24-2327

United States Court of Appeals
for the Second Circuit

JPMORGAN CHASE BANK, N.A.,
Plaintiff-Appellee,

v.

VTB BANK, P.J.S.C.,
Defendant-Appellant.

On Appeal from the United States District Court for the
Southern District of New York
No. 24-cv-2924 (Hon. Lorna G. Schofield)

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1(a) and 29(a)(4)(A), the Chamber of Commerce of the United States of America ("the Chamber"), by and through its undersigned counsel, certifies that it is a nonprofit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has ten percent or greater ownership in the Chamber.

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INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America ("the Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations across the country. The Chamber regularly files amicus briefs in cases—like this one—that raise issues of concern to the business community. The Chamber has a strong interest in ensuring respect for forum selection clauses and compliance with antisuit injunctions. In fact, several of the Chamber's members have experienced misconduct much like that at issue here.[1]

[1] *Amicus curiae* states that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION

Countries around the world—including the United States—have imposed sweeping economic sanctions against Russia, following its invasion of Ukraine. As a result, Russian banks have been cut off from the international financial system and seen billions of dollars of assets frozen. In response, these sanctioned entities turned to Russian courts for help in coercing non-Russian institutions into returning their frozen assets. Russian courts have obliged. They have claimed exclusive jurisdiction over such disputes, notwithstanding contrary forum selection clauses. And they have issued sweeping antisuit injunctions ("ASIs") prohibiting non-Russian entities from bringing or continuing litigation to enforce such clauses outside Russia.

This case involves a Russian-owned bank ignoring both its own contractual commitments and an injunction issued by an American court. The district court appropriately held Defendant VTB Bank, P.J.S.C. ("VTB") in contempt and imposed civil sanctions after VTB *concededly* defied orders to discontinue violating a forum selection clause. This Court should affirm that sound decision and ensure our Nation's judicial system stands up to these transparently improper attempts to circumvent U.S. sanctions.

BACKGROUND

VTB is the second-largest financial institution in Russia and majority-owned by the Russian government. A15; Press Release, U.S. Dep't of Treasury, *U.S. Treasury Announces Unprecedented & Expansive Sanctions Against Russia, Imposing Swift and Severe Economic Costs* (Feb. 24, 2022) ("Treasury Press Release"), https://home.treasury.gov/news/press-releases/jy0608. Since February 24, 2022, VTB has been a mainstay on the U.S. Department of Treasury's Office of Foreign Assets Control's ("OFAC") list of sanctioned entities. Plaintiff-Appellee JPMorgan Chase Bank ("JPMorgan") has accordingly frozen VTB's U.S. dollar correspondent bank account (the "Correspondent Account"), which is maintained at JPMorgan's New York branch. A13. Even now, JPMorgan has no authority to access, release, or transfer these funds absent express authorization from OFAC. *See* Blocking Property with Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation ("EO14024"), 86 Fed. Reg. 20249 (Apr. 15, 2021).

Nevertheless, on April 17, 2024, VTB sued JPMorgan in Russia (the "Russian Action") for failing to transfer to VTB the frozen funds in its Correspondent Account. A150-66. To secure VTB's claim, the Russian court froze certain JPMorgan assets. A243-44. VTB filed that lawsuit despite the Correspondent Account's forum selection clause providing that any dispute arising from the account

must be adjudicated in New York. A120. To enforce this clause, unfreeze its assets, and guard against the risk of conflicting legal obligations, JPMorgan brought this lawsuit in the Southern District of New York (the "New York Action"). A22-23. JPMorgan promptly moved for a temporary restraining order ("TRO"), "immediately enjoining" VTB from continuing the Russian Action, and a preliminary injunction, "extending that relief during the pendency" of the New York Action. A43.

