectly reasonable, Your  
2 Honor, and just to be clear about one thing, we  
3 would not be able to take these steps in time to  
4 deal with the payment that is coming on September  
5 30. Those are steps that would take about 90 days  
6 at the least. So we could not do anything between  
7 now and September 30 to alleviate this situation.

8 JUDGE RAGGI: But that goes to the  
9 question of that you haven't so far either and  
10 whether that weighs against you in this -- in any  
11 balance that might be struck here.

12 MS. WAGNER: That's correct, Your Honor.

13 JUDGE PARKER: So it's not your position  
14 that the -- that Judge Griesa's order -- the  
15 February 12th order, covers U.S.-denominated  
16 Argentine law exchange bonds?

17 MS. WAGNER: Your Honor, it is our  
18 position that the order that was issued in  
19 connection with the injunction here only covers  
20 Bank of New York bonds, bonds for which Bank of  
21 New York is indenture trustee. It is very clear,  
22 I think, from the record that supports the

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1 issuance of the original injunction no other bonds  
2 were considered and therefore we do not believe  
3 our bonds were considered.

4 JUDGE PARKER: So what's unclear about  
5 the injunction? The injunction covers exchange  
6 bonds under both 2005 and 2010.

7 MS. WAGNER: Correct, Your Honor, and  
8 that is exactly why we took the judge's invitation  
9 to make sure we understood correctly that in fact  
10 it did not cover our bonds. We thought that the -  
11 -

12 JUDGE RAGGI: So you concede that they  
13 are exchange bonds?

14 MS. WAGNER: Your Honor, I did say that  
15 to the District Court. I then corrected myself.

16 JUDGE RAGGI: I understand --

17 MS. WAGNER: Some of them are exchange  
18 bonds, Your Honor, in the sense that they were  
19 issued pursuant to the exchanges.

20 JUDGE RAGGI: I understand we have a  
21 number that covers both exchange and non- exchange  
22 bonds. But some of the bonds that you are seeking

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1 to pay you concede are exchange bonds. Is that  
2 right?

3 MS. WAGNER: Some of the bonds that we  
4 are speaking about at Citibank Argentina were  
5 issued in exchanges. We do not concede that they  
6 are exchange bonds as defined in the injunction  
7 because we believe the exchange bonds as defined  
8 in the injunction relate only to the Bank of New  
9 York bonds.

10 JUDGE PARKER: Although the injunction  
11 is pellucid that it covers all exchange bonds,  
12 it's your position that this was some sort of  
13 mistake or inadvertence?

14 MS. WAGNER: Your Honor, it's our  
15 position that the opinion explained the injunction  
16 and the opinion clearly describes the bonds upon  
17 which the injunction is based and it is very clear  
18 that the bonds that Citibank Argentina holds for  
19 its customers are entirely different from the  
20 bonds that were at issue in that litigation.

21 JUDGE POOLER: Counsel, you're here  
22 seeking relief from a motion to compel discovery.

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1 Is that correct?

2 MS. WAGNER: No, Your Honor. We are  
3 here today only seeking relief from an order which  
4 compels Citibank to make the payments on these  
5 bonds.

6 JUDGE POOLER: And that's the July 28th  
7 order or the June 27?

8 MS. WAGNER: July 28th.

9 JUDGE POOLER: In which the judge said  
10 that you couldn't make a payment after July 30th?

11 MS. WAGNER: That's correct, Your Honor.

12 JUDGE PARKER: But Citibank --

13 JUDGE POOLER: Is that a modification of  
14 any previous order?

15 MS. WAGNER: We believe, Your Honor,  
16 that it is a modification of the original  
17 injunction, just to take you --

18 JUDGE POOLER: The September 2012  
19 injunction?

20 MS. WAGNER: Yes. Yes, Your Honor.

21 JUDGE RAGGI: But you did not --

22 JUDGE POOLER: Well, why is it a

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1 modification? Why is it not --

2 MS. WAGNER: Because, Your Honor, the  
3 September injunction applied only to the Bank of  
4 New York bonds. That was confirmed by the judge's  
5 June order in which he said the injunction does  
6 not cover the Citibank Argentina bonds, and then  
7 in the later order he said it will cover now these  
8 bonds. He did not take back his original legal  
9 analysis which is that as a matter of law the  
10 injunction could not apply to the bonds that we  
11 hold. Rather, as best one can interpret the  
12 order, he said he decided it should apply to a  
13 great new number of bonds.

14 JUDGE POOLER: So he changed -- he  
15 changed his view on what they were.

16 MS. WAGNER: He changed his view, but  
17 not I think his legal analysis or at least he did  
18 not articulate a change in his legal analysis. So  
19 we are of the view, Your Honor, this was -- this  
20 injunction is a contractual injunction. It is an  
21 injunction issued to enforce contracts, and there  
22 is the contracts that were at issue in the hearing

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1 before --

2 JUDGE PARKER: The injunction define  
3 exchange bonds to mean, quote, "The bonds or other  
4 obligations entered pursuant to the Republic's  
5 2005 or 2010 exchange offers or any subsequent  
6 exchange or substitution."

7 MS. WAGNER: Correct.

8 JUDGE PARKER: I don't know how you  
9 could seriously argue that the Argentine bonds  
10 aren't covered by the definition.

11 MS. WAGNER: Your Honor, we sought  
12 clarification for exactly that reason. Obviously  
13 our bonds were issued in the exchanges.

14 JUDGE PARKER: Right.

15 MS. WAGNER: But they had nothing --  
16 they are totally different from the bonds that  
17 were issued in the hearing in very material legal  
18 ways.

19 JUDGE RAGGI: How do we know that? How  
20 do we know they're different?

21 MS. WAGNER: We know that because we put  
22 in affidavits that describe the bonds and we

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1 described the fact that they were issued locally.  
2 They were not issued pursuant to the indenture.  
3 They are based on Argentine law and not New York  
4 law. The Republic has not submitted jurisdiction  
5 as to those bonds.

6 JUDGE RAGGI: Are they dollar-  
7 denominated or peso-denominated?

8 MS. WAGNER: The ones at issue right now  
9 are dollar-denominated because the appellees have  
10 declined to pursue --

11 JUDGE RAGGI: So why isn't -- why  
12 doesn't it fall under the definition of external  
13 indebtedness, which I have in front of me?

14 MS. WAGNER: Your Honor, it is our view  
15 that the bonds do not fall under the definition of  
16 external indebtedness but I think more relevant to  
17 this particular hearing is what was enjoined was  
18 payments on external -- sorry, on exchange bonds,  
19 not on external debt.

20 JUDGE RAGGI: But the exchange bonds, as  
21 you conceded, it's in document 205, I believe --  
22 215, in this record. These were bonds in exchange

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1 for the original indebtedness on which Argentina  
2 did submit to jurisdiction and which is the basis  
3 of the injunction, right?

4 MS. WAGNER: No, Your Honor. That is  
5 not correct.

6 JUDGE RAGGI: Well, I think it is  
7 correct so you'd better tell me why not.

8 MS. WAGNER: I will tell you why I think  
9 not. The bonds that Citibank Argentina is holding  
10 were issued in exchange only for other local law  
11 bonds as to which there was no submission of  
12 jurisdiction which were only issued in Argentina  
13 and which were very much like these bonds and are  
14 capped at external indebtedness.

15 JUDGE RAGGI: That goes to how it was  
16 affected. They fit within the definition of the  
17 2005 and 2010 exchange bonds, right?

18 MS. WAGNER: Your Honor, they were  
19 issued in the exchanges.

20 JUDGE RAGGI: So what, did you make a  
21 mistake when you conceded in the District Court  
22 that they weren't exchange bonds?



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1 MS. WAGNER: Your Honor, what I was  
2 intending to concede was they were issued in  
3 exchanges. I did not mean to suggest that they  
4 were exchange bonds as defined by the injunction  
5 and further I followed it up with a letter to the  
6 judge before he ruled after we discovered that  
7 many of the bonds held by Citibank Argentina were  
8 not issued in exchanges.

9 JUDGE RAGGI: Well, you know, you asked  
10 the District Court for clarification.

11 MS. WAGNER: I did.

12 JUDGE RAGGI: And the District Court  
13 clarified and said, no, these are exchange bonds,  
14 and you are now --

15 MS. WAGNER: Well, his first  
16 clarification was no.

17 JUDGE RAGGI: You are now -- let me ask  
18 my question.

19 MS. WAGNER: Sorry, Your Honor.

20 JUDGE RAGGI: And you're now saying that  
21 he modified it. So it seems to me your whole  
22 jurisdictional argument is based on whether it was

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1 a modification or whether it wasn't a  
2 modification. Am I right?

3 MS. WAGNER: Then, yes, Your Honor --

4 JUDGE RAGGI: So if we don't agree with  
5 you that this was a modification, do we have  
6 jurisdiction to do any of the, you know, balancing  
7 analysis or to fret about any of that? That seems  
8 to me to be something you would raise in the  
9 District Court.

10 MS. WAGNER: Your Honor, I think you  
11 absolutely have jurisdiction because it's a  
12 modification but also because it's a --

13 JUDGE RAGGI: Well, what if we don't  
14 agree with you? That's what I'm asking you to  
15 consider.

16 MS. WAGNER: If you don't agree with me  
17 that it's a modification, I think you have to  
18 conclude that somehow the original injunction  
19 covered bonds other than the bonds addressed at  
20 the hearing, and I think it's unlikely you will  
21 reach that conclusion, especially as the Court  
22 ruled in June that our bonds were not covered. So

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1 therefore, that ruling in July that now they were  
2 going to be covered --

3 JUDGE POOLER: So one of them ruled --

4 MS. WAGNER: -- has to be a modification  
5 of the original injunction. There's no other way  
6 --

7 JUDGE POOLER: One of them, either the  
8 June or the July order, is a modification.

9 MS. WAGNER: Is a modification, yes,  
10 Your Honor. I believe that must be the case.

11 JUDGE PARKER: So you haven't -- at this  
12 point, you haven't been ordered to do anything,  
13 correct?

14 MS. WAGNER: We have been enjoined by  
15 the most recent order from making any further  
16 payments.

17 JUDGE PARKER: You're not a party to  
18 this.

19 MS. WAGNER: We're a nonparty but now we  
20 are directed by a specific injunction directed to  
21 us saying you may not make any more payments.

22 JUDGE RAGGI: So is this -- is your

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1 complaint right?

2 MS. WAGNER: I think it is extremely  
3 right because it's going to become extremely  
4 relevant in 12 days when we get funds and when the  
5 District Court has said we cannot pay them out. I  
6 think it is absolutely right. It's a final order.  
7 There are no further proceedings going on in the  
8 District Court relating to this injunction, and we  
9 are bound by it right now, and so, we need  
10 immediate relief from this Court.

11 JUDGE RAGGI: All right. Thank you.  
12 We'll hear from the Republic.

13 MS. WAGNER: Thank you.

14 JUDGE RAGGI: You've reserved some time  
15 for rebuttal.

16 MR. BOCCUZZI: Good afternoon, Your  
17 Honors. Carmine Boccuzzi from Cleary Gottlieb on  
18 behalf of the Republic of Argentina. The District  
19 Court --

20 JUDGE PARKER: So in the spring, you  
21 went into the Supreme Court and you told the  
22 Supreme Court that, to be clear, absent relief,

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1 Argentina will comply with the orders under  
2 review.

3 MR. BOCCUZZI: Yes, Your Honor.

4 JUDGE PARKER: And then shortly  
5 thereafter, you took steps that were palpably in  
6 violation of the injunction, right?

7 MR. BOCCUZZI: The Republic did, yes,  
8 Your Honor.

9 JUDGE PARKER: So how are we to -- I  
10 mean, what are we to make of these  
11 representations? You told the Supreme Court you  
12 were going to comply, then as soon as you didn't  
13 get what you wanted out of the Supreme Court, you  
14 disregarded the representation and went on your  
15 merry way.

16 MR. BOCCUZZI: Our understanding when we  
17 wrote to the Supreme Court was that that's how  
18 things would unfold and then, following the denial  
19 of cert, the Republic acting at the highest levels  
20 chose to act otherwise.

21 As I explained to the District Court,  
22 the officials charged with overseeing these bonds

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1 at the Ministry of Economy, given current  
2 legislation, themselves faced criminal prosecution  
3 in Argentina if they did not process the payment  
4 without some change in Argentine law, which had  
5 not occurred.

6 As to these bonds, Your Honor, these  
7 Argentine law-governed bonds, Judge Griesa never  
8 found that that payment to Citibank was in  
9 violation of any of his orders because following  
10 Ms. Wagner's motion for clarification, he said,  
11 and I think he was absolutely right, these bonds  
12 have always been treated differently, and there's  
13 a reason why these bonds, the Citibank bonds, have  
14 always been treated differently. They're governed  
15 by Argentine law.

16 JUDGE RAGGI: This is the June 27th  
17 order?

18 MR. BOCCUZZI: Correct, the response to  
19 Ms. Wagner's motion for clarification.

20 JUDGE RAGGI: Treated differently by  
21 whom?

22 MR. BOCCUZZI: By the Court, and I think

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1 that was --

2 JUDGE RAGGI: Have they ever been at  
3 issue in anything other than a discovery dispute  
4 in the Court?

5 MR. BOCCUZZI: Other Argentine law-  
6 related bonds, so-called BODENs, had been subject  
7 to attachment efforts by these plaintiffs based on  
8 arguments --

9 JUDGE RAGGI: Right, and the attachment  
10 and the efforts to secure property have not  
11 succeeded for various reasons. But what perplexes  
12 me here with respect to Argentina is what the  
13 plaintiffs came in to enforce was a ratable  
14 payment provision which might be construed to  
15 apply to any other bonds of Argentina.

16 But the injunction the District Court  
17 entered really limits it to the 2005 and 2010  
18 exchange bonds. So the only question is whether  
19 the District Court injunction applies to these  
20 exchange bonds issued under Argentine law rather  
21 than under -- or the consent to agree the United  
22 States law.

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1 MR. BOCCUZZI: I would say there's --

2 JUDGE RAGGI: The District Court said it  
3 did.

4 MR. BOCCUZZI: Well, there are two  
5 questions --

6 JUDGE RAGGI: Whether they got treated  
7 differently or not in other circumstances, the  
8 only question is whether they are part of the  
9 2005, 2010 exchange bonds.

10 MR. BOCCUZZI: Well, there's a question  
11 that precedes that which is any bond that is  
12 caught up in these injunctions has to be external  
13 indebtedness, and that's clear --

14 JUDGE RAGGI: Yes, I understand that.

15 MR. BOCCUZZI: -- from the lead-in to  
16 paragraph two in the injunction, which talks about  
17 the enforcement of the pari passu clause.  
18 External indebtedness has a carve-out from the  
19 definition, so-called domestic foreign currency  
20 indebtedness, and that's indebtedness that is  
21 denominated in a currency other than Argentine  
22 pesos, so in dollars.



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1 JUDGE RAGGI: And the ones we're talking  
2 about here are the ones payable in United States  
3 dollars.

4 MR. BOCCUZZI: Correct, yes, because --

5 JUDGE RAGGI: So we're over that hurdle.

6 MR. BOCCUZZI: Right, because -- well,  
7 no actually. If we're over the hurdle in terms of  
8 United States dollars, that means we can fit  
9 within the definition of domestic foreign currency  
10 indebtedness which is an exception to external  
11 indebtedness as covered by the parties.

12 JUDGE RAGGI: I'm sorry. You've lost  
13 me. I thought that the definition of external  
14 indebtedness was instruments payable in the  
15 currency -- in a currency other than Argentina's.  
16 Did I miss something?

17 MR. BOCCUZZI: That's correct, except  
18 the definition of external indebtedness shall not  
19 include DFCI, domestic foreign currency  
20 indebtedness, and the reason for that is domestic  
21 foreign currency indebtedness, like the bonds  
22 we're dealing with here, are issued solely in

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1 Argentina under Argentine law and the FAA -- the  
2 fiscal agency agreement -- the document under  
3 which plaintiffs have asserted their pari passu  
4 rights, has as part of the definition of foreign  
5 currency indebtedness a list -- it's A through G -  
6 - of different types of Argentine law bonds that  
7 qualify as DFCI or anything exchanged for those  
8 bonds.

9 JUDGE POOLER: So even if bonds were  
10 part of the exchange of 2005 and 2010, they could  
11 still not come under the September 12 injunction?

12 MR. BOCCUZZI: Correct, Your Honor,  
13 because there were two --

14 JUDGE POOLER: Well --

15 MR. BOCCUZZI: It's easiest to think  
16 about it as essentially two exchanges. There is  
17 an international exchange, and Your Honors allude  
18 to this at least somewhat in your prior decisions.  
19 You talk about how folks who had defaulted FAA  
20 bonds could get for those defaulted FAA bonds  
21 exchange bonds. The bonds that we're talking  
22 about today, Argentine law bonds, if you had a

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1 defaulted Argentine law bond, you could not get  
2 those exchange bonds.

3           You could get other Argentine law debt,  
4 and so, it's really on two parallel tracks and  
5 what's important for our consideration of the  
6 coverage of these bonds by this injunction is that  
7 this track, the Argentine law bonds, in fact fit  
8 quite nicely within the definition of DFCI which  
9 is an exception --

10           JUDGE POOLER: What does this --

11           JUDGE PARKER: This isn't an issue you  
12 should -- explain to me this is not an issue which  
13 you should have brought to us in connection with  
14 your first appeal. What your dispute --

15           JUDGE POOLER: What does this --

16           JUDGE PARKER: What your dispute is --  
17 what your dispute of fact is, is that there is a  
18 certain class of bonds that should not be covered  
19 by the definition of exchange offers. So but you  
20 had an -- you had an injunction that broadly  
21 defined exchange bonds and arguably covers at  
22 least the dollar- denominated Argentine bonds. If

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1 you thought that the injunction cut too broadly in  
2 that respect, weren't you obligated to seek relief  
3 before Judge Griesa under rule 60(b)?

4 MR. BOCCUZZI: Two responses, Your  
5 Honor. That definition is always cabined by the  
6 lead- in to paragraph 2(a), and the lead-in talks  
7 about you have to perform -- the Republic must  
8 specifically perform its obligations under  
9 paragraph 1(c) of the FAA. 1(c) of the FAA, the  
10 pari passu provision, speaks only in terms of  
11 external indebtedness.

12 So you coupled that, which is the  
13 universe which could really only be the subject of  
14 a pari passu injunction, is that external  
15 indebtedness with the fact that the plaintiffs  
16 themselves always highlight in looking back in the  
17 record the Bank of New York trust bonds --

18 JUDGE POOLER: I'm sorry --

19 MR. BOCCUZZI: It makes it clear that's  
20 what they were asking for.

21 JUDGE POOLER: You always thought these  
22 were not included but it only came up when

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1 Citibank got into this position where they might  
2 have to break Argentinian law in order to pay the  
3 money?

4 MR. BOCCUZZI: Correct. So Citi raised  
5 the -- and just the -- and if you look at A- 1390  
6 in the record, you'll see form of notes are put in  
7 by the plaintiffs as supporting their pari passu  
8 injunction. They're all the form of the notes  
9 where Bank of New York acts as a trustee.