On April 18, the district court issued the requested TRO and issued an order to show cause, A123-26, which JPMorgan served on VTB by email the next day, A127-33. On April 26, after VTB failed to oppose JPMorgan's motion or appear at the show cause hearing, the TRO was converted into a preliminary injunction. A167-74. The district court found that, by agreeing to the Correspondent Account's terms, VTB waived its sovereign immunity, consented to service by email, and agreed to New York's exclusive jurisdiction. A169. It then found that because JPMorgan had adequately served VTB and VTB unquestionably had actual knowledge of the show cause hearing and TRO, its failure to oppose the motion or appear at the hearing "waived any objections to the [m]otion." A171-72. The court thus directed VTB to immediately "[d]ismiss and discontinue the Russian Action." A172. And the court enjoined VTB "from taking action to evade the directives of this [order], render it ineffective, or to take any steps to diminish the Court's ability

to adjudicate this Action." A173. On May 29, VTB moved to dissolve the injunction.

In parallel, VTB disregarded the TRO and preliminary injunction by continuing to litigate in Russian court. On April 25, VTB obtained a competing temporary injunction, requiring JPMorgan to "suspend[]" the New York Action. A176. On June 21, the Russian court issued a permanent injunction, ordering JPMorgan to seek termination of the New York Action within 14 days or risk a $500,000 penalty. A322-27. Then, on July 4, the Russian court granted VTB's request to freeze more of JPMorgan's Russian assets. A362, 397. Five days later, the district court excused JPMorgan from defending its position in the New York Action, because doing so would violate the Russian court's injunction. A363, 377-78.

All the while, the district court clearly and repeatedly stated that its April 26 preliminary injunction remained in force. On July 29—after VTB's on-the-record concession that it violated the TRO and preliminary injunction—the district court held VTB in civil contempt. A385-96. The district court ordered VTB to move to stay the Russian Action, along with "an explicit lifting or stay" of the Russian ASI, or pay a $500,000 fine. A394. The court furthered ordered that VTB "shall pay to [JPMorgan] directly an additional fine equal to any payment [JPMorgan] or its affiliates makes directly or indirectly to or for the benefit of [VTB] as a consequence

of the Russian action." A395. It explained that these sanctions were "intended both to secure compliance with the Preliminary Injunction" and "and to compensate [JPMorgan] as the party wronged by violation of the Preliminary Injunction." *Id.*

Rather than comply, VTB asked the Russian court to order that JPMorgan move to dismiss the New York Action and lift the district court's preliminary injunction. A408. On August 6, the district court imposed a $500,000 monetary sanction on VTB for failure to comply. A410.

On JPMorgan's motion, the district court dismissed the New York Action without prejudice on August 15. A422-23. JPMorgan emphasized that its hand had been "forced" by the Russian court's orders. A431. And because the preliminary injunction restrained VTB for only "the duration of [the New York] Action," A172-74, the district court denied as moot VTB's May 29 motion to dissolve it, A422. But the court emphasized that its July 29 order "finding [VTB] in civil contempt for its violation of the April 26" preliminary injunction and its August 6 order "fining [VTB] $500,000" would "remain in effect . . . unless and until modified." A422-23.

VTB now appeals those July 29 and August 6 orders. JPMorgan remains "constrained to take no position" in this case. JPMorgan Br. 16. The Chamber appears to defend the judgment below because this case implicates a broader pattern

of misconduct that has attempted to shift the burden of sanctions against Russia onto American business. *See infra* at 21-29.

ARGUMENT

I. THE SOLE ISSUE ON APPEAL IS WHETHER THE DISTRICT COURT PROPERLY IMPOSED CIVIL CONTEMPT SANCTIONS

The sole issue on appeal is whether this Court should uphold the district court's well-supported sanctions order against VTB. The district court's injunction ceased being in effect when the case was dismissed, A434, so VTB's attacks on its validity are inapposite; all VTB seeks is relief from the sanctions, VTB Br. 2.

Nothing about that request turns on VTB's quarrels with whether the district court properly entered the ASI in the first place. Even if VTB had "proper grounds to object" to the ASI, VTB still had to "obey that decree until it [wa]s modified or reversed." *Paramedics Electromedicina Comercial, Ltda v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 656 (2d Cir. 2004) (citation omitted). VTB concededly did the opposite—by continuing to seek, and ultimately obtaining, a competing ASI from the Russian court that forced JPMorgan to seek dismissal of the New York Action—despite explicit warnings from the district court that the ASI remained in force and must be followed, on pain of contempt. *Supra* at 5-6. Only after that demonstrable noncompliance did the district court dismiss the New York action and, by extension, lift the ASI. *Id.*

This is a textbook case for contempt. VTB has no sound excuse for repeatedly and concededly defying the district court's orders while they were in force.