10 So that was the ask and the ask also,  
11 they were very clear, they weren't going after  
12 even all external indebtedness, and so, it was  
13 this specific universe that was at issue.  
14 Citibank, when the litigation was going on, then  
15 made their motion to say just to be clear, we  
16 don't want to be held in contempt. We don't want  
17 any problems. Judge, please tell us that our  
18 bonds are outside the scope of that.

19 JUDGE RAGGI: All right, Mr. --

20 JUDGE POOLER: And this was all made  
21 clear to Judge Griesa?

22 MR. BOCCUZZI: I'm sorry?

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1 JUDGE POOLER: This was all made clear  
2 to Judge Griesa?

3 MR. BOCCUZZI: Well, what happened  
4 before Judge Griesa is that their motion for  
5 clarification was fully briefed on June 26th,  
6 within a week. The next day we had the hearing  
7 which covered about five different motions. The  
8 judge granted their motion.

9 JUDGE POOLER: Right.

10 MR. BOCCUZZI: There was then a motion  
11 for clarification, and in the course of that  
12 motion for clarification bubbling up to the  
13 surface came all these additional issues without -  
14 -

15 JUDGE PARKER: Right, but Citibank asked  
16 for clarification long before that, didn't they?  
17 Wasn't it in May of 2013?

18 MR. BOCCUZZI: And the judge said let's  
19 wait, because at that point the second round of  
20 the appeals was before Your Honors, and so the  
21 judge said let's wait and see what they do. If  
22 Your Honors had struck down the injunctions,

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1 modified them --

2 JUDGE RAGGI: But you didn't come to us  
3 and say there's this class of bonds that will also  
4 be at issue. There wasn't a peep about Citibank  
5 from you all when you were before us.

6 MR. BOCCUZZI: No, because our focus was  
7 on what they were asking for, which was --

8 JUDGE RAGGI: I have a different  
9 question for you, but I want to make sure we're  
10 not being -- using a shorthand here. You refer to  
11 this as a pari passu clause injunction. There's a  
12 pari passu clause in the FAA. There's a ratable  
13 payment obligation.

14 The injunction, as I understand it,  
15 relates to the ratable payment obligation, and is  
16 that language that you cited to us about these  
17 distinguishing these bonds in the ratable payable  
18 obligation?

19 MR. BOCCUZZI: It should be in both  
20 sections.

21 JUDGE RAGGI: I thought that reached  
22 more broadly to promise that you would -- that

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1 Argentina would not treat any other bond, give any  
2 other bond priority over the bonds that were the  
3 subject of the FAA.

4 MR. BOCCUZZI: I don't believe so, Your  
5 Honor. I call it the pari passu clause.  
6 Plaintiffs call it equal treatment provision. It's  
7 all 1(c) in the FAA and it has two --

8 JUDGE RAGGI: Right. So there does seem  
9 to be two issues. But I'm sure your adversaries  
10 will tell us their views on that, okay?

11 MR. BOCCUZZI: Okay. I do think it's  
12 all linked to external indebtedness.

13 JUDGE POOLER: Counsel, you've reserved  
14 two minutes for rebuttal.

15 MR. BOCCUZZI: Thank you, Your Honor.

16 JUDGE POOLER: We'll hear from the  
17 funds.

18 MR. ENGLERT: May it please the Court.  
19 Roy Englert, appearing on behalf of all the  
20 plaintiff appellees today. This Court's opinion  
21 in United States v. Spallone makes the point that  
22 all Court orders are to be interpreted within



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1 their four corners. Nowhere is that principle more  
2 important than with regard to injunctions, which  
3 are required by rule 65 to state clearly what acts  
4 are enjoined.

5           As Judge Parker said from the bench this  
6 morning, paragraph 2(a) of the injunction is  
7 pellucid. It defines exchange bonds solely in  
8 terms of whether the bonds were issued pursuant to  
9 the Republic's 2005 or 2010 exchange offers. It  
10 does not differentiate between bonds based on who  
11 processes the payments. It does not differentiate  
12 between bonds based on what law applies to the  
13 bonds.

14           To succeed on this appeal, Citibank and  
15 Argentina nevertheless must persuade this Court  
16 that failure to read such unstated limitations  
17 into paragraph 2(a) was such a major and radical  
18 change in the injunctions that it amounted to  
19 modification and not mere clarification.  
20 Otherwise, there's no appellate jurisdiction, and  
21 then, Argentina and Citibank face another  
22 herculean task. They must persuade this Court that

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1 it was an abuse of discretion to hold Argentina to  
2 its equal treatment promise with respect to  
3 obligations that do constitute external  
4 indebtedness under the contract and do constitute  
5 exchange bonds under the injunctions.

6 JUDGE POOLER: We just heard that there  
7 was not -- they don't meet the test of external  
8 indebtedness because of the carve- out. Is that  
9 correct? I mean, that's correct what we heard.

10 MR. ENGLERT: Their position is not  
11 correct. But it was also not litigated in the  
12 District Court, which is another problem with  
13 being here today on this expedited appeal.

14 JUDGE POOLER: So, I'm reading it. It  
15 does say provided that no domestic foreign  
16 currency indebtedness as defined below shall  
17 constitute external indebtedness, and what I heard  
18 counsel say was that this is domestic foreign  
19 currency indebtedness.

20 MR. ENGLERT: That's being raised. That  
21 was raised for the first time in a July 27th  
22 letter after a July 22nd hearing on a May 2013

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1 motion. But none of this matters and let me  
2 explain very precisely why none of this matters.

3 JUDGE POOLER: Tell me why.

4 MR. ENGLERT: At 600 F.3d at 261 in this  
5 Court's first opinion and Argentina's first  
6 appeal, this Court wrote, "Once the District Court  
7 determined that Argentina had breached the FAA and  
8 an injunctive relief was warranted, the Court had  
9 considerable latitude in fashioning that relief.  
10 The performance required by a decree need not, for  
11 example, be identical with that proposed in the  
12 contract."

13 So number one, the external indebtedness  
14 definition fell out once an injunction was issued.  
15 Number two, as a matter of appellate procedure,  
16 this is not the time to be raising these  
17 arguments. This case ended --

18 JUDGE RAGGI: Well, let me ask you about  
19 the first point you made. As I understood Mr.  
20 Boccuzzi's argument, it's that the District Court  
21 may have had broad powers but it only exercised  
22 them to the extent the FAA referenced them, and

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1 the FAA has a carve-out, he says, for domestic  
2 foreign currency indebtedness.

3           So I construed that argument by  
4 Argentina to be within the four corners of this  
5 injunction. It doesn't reach these instruments.  
6 So you have to tell us why you think it does.

7           MR. ENGLERT: Yes, Judge Raggi. Mr.  
8 Boccuzzi is relying on paragraph 1 of the  
9 injunction.

10           JUDGE RAGGI: Right.

11           MR. ENGLERT: Prefatory language, the  
12 whereas clauses that state why the Court is  
13 issuing the order. The operative provisions are  
14 in paragraph 2. The actual terms of the  
15 injunction, fulfilling the obligation under rule  
16 65 to state what Argentina is enjoined from doing  
17 are in paragraph 2, and both paragraph 2(a) and  
18 paragraph 2(f) pellucidly cover the bonds at issue  
19 here, and by the way, Citibank has not been  
20 enjoined.

21           As Judge Parker's opinion for this Court  
22 in the second appeal pointed out quite clearly,

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1 this injunction runs only against Argentina. The  
2 carve-out sought here was not a party-specific  
3 carve-out, nor would a party-specific carve-out  
4 make any sense given the way rule 65(d)(2)  
5 operates. The carve-out that was sought here was  
6 for Argentine law bonds. What is the textual  
7 basis for carving out Argentine law bonds? Zero,  
8 none at all. There is no textual basis. The basis  
9 that's advanced is Argentine law bonds were not  
10 specifically put into the record or mentioned in  
11 Judge Griesa's opinion.

12 That doesn't matter. What matters is  
13 the terms of the injunction that Judge Griesa  
14 issued and equally important, the terms of the  
15 injunction that this Court affirmed. It's equally  
16 important because if domestic foreign currency  
17 indebtedness mattered, Argentina had an obligation  
18 to raise that on appeal to this Court.

19 JUDGE POOLER: Why isn't the June 27th  
20 order a modification of the September injunction?

21 MR. ENGLERT: It's easy. It was a  
22 modification. He made a mistake. He modified the

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1 injunction and had he not reversed himself on our  
2 motion for reconsideration, we would have had a  
3 good appeal to this Court, and let me explain why  
4 it's terribly, terribly important in practical  
5 terms, not just legal terms, not to carve out  
6 Argentine law bonds.

7           Last week, the legislature of Argentina  
8 passed a statute designed to circumvent this  
9 Court's orders and the legislature did not mince  
10 words: "The purpose of this law is to implement  
11 legal instruments that will allow for receipt of  
12 service payments on 100 percent of the debt  
13 securities issued within the framework of the  
14 2005, 2010 sovereign debt restructuring in  
15 response to the illegitimate and illegal  
16 obstruction of the means to receive the funds paid  
17 to the Argentine Republic -- paid by the Argentine  
18 Republic on June 26, 2014, pursuant to judicial  
19 orders issued by the Southern District Court of  
20 the City of New York in the case NML Capital,  
21 Ltd. v. Republic of Argentina, which are  
22 impossible to carry out as written and violate

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1 both the sovereignty and the immunity of the  
2 Argentine Republic as well as the rights of third  
3 parties."

4           This is the Argentine law that you're  
5 being asked to defer to, not just this statute but  
6 the entire purpose of the Argentine law, by which  
7 the Republic is trying to evade orders that have  
8 been issued by the District Court to whose  
9 jurisdiction Argentina submitted, affirmed twice  
10 by this Court and denied review by the Supreme  
11 Court of the United States.

12           JUDGE RAGGI: Even if we were  
13 sympathetic to your argument that Argentina  
14 deserves no deference here, with respect to  
15 Citibank, let me ask you what do you expect  
16 Citibank to do?

17           MR. ENGLERT: Citibank should be on our  
18 side of the v., not on Argentina's side of the v.  
19 It should be --

20           JUDGE RAGGI: But what does that  
21 practically mean? What should they do here? I  
22 mean, you know, I asked about declining to accept

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1 they money. They tell us that that can't  
2 practically be done in the time allowed, that once  
3 they receive the money, if they don't pay it to  
4 the client to whom it is directed, they are in  
5 violation of Argentina law. I mean, tell me what  
6 you expect Citibank to do to comply with this  
7 injunction by the end of the month.

8 MR. ENGLERT: I expect Citibank to  
9 behave exactly like Bank of New York and obey the  
10 Court's injunction and --

11 JUDGE RAGGI: By doing what?

12 MR. ENGLERT: By refusing to violate and  
13 to act --

14 JUDGE RAGGI: No, I understand that's  
15 the legal term. But what do you expect them to  
16 do? To refuse to accept the money? What are they  
17 supposed to do practically?

18 MR. ENGLERT: They could refuse the  
19 money or they could do what Bank of New York has  
20 done, which is they could accept the money and  
21 then go to Judge Griesa and seek interpleader or  
22 some other of form of judicial --



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1 JUDGE RAGGI: All right. The  
2 circumstance that's somewhat different is Bank of  
3 America is receiving that money, as I understand  
4 it, here in this country. So there's no sovereign  
5 that's going to prosecute it for doing that.  
6 Citibank says it's in a different position because  
7 it's in Argentina. So again, practically, what do  
8 you expect them to do?

9 MR. ENGLERT: I expect them to do what  
10 they have to do when confronted with a sovereign  
11 that is trying to punish them for obeying this  
12 Court's orders.

13 JUDGE RAGGI: Which is what?

14 MR. ENGLERT: Well, it's a tough  
15 position, Judge Raggi. There's no question that  
16 it's a tough position created by the misconduct of  
17 Argentina, not my anything my clients have done  
18 wrong.

19 JUDGE RAGGI: I understand that and,  
20 again, putting aside whatever grievances you might  
21 want to, you know, say are Argentina's fault. To  
22 the extent Citibank does not want to find itself

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1 held in contempt, what do you expect it to do?

2 MR. ENGLERT: I expect it to go to Judge  
3 Griesa and say, tell us what to do with this money  
4 if we receive it. I expect it to refuse the  
5 money. I expect it to bring action against  
6 Argentina. I expect it ultimately if it has to  
7 cease doing business with Argentina.

8 But I don't expect it to give Argentina  
9 an opportunity to evade this Court's orders by  
10 carving something out. This is the evasion plan  
11 that the president announced on June 16th, was to  
12 convert everything to Argentine law bonds. This  
13 is the evasion plan enacted by the legislature of  
14 Argentina last week.

15 JUDGE POOLER: But --

16 MR. ENGLERT: By the way, if I may,  
17 Judge Pooler, I'm sorry --

18 JUDGE POOLER: Yes, you can.

19 MR. ENGLERT: But Bank of New York has  
20 been punished. Section 3 of this legislation,  
21 with lots of inflammatory language about Bank of  
22 New York, removes Bank of New York -- purports to

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1 remove Bank of New York as trustee and to take  
2 away Bank of New York's license.

3 JUDGE POOLER: But --

4 MR. ENGLERT: Argentina will not -- I'm  
5 sorry, Judge Pooler.

6 JUDGE POOLER: So rather than  
7 converting, what we heard today is these were  
8 always Argentinian bonds and they're not  
9 converting them. This is what they always were.

10 MR. ENGLERT: No, Judge Pooler. I'm  
11 sorry if I didn't make myself clear. The bonds at  
12 issue in this appeal today are Argentine law  
13 bonds, pellucidly covered by paragraph 2(a) of the  
14 injunction.

15 JUDGE POOLER: Right.

16 MR. ENGLERT: Argentina wants Argentine  
17 law bonds not to be covered by the injunction. If  
18 it wins this appeal, that would be the result, and  
19 then the evasion plan would be aided and abetted  
20 by this Court's rulings because Argentina wants to  
21 convert bonds to Argentina law instead of New York  
22 law so that it can continue thumbing its nose at

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1 the orders of the District Court and this Court.

2 JUDGE POOLER: But aren't the Argentine  
3 law bonds not covered by the injunction?

4 MR. ENGLERT: The Argentine law bonds  
5 are absolutely covered by the injunction. The  
6 injunction is pellucid in paragraph 2(a) and  
7 paragraph 2(f), absolutely pellucid, and the time  
8 to make an argument to the contrary was not when  
9 it was made in the District Court. The time to  
10 make an argument to the contrary was when the  
11 injunction was being formulated and when it was  
12 being appealed to this Court. By the way, it's not  
13 as if --

14 JUDGE RAGGI: I want to give you an  
15 opportunity to respond how I think Argentina is  
16 challenging that, which is not simply by reference  
17 to paragraph 2 of the injunction -- paragraph 1  
18 but also by paragraph 2.

19 If I understood the argument, it is that  
20 because that paragraph starts with -- let me get  
21 it in front of me -- the phrase, "The Republic is  
22 permanently ordered to specifically perform its

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1 obligations under paragraph 1(c) as follows," that  
2 paragraph 1(c) in its definition of domestic  
3 foreign currency indebtedness, that carve-out  
4 necessarily informs everything that follows. That  
5 was the argument that I think I heard. What's your  
6 response to it?

7 MR. ENGLERT: My response is the words  
8 as follows in accordance with the way rule 65 is  
9 supposed to operate explained what the District  
10 Court thought was meant by that language of what's  
11 covered by paragraph 1(c) of the FAA, and there  
12 are six lettered provisions, A through F, designed  
13 to tell Argentina and the rest of the world  
14 exactly what is enjoined.

15 If anybody had an objection to A, B, C,  
16 D, E or F as not consistent with 1(c) of the FAA,  
17 the place to raise that and the time to raise that  
18 was on appeal to this Court in the main appeal,  
19 not in response to a clarification motion file  
20 after judgment.

21 By the way, let me mention with regard  
22 to jurisdiction, there are 71 docket numbers in

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1 this Court pertaining to five appeals that have  
2 been taken from every order Judge Griesa has  
3 issued since June 16th that is adverse to anyone  
4 other than the plaintiffs.

5 JUDGE POOLER: But Counsel, if the other  
6 side, Citibank and the Republic, always thought  
7 those bonds were not part of the injunction, why  
8 would they even have to tell anyone? They always  
9 thought they were separate.

10 MR. ENGLERT: They were wrong because  
11 they didn't read the language of the injunction to  
12 read what it says, and it's not as if this Court  
13 didn't hear from interested third parties on the  
14 second appeal especially.

15 JUDGE POOLER: We heard from Bank of New  
16 York Mellon and others. But we never heard from  
17 Citibank.

18 MR. ENGLERT: You heard from the  
19 American Bankers Association on the second appeal.  
20 You heard from the clearinghouse on the first  
21 appeal and the second appeal. You heard from  
22 exchange bondholders. You heard from Eurobond

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1 holders. There was no dearth of efforts to raise  
2 issues in this Court.

3 Citibank, aside from any participation  
4 it may have had in the American Bankers  
5 Association and clearinghouse briefs, Citibank sat  
6 on its hands and said we'll raise this issue  
7 later. That is not proper procedure. It's  
8 especially not proper procedure in the face of an  
9 injunction that is, if I may borrow Judge Parker's  
10 work again, as pellucid as paragraph 2(a) of this  
11 one is.

12 JUDGE POOLER: All right.

13 MR. ENGLERT: Thank you.

14 MR. BOCCUZZI: Just briefly, on the  
15 language of the pari passu clause, Judge Raggi,  
16 the second sentence, which has been called the  
17 ratable payment sentence, has the reference to  
18 external indebtedness. It says the --

19 JUDGE RAGGI: It says what with respect  
20 to external indebtedness?

21 MR. BOCCUZZI: I'm sorry?

22 JUDGE RAGGI: It says what with respect

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1 to external indebtedness?

2 MR. BOCCUZZI: It references. So on  
3 page A-377 in the appendix, the payment  
4 obligations -- so I'm reading from 1(c) -- the  
5 payment obligations of the Republic under the  
6 security shall at all times rank at least equally  
7 with all of its other present and future unsecured  
8 and unsubordinated external indebtedness,  
9 parentheses, (as defined in the agreement), and  
10 then when you go to later in the agreement, which  
11 is on -- excuse me -- A-392 and 391, there's the  
12 definition of external indebtedness and it says at  
13 the end provided that no domestic foreign currency  
14 indebtedness as defined below shall constitute  
15 external indebtedness.

16 JUDGE PARKER: But this is all getting -  
17 -

18 JUDGE RAGGI: Right, but this isn't  
19 domestic currency indebtedness.

20 MR. BOCCUZZI: No, this is domestic  
21 foreign currency indebtedness we're talking about.

22 JUDGE RAGGI: I thought you said it



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1 doesn't apply to domestic currency. I'm sorry  
2 that I don't have this language in front of me,  
3 but --

4 MR. BOCCUZZI: So pari passu applies to  
5 external indebtedness as defined.

6 JUDGE RAGGI: Right.

7 MR. BOCCUZZI: External indebtedness --

8 JUDGE RAGGI: So the definition of  
9 external indebtedness that you just read.

10 MR. BOCCUZZI: External indebtedness in  
11 turn says -- means obligations for borrowed money  
12 or evidence by debentures, et cetera, in a  
13 currency other than the lawful currency of the  
14 Republic provided that no domestic foreign  
15 currency indebtedness as defined below shall  
16 constitute external indebtedness, so --

17 JUDGE RAGGI: All right, and then we  
18 have to look to how domestic foreign currency is  
19 defined.

20 MR. BOCCUZZI: Right, and as to that,  
21 it's the list of Argentine law bonds, which are  
22 brought out and anything exchanged for them, and

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1 so remember, no FAA debt to exchanged or defaulted  
2 FAA debt in the 2005 or 2010 exchange offer, that  
3 could not get you Argentine law debt. The only  
4 way to get that Argentina law debt was to tender  
5 other Argentina law debt, and so the paragraph --

6 JUDGE RAGGI: Where is this argument of  
7 tracking this language made to Judge Griesa in  
8 this last round of modification/clarification  
9 arguments?