II. THE DISTRICT COURT'S ACTIONS THROUGHOUT THIS CASE WERE JUSTIFIED

At any rate, the district court handled this litigation correctly from the start. It properly exercised jurisdiction over VTB, issued an ASI, and imposed appropriate contempt sanctions when its orders were ignored. There is no basis to reverse.

A. The District Court Properly Exercised Jurisdiction Over VTB

Under the FSIA, "foreign sovereigns"—and their instrumentalities—"are immune from suit unless a specific exception to sovereign immunity applies." *Cap. Ventures Int'l v. Rep. of Argentina*, 552 F.3d 289, 293 (2d Cir. 2009). Relying on its status as an instrumentality of the Russian government, VTB claims the district court lacked subject matter jurisdiction over this dispute and personal jurisdiction over VTB—and cannot impose contempt sanctions on a sovereign entity. VTB Br. 34-40. VTB is wrong.

1. A foreign state or instrumentality is not immune from suit when it has "waived its [sovereign] immunity either explicitly or by implication." 28 U.S.C. § 1605(a)(1). That is exactly what VTB did: Section 17.7 of the Account Terms provides that "[t]o the extent that the Customer" has "any immunity (including sovereign, crown or similar immunity)," then "the Customer irrevocably waives and agrees not to claim such immunity." A120. This waiver is "'clear and

unambiguous,'" satisfying "the FSIA's requirement of an 'explicit' waiver." *Cap. Ventures*, 552 F.3d at 293-94 (citation omitted) (similar language "clearly" waived "Argentina's 'immunity (sovereign or otherwise)' in '*any* court'").

VTB does not dispute that Section 17.7 qualifies as a valid waiver of sovereign immunity. Instead, VTB insists that, as a factual matter, Section 17.7 does not apply to the Correspondent Account. But VTB failed to raise that argument before the district court at the appropriate time. VTB failed to appear at the April 25 hearing, and did not offer any competent evidence or argument to support its contention that Section 17.7 does not apply to the Correspondent Account.[2] The district court thus correctly found that Section 17.7 applied based on JPMorgan's uncontroverted evidence. And while VTB repeatedly asserts that JPMorgan "misrepresented" facts to the district court, JPMorgan explained that this contract, by its terms, applied to "all" VTB "accounts." A265-97; *see* JPMorgan Br. 16-19 (cataloguing JPMorgan's arguments below). The district court appropriately held that "VTB waived its sovereign immunity." A169.

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[2] VTB contested this argument only at the motion to *dissolve* stage, but that motion was appropriately denied as moot, because the preliminary injunction stopped being in effect when the New York Action was dismissed. A434. VTB offers no argument on appeal that the district court erred in deeming the motion to dissolve moot, and the arguments made in support of that motion are thus not properly before this Court.

2. In any event, the FSIA's commercial activity exception also clearly applies here, and provides an independent basis for jurisdiction. *See* 28 U.S.C. § 1605(a)(2). That provision ensures that foreign states and their instrumentalities do not evade legal accountability "insofar as their commercial activities are concerned." 28 U.S.C. § 1602. So whenever a foreign state or instrumentality "acts 'in the manner of a private player within' the market," rather than as a sovereign, the commercial activity exception applies. *Saudi Arabia v. Nelson*, 507 U.S. 349, 360 (1993).

VTB has indisputably engaged in "commercial activity" in the United States. It entered into a banking relationship with JPMorgan, something obviously not among "those 'powers peculiar to sovereigns.'" *Schansman v. Sberbank of Russia PJSC*, 128 F.4th 70, 81 (2d Cir. 2025). The "gravamen" of JPMorgan's claim, *id.*, is VTB's breach of the terms of its Correspondent Account, a New York bank account that VTB "regular[ly] use[d]." A390 (emphasis omitted). And VTB's other challenged conduct—e.g., filing the Russian Action—"cause[d] a direct effect" on JPMorgan's ability to prosecute this action in New York and otherwise comply with U.S. sanctions against VTB. 28 U.S.C. § 1605(a)(2). This case falls comfortably within the commercial activity exception. *See Schansman*, 128 F.4th at 81-82 (action based on use of correspondent accounts falls within exception).

VTB offers no substantive argument to the contrary. Instead, without explanation, it claims that "JPMorgan forfeited any claim for that exception" below. VTB Br. 36. That is simply wrong: JPMorgan asserted the commercial activity exception both in its complaint and at the TRO hearing. *See* A16 (complaint); A192-93 (TRO hearing). And, regardless, this Court "may affirm on any ground that finds support in the record." *Dettelis v. Sharbaugh*, 919 F.3d 161, 163 (2d Cir. 2019).

3. The district court also properly exercised personal jurisdiction over VTB. Under the FSIA, "'subject matter jurisdiction plus service of process equals personal jurisdiction,'" provided that the "exercise of personal jurisdiction under the FSIA" also "comport[s] with the Due Process Clause." *U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co.*, 241 F.3d 135, 151-52 (2d Cir. 2001) (citation omitted).

As explained, the district court had subject matter jurisdiction under the FSIA. VTB does not challenge the district court's finding that exercising personal jurisdiction would comport with due process. *See* VTB Br. 37; A171-72. And VTB expressly consented to service by email when it accepted the Correspondent Account's terms. Section 13 provides that "[a]ll . . . notices may be sent to [VTB] by . . . electronic transmission." A119. "*All* means *all*." *Choice Hotels Int'l, Inc. v. SM Prop. Mgmt., LLC*, 519 F.3d 200, 210 (4th Cir. 2008) (contract provision governing "[a]ll notices" applied to notice of arbitration); *see also In re Arb. Between Space Sys./Loral, Inc. & Yuzhnoye Design Off.*, 164 F. Supp. 2d 397, 402 (S.D.N.Y.

2001) (collecting cases concluding that contractual provision governing "[a]ll notices" includes service of process). The district court properly concluded that VTB was properly served—and subject to the court's jurisdiction.

B. The District Court Properly Entered An Antisuit Injunction

VTB next argues that the district court improperly entered an ASI directing VTB to cease its litigation against JPMorgan in the Russia Action. VTB Br. 21-33. As explained, those arguments are not properly before this Court. *Supra* at 7-8. Indeed, VTB forfeited those objections twice over—by failing to oppose JPMorgan's request for a preliminary injunction below, and by failing to challenge the district court's forfeiture finding on appeal. In any case, the district court did not abuse its discretion. This was a textbook case for an ASI.

1. VTB does not—and cannot—dispute that it had notice of JPMorgan's request for a preliminary injunction, the district court's TRO and order to show cause, and the April 25 hearing. *See, e.g.*, A132-33. Instead, VTB criticizes the district court for acting with "haste," based solely on "JPMorgan's representation that, without an ex parte anti-suit injunction, VTB might rush to obtain its own anti-suit injunction from the courts of its home country." VTB Br. 33. But that is exactly what happened, proving that JPMorgan's—and the district court's—concerns were well-founded.

The district court also gave VTB every opportunity to be heard. While the court imposed an expedited schedule for the preliminary injunction motion (as is standard practice "given the nature of the relief"), it also emphasized that, if VTB "appear[s] and ask[s] for more time," it would "of course, listen to that request and try to accommodate that." A200. And it explicitly warned that "if VTB fail[ed] to appear at the [show cause] hearing or file any opposition to" the motion, the TRO "shall automatically convert into a preliminary injunction." A125.

Nevertheless, VTB did not oppose the motion, seek any extension, or appear at the hearing. That is on VTB and no one else. The district court thus correctly held that VTB "waived any objections to the [m]otion." A172; *see supra* at 4. On appeal, VTB does not challenge the district court's finding that VTB waived any objection to the motion, which is itself grounds to affirm. *See Estle v. Int'l Bus. Machines Corp.*, 23 F.4th 210, 214 n.2 (2d Cir. 2022).