10 MR. BOCCUZZI: The tracking language was  
11 not raised in that --

12 JUDGE RAGGI: Right, so this was never  
13 raised in the District Court.

14 MR. BOCCUZZI: Well, the issue of DFCI  
15 did come through during the clarification process.

16 JUDGE RAGGI: Well, it seems to me like  
17 the critical argument for why these bonds are not  
18 covered by this injunction and yet it's not  
19 presented to the District Court.

20 MR. BOCCUZZI: Well, the important fact  
21 for --

22 JUDGE RAGGI: Because the arguments

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1 presented to the District Court was this  
2 injunction only applies to the Bank of New York  
3 Mellon bonds. That's a different argument than  
4 the one you're now advancing in this Court.

5 MR. BOCCUZZI: However, for the  
6 plaintiffs to change -- and if you read the  
7 injunction and we're not just relying on prefatory  
8 language, paragraph 1 talks about the ongoing  
9 violations of paragraph 1(c) of the FAA. That's  
10 repeated. Two, has the lead- in about paragraph  
11 1(c), and as Mr. Englert said, it then goes on in  
12 several paragraphs to talk about exactly what's  
13 enjoined.

14 JUDGE RAGGI: Right, but you're here  
15 telling us the District Court erred and you're  
16 telling us it erred for a reason you didn't argue  
17 in the District Court.

18 MR. BOCCUZZI: But in --

19 JUDGE RAGGI: So we consider that  
20 forfeiture.

21 MR. BOCCUZZI: It's not forfeiture, Your  
22 Honor, because they had the burden to show that

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1 this injunction, which always by its plain terms  
2 and by how they litigated it, applied to the Bank  
3 of New York debt applied here and they didn't --

4 JUDGE PARKER: Even if --

5 MR. BOCCUZZI: And they didn't establish  
6 that.

7 JUDGE PARKER: This argument just seems  
8 too contrived to me because you conceded in your  
9 brief that the Argentine indebtedness arose in  
10 connection with the 2005 and 2010 exchange offers.  
11 You said that.

12 MR. BOCCUZZI: We said it was -- but it  
13 was two separate exchanges.

14 JUDGE PARKER: You said the Republic  
15 issued 2.3 billion worth of Argentine law bonds in  
16 connection with its 2005 and 2006 exchange offers,  
17 and you mashed that up with the broad language  
18 we've been vetting that's in the injunction. So  
19 it seems to me -- explain what I'm missing.

20 If you thought that there were some  
21 bonds that were exchanged that should not have  
22 been covered by the injunction, then you run right

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1 up against rule 60 problems. You had an  
2 obligation to go to the District Court and try to  
3 get the judgment amended because of some confusion  
4 or mistake or the normal grounds that would  
5 justify relief.

6 MR. BOCCUZZI: But Judge Parker, we have  
7 to go back to what we were discussing earlier,  
8 which is the plain terms of this injunction talk  
9 about Bank of New York, and in this paragraphs in  
10 2(a), they list four Bank of New York entities who  
11 are enjoined. Not one of them is involved with  
12 the payment of the Argentine law bonds. The other  
13 folks who were here in the second round,  
14 Euroclear, Clearstream, everybody who was here  
15 were folks who were specifically named in this  
16 injunction.

17 JUDGE RAGGI: As illustrative. The  
18 language is including. It doesn't say that this  
19 is the extent of it.

20 MR. BOCCUZZI: But it's still --

21 JUDGE RAGGI: But now you're switching  
22 to the argument you did raise in the District

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1 Court. It's just the Bank of New York. My  
2 concern is with your other argument. It seems to  
3 me that's forfeited and it's forfeiture in  
4 circumstances where to the District Court,  
5 Citibank acknowledged that these were exchange  
6 bonds. So it seems to me, I mean, how do we find  
7 fault with what the District Court did in light of  
8 a concession and a forfeiture?

9 MR. BOCCUZZI: I don't think there's a  
10 forfeiture because, again, he granted the motion  
11 originally. We were in the context of  
12 reconsideration. They had the importance of  
13 understanding the terms of the injunction from the  
14 starting point as that they were basically seeking  
15 additional relief. So it really should be thought  
16 of as a failure of proof on their point -- on  
17 their part as to showing --

18 JUDGE POOLER: To expand the injunction?

19 MR. BOCCUZZI: Exactly, to expand the  
20 injunction to cover these bonds which had never  
21 been mentioned, never been litigated before, and  
22 Citi, while at first making statements about

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1 exchange bonds, in the end it was clear. No one  
2 disputes that at least 72 percent of the Argentine  
3 law bonds -- so we're talking about a universe of  
4 \$8 billion -- at least 72 percent, even under  
5 their definition of exchange bonds, are not  
6 exchange bonds.

7 JUDGE RAGGI: That's because you put the  
8 same serial number on them, right?

9 MR. BOCCUZZI: Well --

10 JUDGE RAGGI: Which Argentina did after  
11 the injunction was entered.

12 MR. BOCCUZZI: That's only 1.75 billion  
13 for the Repsol bond. We settled that.

14 JUDGE RAGGI: Well, you know, it's 1.7  
15 here and there, yes. But the point is Argentina  
16 put the same number on these bonds after it knew  
17 it was going to be enjoined. Is that right?

18 MR. BOCCUZZI: It is -- it is not right  
19 for --

20 JUDGE RAGGI: So to the extent they  
21 can't be -- parent can't be segregated, you might  
22 understand why there's not a lot of sympathy for

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1 you on that.

2 MR. BOCCUZZI: Just to be clear, Judge  
3 Raggi, 4.3 billion of that was issued in local  
4 issuances before pari passu motion was ever  
5 brought, and then the --

6 JUDGE RAGGI: The same number?

7 MR. BOCCUZZI: Yes, Your Honor.

8 JUDGE RAGGI: Why? Because there wasn't  
9 another number available?

10 MR. BOCCUZZI: No, you want to have  
11 issuances to share a number because that makes it  
12 so they can trade. That helps fungibility of  
13 bonds. It's like getting the same widget. So you  
14 put them, depending on if they're pars or quasi-  
15 pars or whatever the lingo is, into a limited set  
16 of ISIN numbers. Otherwise, you have a bunch of  
17 ISINs. People don't match them up and it's harder  
18 for them to trade. This actually benefits  
19 bondholders.

20 JUDGE RAGGI: And it has to be the same  
21 as a bond that is subject to a ratable payment  
22 limitation. So to that extent, I mean, they would



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1 be -- they will be traded the same. That's what  
2 Argentina wants and that's what Argentina may get.

3 MR. BOCCUZZI: Well, Your Honor, I think  
4 that would be unfortunate, and again, the way the  
5 record was developed here, it happened rapidly.  
6 It happened after the judge had ruled and stated  
7 on the record a perfectly correct conclusion, one  
8 that I agree with and that Ms. Wagner agrees with,  
9 that these bonds are different.

10 It's against the litigation context  
11 where it was litigated it was the Bank of New York  
12 bonds, and this language, while it's illustrative  
13 for who's involved in the Bank of New York  
14 payment, that's not the Citibank Argentine law  
15 bond payment stream. So given all that and the  
16 need -- these bonds are -- these injunctions are  
17 very unique in terms of their effect on third  
18 parties, on financial institutions like Citi, on  
19 bondholders, and so I think there it really is in  
20 the interest of everybody to really try to get  
21 this as right as we can.

22 JUDGE RAGGI: Let me ask you this. If

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1 we don't agree with you and the injunction stands,  
2 is Argentina going to obey this one?

3 MR. BOCCUZZI: I think, Your Honor, I  
4 don't have a crystal ball. I will be honest with  
5 Your Honor. They have made statements that they  
6 really need to pay their debt. But I have not  
7 been told by them that they're going to make the  
8 payment and I just don't know.

9 JUDGE RAGGI: Because we've stood and  
10 talked like this before and the question is  
11 whether we should be hearing a party complain  
12 about an injunction at the same time that it's  
13 telling us that if it does not succeed it will  
14 violate the injunction.

15 MR. BOCCUZZI: I understand, Your Honor,  
16 and it is not a happy situation. It is an  
17 extremely fraught situation and so that's why --

18 JUDGE RAGGI: Well, shouldn't we expect  
19 you to tell us that it will be obeyed and give us  
20 more assurances than apparently you were able to  
21 give the Supreme Court before we expend a lot of  
22 energy figuring out whether you -- whether you

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1 were wronged here or not? I mean, doesn't the  
2 Court have a right to expect that once it decides,  
3 the party asking for relief will abide by the  
4 decision.

5 MR. BOCCUZZI: I think the issues that  
6 are before us today takes us back to an earlier  
7 point, which is should there even be an order as  
8 to these bonds in the first place, and it seems  
9 like I understand relationship that has gone on  
10 with the Republic and this Court to date. But if  
11 we decide that it should be enjoined --

12 JUDGE RAGGI: Right. If you win, I know  
13 you'll be happy to abide by the Court's order. But  
14 the concern I have is with a party saying to us  
15 give us relief and we'll obey but if you don't  
16 give us relief, we'll just ignore you.