2. In any case, the ASI was plainly not an abuse of discretion under the standard this Court set in *China Trade & Development Corp. v. M.V. Choong Yong*, 837 F.2d 33 (2d Cir. 1987). For starters, VTB does not dispute that the "two threshold requirements" for an ASI were met—i.e., "'(A) the parties are the same in both matters, and (B) resolution of the case before the enjoining court [i.e., the New York Action] is dispositive of the action to be enjoined [i.e., the Russian Action].'"

Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 500 F.3d 111, 119 (2d Cir. 2007) (citation omitted).

The remaining *China Trade* factors also strongly favor the injunction. The ASI was necessary to protect the district court's jurisdiction. VTB filed the Russian Action and sought a competing ASI specifically to undermine this Court's jurisdiction. The ASI was supported by compelling public policy considerations, including protecting the President's sanctions power, the authority of U.S. courts, and private contractual obligations. *Infra* at 21-29. Blessing VTB's resort to the Russian judicial system would have directly undermined these important objectives. "[V]exatiousness" was present because the "'parallel actions'" here were "'proceeding concurrently.'" *Karaha Bodas*, 500 F.3d at 126 (citation omitted). The Russian Action also resulted in "delay," "inconsistency," and "a race to judgment," as well as extreme "inconvenience" and "expense" for JPMorgan. *Id.* at 119 (citation omitted). And the Russian court's orders were "not entitled to comity" because VTB "'deliberately courted legal impediments' to the enforcement of [the district] court's orders.'" *Id.* at 127 (citation omitted).

In short, because VTB defied the district court's orders and sought a competing ASI in Russian court—all in an effort to strongarm JPMorgan into dropping an action properly brought against VTB in the parties' contractually agreed forum—the ASI was not an abuse of discretion.

C. The District Court's Contempt And Sanctions Orders Were Not Abuses Of Discretion

Given VTB's flagrant violations of the TRO and preliminary injunction—and its conceded failure to even try to comply with either order—the district court held VTB in civil contempt. A394. The court ordered VTB to (1) move to stay the Russian Action or risk a $500,000 fine and (2) compensate JPMorgan for any payment JPMorgan "makes directly or indirectly to" VTB "as a consequence of the Russian action." A395. Yet VTB continued to defy the district court. In fact, VTB moved the Russian court for an order requiring JPMorgan to "discontinue within 14 days" the New York Action and specifically the preliminary injunction order, while explicitly referencing the district court's contempt order. A405-08. After this persistent noncompliance, the district court made good on its threat and imposed a $500,000 sanction, while leaving in place its order directing VTB to compensate JPMorgan as appropriate. A410.

Nevertheless, VTB argues that the district court improperly held VTB in contempt and that its sanctions were improperly punitive. VTB Br. 41-47. This argument fares no better than the others.

1. The district court properly held VTB in civil contempt. "A party who violates an injunction entered by the district court faces the threat of both civil and criminal contempt." *Paramedics*, 369 F.3d at 657; *see CBS Broad. Inc. v.*

FilmOn.com, Inc., 814 F.3d 91, 101 (2d Cir. 2016). Here, VTB undisputedly violated two unambiguous district court orders.

First, VTB violated the district court's April 18 TRO, which enjoined VTB "from continuing the Russian Action" and ordered VTB to "discontinue it immediately." A124. Rather than comply—or even appear in the New York Action to dispute the order—VTB went straight to a Russian court and sought competing orders requiring JPMorgan to seek a stay, and ultimately the termination, of the New York Action. A176, 244-45.

Second, VTB violated the district court's April 26 preliminary injunction. A172. That order made clear that "[t]o come into compliance with both the [TRO] and this [order]," VTB must "[d]ismiss and discontinue the Russian Action" and "[c]ease all efforts to enforce" the Russian court's order freezing JPMorgan's assets. *Id.* It further enjoined VTB "from taking action to evade the directives of this [order], render it ineffective, or to take any steps to diminish the Court's ability to adjudicate this Action." A173. And it warned that "[a]ny failure to comply . . . shall be punishable as a contempt of Court." *Id.* Undeterred, VTB continued to litigate in Russian court—ultimately obtaining a permanent injunction requiring JPMorgan to discontinue the New York Action, as well as a writ of execution to freeze more of JPMorgan's Russian assets. A230-35, 314, 362.

VTB concedes that it "violated"—and indeed, took no steps to comply with—the district court's TRO and preliminary injunction. A372. Its only defense was that it somehow "didn't need to comply" because it believed the injunction was incorrectly issued. *Id.* That is flat wrong. Anyone "subject to an injunctive order issued by a court with jurisdiction" must "obey that decree until it is modified or reversed, even if they have proper grounds to object to the order." *Paramedics*, 369 F.3d at 656 (citation omitted). While VTB was entitled to dispute the preliminary injunction, VTB still had to comply with the order. After VTB "indisputably failed to comply with the district court's unambiguous order," a finding of contempt was entirely appropriate, "[r]egardless of the propriety of the anti-suit injunction." *A.P. Moller-Maersk A/S v. Comercializadora de Calidad S.A.*, 429 F. App'x 25, 30 (2d Cir. 2011).

2. The district court imposed a quintessential civil sanction, not a criminal one. Civil sanctions may be coercive (i.e., designed to "secure future compliance with court orders") and/or compensatory (i.e., designed to "compensate the party that is being wronged"). *Paramedics*, 369 F.3d at 657. When a sanction is coercive, "the court has 'broad discretion to design a remedy that will bring about compliance.'" *Id.* at 657 (citation omitted). When a sanction is compensatory, "the sanction should correspond at least to some degree with the amount of damages."

Id. at 658 (citation omitted). The district court's order had both coercive and compensatory components, both of which were well-within its discretion to impose.

First, the district court ordered VTB to "move to stay the Russian action, including an explicit lifting or stay of the permanent anti-suit injunction order to allow this litigation to proceed," or "pay a fine of $500,000." A394. That directive plainly sought "to compel immediate responsive action" by VTB. A395. The "hallmark" of a coercive sanction is that "'the contemnor is able to purge the contempt and obtain his release by committing an affirmative act'"—but must suffer the consequences if he refuses. *CBS Broad.*, 814 F.3d at 101 (quoting *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828 (1994)).

Here, VTB had every opportunity to purge its contempt by simply complying with the district court's injunction, which remained in effect throughout the proceedings below. *See id.* at 103 ("[T]he fact that the Injunction . . . continue[d] to remain in effect further suggests that the purpose of the sanctions was to ensure future compliance with the Injunction."). Only when VTB continued to fail to comply did the district court impose a $500,000 monetary sanction. Civil sanctions "for failing to comply with" a court order as directed do not "transform" into "retrospective, punitive penalties" just because a party ultimately "cease[s] violating" the order. *Id.* at 103-04. VTB must live with the consequences of brazenly defying the district court's orders.

In addition, the amount of the monetary sanction—$500,000—was "relatively minor," *id.* at 103, in light of the amount in dispute ($439 million) and the fact that VTB holds nearly 20% of all banking assets in Russia, *see* Treasury Press Release, *supra* at 3. It also pales in comparison to the $439 million sanction VTB requested the Russian court impose in the event JPMorgan violated the Russian ASI. *Id.*

Second, the district court required VTB to pay JPMorgan "directly an additional fine equal to any payment [JPMorgan] or its affiliates makes directly or indirectly . . . as a consequence of the Russian action." A395. In other words, VTB must compensate JPMorgan for whatever amount the Russian court orders JPMorgan to pay VTB as part of the improperly brought Russian Action. This directive sought "to compensate" JPMorgan for any benefit VTB "gained in violation of the Preliminary Injunction." *Id.* Because it corresponded "to some degree"—indeed, entirely—with JPMorgan's loss, it was an appropriate civil sanction. *Paramedics*, 369 F.3d at 658 (citation omitted).

In sum, the combination of the district court's "stated rationale," VTB's "repeated disregard [of a] federal injunction," and the "heightened importance of ensuring [VTB's] compliance" support a finding that the district court imposed a proper civil sanction. *CBS Broad.*, 814 F.3d at 103.

3. VTB responds that the district court's contempt order was a criminal sanction because it was supposedly "backward-looking and punitive." VTB Br. 42.