17 MR. BOCCUZZI: All I can say further, as  
18 to that, Your Honor, is that the Republic is not  
19 the only entity with very large interest in this -  
20 -

21 JUDGE RAGGI: Right, and the other  
22 interests of the other party is that you're going

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1 to try and proceed against it criminally or pull  
2 its license or do all kinds of other horrible  
3 things. Can you assure us you won't do that?

4 JUDGE POOLER: As attorney for  
5 Argentina, are you going to prosecute Citibank?

6 MR. BOCCUZZI: I'm not. I'm not an  
7 Argentina lawyer --

8 JUDGE POOLER: Oh, but --

9 MR. BOCCUZZI: And I am not a part of  
10 the criminal and the regulatory body of Argentina.  
11 They don't consult me on that.

12 JUDGE POOLER: So you don't know if  
13 they're going to go after Citibank on September  
14 30th.

15 MR. BOCCUZZI: I don't know. All I know  
16 is that those are decisions that are relegated to  
17 those law enforcement bodies which as their New  
18 York lawyer I'm not involved with.

19 JUDGE RAGGI: Right. But you speak here  
20 for a client and the question I asked you is, is  
21 your client in asking for this relief and not  
22 telling us whether it's going to obey the order

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1 itself, able to tell us that it will not impose  
2 these sanctions on Citibank if it obeys the Court  
3 order.

4 MR. BOCCUZZI: As an officer of this  
5 Court, I am not able to make a representation  
6 about what the Republic of Argentina is going to  
7 do.

8 JUDGE RAGGI: Okay.

9 MR. BOCCUZZI: And --

10 JUDGE PARKER: And just to follow up on  
11 Judge Raggi's question, at this point, we're just  
12 simply left to speculate about whether the orders  
13 that this Court issues, the judgments of this  
14 Court, the orders of Judge Griesa will be  
15 respected by your client.

16 MR. BOCCUZZI: Excuse me, Your Honor.  
17 On -- yes, all I can say is that these orders have  
18 an enormous impact on the Republic, its citizens,  
19 the bondholders. It's been taken up the highest  
20 levels, the president, the ministry and we're just  
21 in a situation where they want to resolve. They  
22 do want to resolve their outstanding debt issuance

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1 and these defaults.

2 JUDGE PARKER: But not under New York  
3 law, on their own terms.

4 MR. BOCCUZZI: They want to reach  
5 something that will be -- it has to be voluntary  
6 on their part and the part of the plaintiffs. We  
7 have learned since --

8 JUDGE PARKER: Well, why is --

9 JUDGE RAGGI: You were given -- you were  
10 given time by Judge Griesa to try and work  
11 something out. So it's not as if you've been  
12 rushed to this. Judge Griesa delayed because he  
13 thought that there were negotiations going on.

14 MR. BOCCUZZI: And hopefully there may  
15 be negotiations. One issue that was vetted with  
16 Judge Griesa is the exchange bondholders have in  
17 their bonds the so-called right upon future offer  
18 provision. That entitles them, if an offer that  
19 qualifies under that clause is made, to hold out  
20 debtors, creditors, to receive the difference, the  
21 better deal, and so, that is a serious constraint  
22 on Argentina's ability to resolve anything. That

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1 clause sunsets at the end of this year.

2           So we had asked the Court to give more  
3 time, to let that sunset, to let things happen in  
4 the fullness of time with the hope that we'd  
5 resolve it. There was no stay available. We  
6 couldn't agree to one with the plaintiffs. So now,  
7 we're in a situation where we're in this window  
8 period. There certainly is a desire obviously to  
9 resolve this and move on the way these sovereign  
10 debt situations are often done.

11           Here we're just talking about so much  
12 debt and now these pari passu injunctions which,  
13 by their terms, give anybody a right to say give  
14 me what that person had, and so, we're talking  
15 about a huge amount of money and it's something  
16 that as a macroeconomic matter has to be dealt  
17 with by the Republic. I think that they're trying  
18 to resolve it. But we have these constraints.

19           But one thing in terms of this motion  
20 and that Ms. Wagner has brought to the floor is I  
21 think while that gets worked out, to the best that  
22 we can, if we can have the injunctions tailored in

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1 an appropriate way to track the contracts, I think  
2 that can only help the situation and not make it  
3 worse. These Argentine law bonds we're talking  
4 about are at least \$8 billion. They already have  
5 enjoined payments on \$28 billion, so adding --

6 JUDGE RAGGI: I'm not sure why we're  
7 listening to this. Your client is basically the  
8 person or the entity holding the gun to Ms.  
9 Wagner's client's head because but for that, she  
10 wouldn't have any argument here about the harm to  
11 Citibank, and you're not -- you're not offering  
12 here to take -- to remove the gun. So to that  
13 extent, I'm not sure why are we interested in  
14 hearing from your client? Your client didn't move  
15 for rule 60 relief. Your client isn't telling us  
16 it's going to comply with the order. Your client  
17 is the person with the gun.

18 MR. BOCCUZZI: I think my client, while  
19 the so-called gun is their laws and regulations.  
20 I hear you. Citibank has made the motion. But I  
21 think the Republic as a sovereign nation really  
22 has an interest in trying to get this resolved and



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1 all I'm saying is that I don't think adding these  
2 bonds into the mix will help get this resolved.

3 JUDGE POOLER: And it's your position  
4 that these bonds are not in the mix, right?

5 MR. BOCCUZZI: They should not -- well,  
6 now they're in the mix because of the July order.

7 JUDGE POOLER: But they shouldn't be?

8 MR. BOCCUZZI: All along -- my position  
9 is all along they weren't, they shouldn't and they  
10 shouldn't be.

11 JUDGE PARKER: Arguments not raised  
12 below?

13 MR. BOCCUZZI: Arguments that were  
14 raised below but not fleshed out to the extent we  
15 did today, Your Honor.

16 JUDGE POOLER: Counsel, Ms. Wagner?

17 MS. WAGNER: Thank you, Your Honor.

18 JUDGE POOLER: So what are you going to  
19 do on September 30th?

20 MS. WAGNER: Your Honor, we will obey  
21 the order of this Court. But if we do obey the  
22 order of this Court and if this Court does not

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1 reverse the order of the District Court, we are  
2 likely to suffer very serious damage and we  
3 believe there is no justification for imposing  
4 that on Citibank, and if I may explain for just a  
5 minute, Citibank is not a party to the contact  
6 here that was the origin of the pari passu order.  
7 That is the contract.

8           That is an order that is supposed to  
9 enforce a contract for the benefit of the  
10 plaintiffs, and Citibank Argentina then is of  
11 course the other party to the contract. We are a  
12 custodian. We hold bonds. We don't have a -- we  
13 don't determine what bonds to hold. We are not  
14 party to a contract with Argentina. We are not  
15 indentured trustee like Bank of New York. We just  
16 hold bonds that are bought by other people.

17           JUDGE POOLER: Isn't your position  
18 analogous to Bank of New York?

19           MS. WAGNER: It is not at all analogous.

20           JUDGE POOLER: Why not?

21           MS. WAGNER: Bank of New York has a  
22 contract with Argentina and Bank -- and it has

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1 obligations to its bondholders, all kinds of  
2 obligations. We have no obligations under any  
3 contract with Argentina. We have only contracts  
4 with our customers. We get paid.

5 JUDGE POOLER: Your customers are the  
6 bondholders?

7 MS. WAGNER: Our customers are -- some  
8 of them hold the Argentine law bonds. But we get  
9 paid by them. We get paid by them no matter what  
10 they hold. It just is totally independent of the  
11 contract at issue here which is the contract this  
12 Court enforced.

13 JUDGE RAGGI: So you're not paid in any  
14 way by Argentina.

15 MS. WAGNER: No, we are not.

16 JUDGE RAGGI: Do you have an argument  
17 that you're not a party covered by the injunction  
18 here?

19 MS. WAGNER: I think we do have an  
20 argument to that effect, Your Honor.

21 JUDGE RAGGI: But you haven't made that  
22 argument to the District Court. It would seem to

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1 me that would be the clarification that would be  
2 most important to you, to suggest that whatever  
3 your financial arrangements are and however  
4 downstream you are, that you don't fall within the  
5 injunction.

6 MS. WAGNER: Your Honor --

7 JUDGE RAGGI: And I'm not saying I've  
8 reached that as a conclusion. I'm saying that  
9 isn't that an argument you should be making to the  
10 District Court.

11 MS. WAGNER: Your Honor, we did make  
12 that argument to the District Court and I believe  
13 that was part at least of the reason why the  
14 District Court issued an opinion saying that we  
15 were not bound by the injunction.

16 JUDGE RAGGI: I thought it was that the  
17 argument was that the bonds were different, not  
18 that you were not a party covered by the  
19 injunction.

20 MS. WAGNER: Oh, no, Your Honor. Your  
21 Honor, we absolutely took the position that we  
22 were not covered as a party. There were two parts

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1 to our argument. One is that we are different and  
2 one is that the bonds are different.

3 JUDGE POOLER: That was the genesis of  
4 the June 27th order?

5 MS. WAGNER: That's correct, Your Honor.

6 JUDGE RAGGI: The June 27th order though  
7 is not based on a finding that you are not a  
8 party, right, because then it wouldn't matter that  
9 you can't -- you're not covered by the injunction  
10 because then you wouldn't care whether the bonds  
11 were or were not exchange bonds. You wouldn't be  
12 covered. That's not the basis for any order of  
13 the District Court.

14 MS. WAGNER: Your Honor, that's -- the  
15 District Court made a ruling that payments by  
16 Citibank Argentina on the Argentine law bonds were  
17 not covered. I think there is two parts to that,  
18 and I think both of those parts are no longer in  
19 effect as a result of the later order. So I think  
20 both of these arguments were made and they were  
21 successful on the first order.

22 If I may also just mention once again

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1 the original injunction, while there is a lot of  
2 discussion here about how pellucid the order is,  
3 it cannot be read independently of the opinion  
4 that explained it, which was described by both the  
5 District Court and this Court in its affirmance.  
6 Part of that opinion says the process and the  
7 parties involved in making payments on the  
8 exchange bonds are as follows, and then there's a  
9 big description of the payment system, the payment  
10 stream on the Bank of New York bonds.

11           That has absolutely nothing to do with  
12 the payments stream on the Argentine law bonds and  
13 Bank of New York Mellon is in no way comparable to  
14 a custodian in Argentina. These are completely  
15 different and there was no reason for us to think  
16 we were bound by this.

17           Now, there was a sufficient incongruity  
18 between the terms of the injunction and this  
19 opinion that we went to the judge in an effort to  
20 be as clear as we could and we said basically you  
21 didn't mean to cover us and you didn't mean to  
22 cover these bonds, right, and we gave a lot of

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1 arguments why as a legal entity Citibank Argentina  
2 could not be bound by such an injunction and we  
3 also argued that then we had evidence that the  
4 bonds were different from the bonds that were  
5 covered here.

6           The Court accepted our argument and then  
7 in the motion for reconsideration it's not totally  
8 clear what caused the reconsideration. But part of  
9 it was, according to the Court's order itself, was  
10 new information. Well, what was the new  
11 information? The new information was that many,  
12 many, many Argentine law bonds were actually not  
13 issued in the exchange at all. So they couldn't  
14 possibly be covered by --

15           JUDGE POOLER: Those are Repsol bonds?  
16 Is that what these were?

17           MS. WAGNER: It's not only Repsol. It's  
18 other bonds that were not issued in exchanges. The  
19 other piece of information was that these bonds  
20 were completely fungible. So you couldn't tell  
21 one from the other and Citibank put in a  
22 declaration saying it would be operationally

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1 impossible to figure out which bonds to pay and  
2 which bonds not to pay.

3 JUDGE PARKER: But you conceded below  
4 that some of the bonds were covered.

5 MS. WAGNER: I did, Your Honor. I  
6 conceded that they were issued in connection --

7 JUDGE PARKER: So what was Judge Griesa  
8 to do in light of that concession --

9 MS. WAGNER: Your Honor, I told --

10 JUDGE PARKER: Which is essentially what  
11 your adversaries were arguing.

12 MS. WAGNER: Your Honor, I told the  
13 Court that some of the bonds we held were issued  
14 in connection with the exchanges, and to that  
15 extent, that's why we asked for clarification. But  
16 I always took the position they had nothing to do  
17 with the bonds about which the opinion was issued,  
18 and after I said that to the Court, I then wrote  
19 letters to the Court explaining before the Court  
20 ruled that many of the bonds that we held were not  
21 issued in the exchanges at all and we couldn't  
22 tell one from another.



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1           So we couldn't possibly obey an  
2 injunction that applied to this -- to these bonds  
3 without withholding payment on bonds that are not  
4 exchange bonds and that are not external  
5 indebtedness and there is absolutely no argument  
6 under the contract that those bonds shouldn't be  
7 paid.

8           JUDGE RAGGI: Right, unless where Judge  
9 Griesa left you was figure out a way between now  
10 and the next payment to do it.

11           MS. WAGNER: Sure.

12           JUDGE RAGGI: So you can go back and  
13 tell Judge Griesa that you can't do it and  
14 Argentina refuses to do it. I mean, there's still  
15 the opportunity to be heard on that.

16           MS. WAGNER: Your Honor, there may or  
17 may not be opportunity to be heard but we have  
18 very little time left and before we left Judge  
19 Griesa, all parties, including our colleagues  
20 here, told Judge Griesa there was no way of doing  
21 it. So it seems that Judge Griesa -- it would be  
22 hard to say what view he would take at this point.

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1 But there was no dispute that there's no --

2 JUDGE PARKER: It seems to me the record  
3 on that is very undeveloped. We have letters from  
4 counsel. But there's no record that establishes  
5 that.

6 JUDGE POOLER: Are you asking us to  
7 remand to Judge Griesa to clarify his  
8 clarification? I mean, it belongs first there to  
9 decide some of these issues, doesn't it?

10 MS. WAGNER: Your Honor, I think we have  
11 argued strenuously that as a matter of law his  
12 injunction cannot apply to us and cannot apply to  
13 the Argentine law bonds. If it is the view of  
14 this Court that there is more factual development  
15 necessary on those issues and you wish to remand,  
16 then of course that's up to the Court.

17 But I would then respectfully request  
18 that the Court issue a stay of the application of  
19 this order to Citibank and to these bonds because  
20 there is not enough time to get this done before  
21 this extremely small payment coming up applies a  
22 total disaster for our client -- my client.

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1 JUDGE POOLER: Versus we heard from Mr.  
2 Boccuzzi why they had the same ISIN number. But  
3 that's not evidence. I mean, he told us at  
4 argument that they have to be fungible. But that  
5 wasn't before the Court, was it?

6 MS. WAGNER: It was before the Court,  
7 Your Honor. I believe it was in letters. But  
8 there was no dispute about it. There was no  
9 dispute that there were very, very many Argentine  
10 law bonds. They were not exchange bonds and that  
11 there was no way of telling one from another. So  
12 I think since there was no dispute, we could  
13 develop the record but I think there still would  
14 be no dispute.

15 JUDGE POOLER: But he told you to work  
16 it out.

17 MS. WAGNER: He did, and we inquired  
18 whether anybody else had any thoughts about how we  
19 would do this. We had already put in evidence  
20 with an affidavit that it was operationally  
21 impossible. Nobody else has advised us that it is  
22 possible and we do not think that it is.

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1 JUDGE POOLER: So let's go back to the  
2 thing that brings us here today. I think you were  
3 served with an order to show cause for discovery.

4 MS. WAGNER: Your Honor, we were served  
5 with an order to show cause for discovery. But  
6 that's not an issue that is before the Court at  
7 the moment. Judge Griesa reserved decision on  
8 that question and --

9 JUDGE POOLER: He didn't decide that?

10 MS. WAGNER: He did not decide that.

11 JUDGE PARKER: Are these bonds paid  
12 quarterly or semiannually or what?

13 MS. WAGNER: Semiannually. There's two  
14 tranches of them.

15 JUDGE PARKER: June and September?

16 MS. WAGNER: It's June and September for  
17 one set and whatever the other quarters are for  
18 the other ones, December --

19 JUDGE POOLER: Well, unless we make a  
20 decision today, you are asking us to stay the June  
21 28th order so that you can make that small payment  
22 and buy us another three months?

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1 MS. WAGNER: If Your Honors are inclined  
2 not to reverse the injunction and reinstate the  
3 clarification order, which is what I would ask you  
4 to do, but if you are inclined not to do that,  
5 then I would please ask you, yes --

6 JUDGE PARKER: But isn't the tradition -  
7 - these things are -- these matters are  
8 complicated because, you know, we have a party  
9 that will not conform itself to the law. But the  
10 traditional path is for you to raise these --  
11 since you're not a party, to raise these in  
12 contempt proceedings.

13 MS. WAGNER: Your Honor --

14 JUDGE PARKER: And then you have -- you  
15 know, you have -- you've got an impossibility  
16 defense. You've got other arguments you could  
17 make.

18 MS. WAGNER: Your Honor, two answers I  
19 think to that. One, the District Court invited  
20 clarification requests. We made that request. We  
21 got the clarification and then it got reversed.  
22 We think that is a record that mandates an appeal

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1 to this Court. Number two, just to be clear,  
2 we're not going to be in contempt. We're going to  
3 obey. But if we obey, as Judge Raggi said, we  
4 have a gun to our head and the gun will probably  
5 go off, and I question this Court, what purpose  
6 will be served by that? It won't change what  
7 Argentina does. It will not benefit appellees.  
8 It won't benefit anybody. But it will hurt us.

9 JUDGE RAGGI: Well, you know, you tell  
10 us that there's no time to comply. But let me ask  
11 you, why has Citibank not communicated with its  
12 customers that -- its bondholder customers, that  
13 is -- that it has been now ordered by a Court not  
14 to pay absent proof of the compliance with the  
15 ratable payment notice and that way you would be  
16 ready if this Court denies your application to  
17 tell the paying party not to transfer the money to  
18 you.

19 I mean, it seems to me that once you  
20 were under an injunction, you were obliged to take  
21 steps to assure your ability to comply with it,  
22 not to do nothing and come up to us and say, gee,

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1 now we can't -- now we don't have enough time.

2 MS. WAGNER: Your Honor, until the end  
3 of July, we have an order confirming that we are  
4 not subject to the injunction. By the end of --

5 JUDGE RAGGI: Right, but since the end  
6 of July, you have had an order that tells you that  
7 you will have to comply --

8 MS. WAGNER: Correct.

9 JUDGE RAGGI: And yet you have don't  
10 nothing in the six weeks since then to put  
11 yourselves in position to comply, so --

12 MS. WAGNER: Your Honor --

13 JUDGE POOLER: Did you bring on this  
14 expedited appeal?

15 MS. WAGNER: I beg your pardon?

16 JUDGE POOLER: Did you bring on this  
17 expedited appeal?

18 MS. WAGNER: Yes, we brought on the  
19 expedited appeal, of course --

20 JUDGE RAGGI: But you've done nothing to  
21 make -- put yourself in a position where you could  
22 comply. We're not talking about refusing money.