More specifically, VTB argues that when the district court "announced its intention to impose" sanctions on July 2, "the controversy before it had become moot" because after the Russian court issued its competing temporary ASI on April 25, "there [was] no longer a live controversy" in the New York Action. *Id.* at 44. That is incorrect. The Russian ASI did not moot JPMorgan's injury. To the contrary, JPMorgan had a "personal stake in the outcome of the lawsuit" at all times, despite its ultimate decision to seek dismissal in compliance with the Russian ASI. *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160-61 (2016) (citation omitted). Indeed, recognizing that the court could still grant "effectual relief," *id.* at 161, VTB moved the district court to dissolve the injunction and asked the Russian court multiple times to extend the ASI to require JPMorgan to request its discontinuation, *see, e.g.*, A230-35, 405-08. The case was thus alive and well when the district court issued its July 29 and August 6 sanctions orders.[3]

To the extent VTB contends that the sanctions order should be dismissed now, because the preliminary injunction is no longer in effect, that argument is meritless too. As the district court explained when imposing sanctions, VTB was in open

[3] In any event, even if VTB were correct that the case had become moot as of April 25, the preliminary injunction remained in effect until August 15—and the district court explicitly informed VTB that the injunction remained in force at all times before then. A11; *see also* A7, 9-10, 206, 394. So VTB was still required to "obey" the preliminary injunction "until it [wa]s modified or reversed" by court order. *Paramedics*, 369 F.3d at 656.

violation of multiple court orders and could have avoided the sanction simply by complying with them. *See supra* at 5-6, 15-17. That the injunction is no longer in effect does not change these facts. *See CBS Broad.*, 814 F.3d at 103; *Matrix Essentials, Inc. v. Quality King Distribs., Inc.*, 324 F. App'x 22, 25 (2d Cir. 2009). Furthermore, the New York action was dismissed only because VTB's improper resort to Russian court—in direct violation of the district court's orders—forced JPMorgan's hand in seeking dismissal. VTB should not be rewarded for its own misconduct. *Cf. In re Snyder*, 939 F.3d 92, 101 (2d Cir. 2019) (considering whether "sanction would 'encourage behavior similar to defendant['s]'" and reward "'litigants who abuse the processes and dignity of the court'" (alteration in original accepted) (citation omitted)).

III. REVERSING THE DISTRICT COURT'S SANCTIONS ORDER WOULD INVITE SANCTIONED ENTITIES TO DEFY FEDERAL COURTS WITH IMPUNITY

VTB's arguments, if accepted by this Court, would have far-reaching and alarming implications. To evade economic sanctions, Russia has purported to give Russian courts exclusive jurisdiction over all disputes arising from sanctions, as well as the power to issue ASIs to enforce this jurisdiction. Since Russia's invasion of Ukraine, numerous Russian institutions have taken advantage of this power by suing non-Russian institutions in Russian court to recover funds frozen by foreign governments. The outcome of this appeal will signal whether federal courts will

tolerate this blatant evasion of U.S. sanctions, at the expense of American companies and organizations. This Court should declare a resounding "no."

A. Russia Has Taken Extraordinary Steps To Undermine Global Economic Sanctions

1. In 2020, after a wave of sanctions imposed on Russia following its annexation of Crimea in 2014, Russia amended Article 248 of its Arbitrazh Procedural Code ("APC") to: (1) confer exclusive jurisdiction on Russian courts over disputes arising from sanctions imposed on Russian entities or individuals (Article 248.1); and (2) empower sanctioned entities to petition a Russian court for an ASI if foreign litigation or arbitration has been initiated, or is likely to be initiated, against them (Article 248.2). Dist. Ct. Dkt. 10-7. The APC permits sanctioned entities to petition for ASIs *ex parte* and requires Russian courts to rule on these petitions within a day. *Id.* (Article 93). And it permits the interim freezing of a non-Russian entity's Russian assets to secure the underlying claim. *Id.* (Article 91).