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1 We're talking about notifying your clients that  
2 you may not be able to transfer the money to --

3 MS. WAGNER: Your Honor, we have had  
4 communications with our clients, and I would also  
5 suggest to you that this injunction --

6 JUDGE RAGGI: Oh, so you are in a  
7 position to now refuse to take payment of the  
8 money?

9 MS. WAGNER: We are --

10 JUDGE RAGGI: Well, if you have given  
11 notice to your clients, why not?

12 MS. WAGNER: We have not given notice to  
13 our clients pursuant to any agreement or anything  
14 like that. They are aware of what the situation  
15 is. But there are two issues that we need to  
16 confront. One is we cannot achieve the objective  
17 in the time we have. Number two, the injunction  
18 also says that people who are bound by it cannot  
19 change the payments under it.

20 So if we are bound by it, then it's a  
21 little difficult for us to say, don't make the  
22 payment because then they will say we should be in



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1 contempt because we did that. So we are in a bit  
2 of a bind. There is very little we can do --

3 JUDGE RAGGI: Well, you haven't asked  
4 Judge Griesa whether if you did that you would be  
5 in contempt.

6 MS. WAGNER: We have not, Your Honor.

7 JUDGE RAGGI: Okay. But you could.

8 MS. WAGNER: We could, Your Honor. But  
9 we are -- until very recently, as I said, we  
10 believed that we were not bound. Then we made an  
11 expedited appeal to this Court and hopefully we  
12 will -- hopefully you'll see it my way.

13 If I may make one other point too about  
14 the domestic foreign currency indebtedness, when  
15 we -- when the motion for reconsideration was  
16 made, appellees excluded from their motion peso-  
17 denominated bonds because they are domestic  
18 foreign currency indebtedness. But that in fact  
19 is not the distinction that is relevant. The  
20 distinction, as Mr. Boccuzzi was saying, is were  
21 these bonds issued in connection with -- were  
22 these bonds exchanged for bonds that already were

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1 domestic foreign currency indebtedness or not.

2 U.S.-dollar bonds are part of domestic foreign

3 currency indebtedness. So obviously appellees

4 understood that the pellucid nature of the

5 definition of external indebtedness did not

6 include at least this part of domestic foreign --

7 JUDGE RAGGI: Yeah, but again, I didn't

8 understand this to be your argument to Judge

9 Griesa. Did I miss it somewhere in the papers you

10 filed? Because my understanding of the argument

11 to Judge Griesa was the injunction only covers

12 Bank of New York bonds.

13 MS. WAGNER: That was our principal

14 argument, Your Honor, and because it only covered

15 those bonds, this whole discussion of external --

16 JUDGE RAGGI: Right. Did anybody tell

17 Judge Griesa this concern about what is and is not

18 included within domestic foreign currency bonds?

19 MS. WAGNER: No, Your Honor, because the

20 hearing before Judge Griesa in connection with the

21 injunction concerned only Bank of New York bonds

22 which clearly are all external indebtedness.

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1 JUDGE RAGGI: Right. So why should we  
2 hear you on this argument now?

3 MS. WAGNER: Because the original  
4 injunction did not bind us and that is what Judge  
5 Griesa ruled. Now it does bind us but there is no  
6 record whatsoever suggesting why it should bind  
7 us.

8 JUDGE RAGGI: Right, but when he -- when  
9 Judge -- when you argued to Judge Griesa the  
10 original injunction doesn't bind us, it was  
11 because these are not Bank of New York bonds, not  
12 because these are domestic foreign currency bonds  
13 falling within an exception.

14 MS. WAGNER: Correct, Your Honor.

15 JUDGE RAGGI: Okay.

16 MS. WAGNER: It did not seem relevant to  
17 the argument given the record below. We also did  
18 argue it's because we are Citibank and there is no  
19 entity like Citibank in the proceeding on these  
20 bonds, and I would just respectfully suggest that  
21 if you read the opinion, both that judge's and  
22 this Court's, you refer specifically to the

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1 payments and the people involved and the entities  
2 involved in this and they do not include Citibank  
3 or the Argentine law bonds.

4 JUDGE RAGGI: So you argued that it was  
5 because you were Citibank and not Bank of New  
6 York, not because Citibank was not an entity such  
7 as was defined in the injunction because the  
8 injunction draws a distinction between different  
9 entities depending on where you are in the stream.  
10 That argument you never made to Judge Griesa,  
11 right?

12 MS. WAGNER: We did, Your Honor. We  
13 said there was no entity before the Court in  
14 connection with the Bank of New York --

15 JUDGE RAGGI: I'm not making myself  
16 clear, but that's all right.

17 MS. WAGNER: Your Honor, Citibank is a  
18 very different entity from anyone that was before  
19 the Court in connection with the Bank of New York  
20 argument, and we made that argument to Judge  
21 Griesa when we requested a ruling that we were not  
22 bound by the injunction.

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1 JUDGE POOLER: Thank you all. We'll  
2 reserve decision. Yes, sir?

3 MR. ENGLERT: In light of the length of  
4 the rebuttal, may I be heard for a few minutes?

5 JUDGE POOLER: Ordinarily we don't do it  
6 but you can take a minute.

7 MR. ENGLERT: This Court's opinion, 727  
8 F.3d at 244 says the way to test these legal  
9 propositions is to go in contempt and then take an  
10 appeal, not the procedure sitting before the  
11 Court. The ISIN 113 bond, as Ms. Wagner said  
12 several times, there was undisputed evidence  
13 before the District Court. Not true. The ISIN 113  
14 bonds were raised in post-hearing letters for the  
15 first time. The hearing was July 22nd. It was  
16 all about exchange bonds. The letters came in  
17 July 23rd and July 27th. A stay would be a  
18 terrible problem for my clients. The request for  
19 a stay comes way too late and it --

20 JUDGE POOLER: Why is it a terrible  
21 problem?

22 MR. ENGLERT: Because it would feed

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1 Argentina's efforts to evade. It would make it  
2 easier for Argentina to carry out the evasion  
3 schemes that its president has been announcing  
4 since minutes, hours, the same day after the  
5 Supreme Court denied cert.

6           Finally, we do not concede that peso-  
7 denominated bonds are domestic foreign currency  
8 indebtedness. We do not concede that anything at  
9 issue here or in the future is domestic foreign  
10 currency indebtedness. We made the tactical  
11 decision after Judge Griesa ruled against us on  
12 July 27th to seek reconsideration only with  
13 respect to dollar- denominated bonds, not peso-  
14 denominated bonds because peso-denominated bonds  
15 are not within the definition of external  
16 indebtedness. It is our position that the  
17 injunction goes beyond external indebtedness, but  
18 having lost before Judge Griesa, we decided we  
19 would pick our fight only on U.S. dollar-  
20 denominated bonds, not on peso-denominated bonds.

21           JUDGE RAGGI: If Citibank isn't being  
22 paid by Argentina in any respect with respect to

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1 this transaction, how are their actions in active  
2 concert or participation with the Republic, which  
3 is who the participants are who are covered by the  
4 injunction rather than third parties acting solely  
5 in their capacity as an intermediary bank?

6 MR. ENGLERT: They are not within the  
7 definition of intermediary bank, which is a term  
8 borrowed from article 4A of the UCC. It's an  
9 electronic funds transfer term. It doesn't have  
10 anything to do with Citibank's situation. They  
11 are in active concert or participation because  
12 they are helping Argentina to evade the injunction  
13 by passing on money -- first of all, accepting  
14 money and then passing on money to customers in  
15 direct violation of Judge Parker's injunction. If  
16 you start saying, with respect, Your Honors, that  
17 third parties who are not the real wrongdoers here  
18 may do things that are forbidden by the injunction  
19 because you feel they're in a tough spot, the  
20 injunction will unravel.

21 JUDGE RAGGI: But if the money comes  
22 from another entity that now can no longer give it

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1 back to Argentina and -- because that's what  
2 they're saying, that there are intermediaries and  
3 they are getting this money from an intermediary,  
4 right? They don't get paid by Argentina. They  
5 get paid by CIYM or whatever the entity is.

6 MR. ENGLERT: Oh gosh, there's a whole  
7 chain of entities. I can't keep track of all of  
8 them.

9 JUDGE RAGGI: Right, and so at that  
10 point where they are no longer Argentina's agent,  
11 how are they in active concert with Argentina?

12 MR. ENGLERT: Your Honor, there is an  
13 old saying that the chain is only as strong as its  
14 weakest link.

15 JUDGE RAGGI: But this is the argument  
16 that was not made to the District Court, right?  
17 The argument was we're Citibank, we're not Bank of  
18 New York, not we don't fall within the definition  
19 of participant.

20 MR. ENGLERT: Well, I agree with you.

21 JUDGE RAGGI: Or was that made to Judge  
22 Griesa?



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1 MR. ENGLERT: The argument that they are  
2 not a participant under 2(f) I don't recall being  
3 made to Judge Griesa. But even if it was, Your  
4 Honor, this Court should reject it. It's very  
5 important that this Court reject it because a  
6 chain is only as strong as its weakest link. If  
7 Argentina can pass money to --

8 JUDGE RAGGI: We've kept you a long time  
9 and if it wasn't made to Judge Griesa, I'm not  
10 sure we're going to entertain --

11 MR. ENGLERT: All right. One final very  
12 last point. The 113 bonds that are at issue in  
13 the Repsol and the third category raised by  
14 Argentina in its July 27th have no payments due  
15 until December. The September 30th thing, that  
16 doesn't involve 113 ISIN bonds.

17 JUDGE POOLER: Thank you. Thank you all  
18 very much. We'll reserve decision.

19 CLERK OF COURT: Court stands adjourned.

20 (Whereupon, the proceedings concluded.)

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09/23/14

\_\_\_\_\_  
Benjamin Graham