When countries around the world imposed significant economic sanctions after Russia's 2022 invasion of Ukraine to "limit[] the central bank's ability to aid the war effort and mitigate sanctions impacts," Russian entities relied on Article 248 to initiate a flurry of commercial disputes against Western banks to obtain access to these frozen funds. U.S. Dep't of State, *The Impact of Sanctions and Export Controls on the Russian Federation* (Oct. 20, 2022), https://2021-2025.state.gov/the-impact-of-sanctions-and-export-controls-on-the-

russian-federation (United States alone froze about $300 billion worth of Russian Central Bank assets). And they did so with great success, obtaining numerous judgments against global financial institutions. *See, e.g.*, A75-76; Dist. Ct. Dkt. 10-1 to 10-6, 10-8 to 10-12.

Indeed, Russian courts have interpreted Article 248 broadly, such as by refusing to recognize sanctions as a defense to demands for the return of property, and treating objections to a Russian court's jurisdiction as sufficient to trigger an ASI. *See* A69-70, 76 (Western bank required to pay $24 million debt to Russian bank, despite U.S. sanctions prohibiting payment); Anastasia Stognei, *Moscow Court Freezes Goldman Holdings in Several Russian Companies*, Fin. Times (Aug. 7, 2023), https://www.ft.com/content/b4886463-c9cd-4568-8f34-411979cd3dca (Russian court issued ASI when Western bank objected to its jurisdiction based on forum selection clause requiring U.K. arbitration, reasoning that such objection demonstrated lack of respect for Russian court's exclusive jurisdiction).

2. Courts around the world have started to fight back by enforcing their countries' laws. They have issued ASIs of their own that prohibit sanctioned entities from pursuing Russian court proceedings brought contrary to forum selection clauses—with mixed success. In two cases, Russian entities have complied with ASIs issued by U.K. courts. *See* A393-94; Dist. Ct. Dkt. 10-13 to 10-16. But in many more, like this one, sanctioned entities have ignored these ASIs and obtained

competing ASIs that forced the other party to dismiss their proceedings in non-Russian forums. *See, e.g.*, David Bridge, *From Russia with Love: Varying a Final Anti-Suit Injunction*, CMS Law-Now (Mar. 3, 2025), https://cms-lawnow.com/en/ealerts/2025/03/from-russia-with-love-varying-a-final-anti-suit-injunction.

VTB is subject to U.S., U.K, and E.U. sanctions and has taken frequent advantage of Article 248 to avoid their consequences. A161-62. For example, in 2023, VTB sued VTB Bank Europe SE ("VTB Europe") in Russian court to recover certain debts that VTB Europe had defaulted on as a result of German sanctions. Maxim Kulkov & Anastasia Khalyavina, *Russian Court Confirms Availability of Anti-Suit Injunction as Interim Measure*, Prac. L. Arb. (Nov. 16, 2023), https://uk.practicallaw.thomsonreuters.com/w-041-4176. Consistent with the relevant forum selection clause, VTB Europe sought an ASI in Hong Kong court. But VTB, as here, obtained a competing ASI requiring the discontinuation of proceedings in Hong Kong. *Id.*; *see also* Dist. Ct. Dkt. 10-8 (Russian court's decision). Similarly, in 2023, Otkritie, a VTB-owned bank, obtained an order in Russian court requiring a Western bank to pay $6.4 million in debt obligations, which sanctions prohibited the bank from transferring. Stognei, *supra* at 23; *see* Dist. Ct. Dkt. 10-4 (Russian court's decision).

VTB, its affiliates, and other sanctioned entities have shown no signs of slowing down their efforts to blunt the force of global sanctions. The district court's

sanctions appropriately attempted to compel VTB to comply with U.S. law and compensate JPMorgan. VTB's defiance is no license to lift properly issued civil contempt sanctions.

B. Reversing the Sanctions Order Would Invite Rampant Disrespect Of U.S. Sanctions, Federal Court Orders, And Contractual Commitments

This appeal will communicate whether U.S. courts can protect U.S. companies against misconduct by sanctioned Russian entities. Permitting VTB to dodge the consequences for its misconduct would directly undermine the President's sanctions power, invite disrespect of U.S. courts, and vitiate important contract rights.

1. Letting VTB's misconduct go unaddressed would undermine the effectiveness of U.S. sanctions, at the expense of American businesses. The Executive Branch has declared "a national emergency to deal with th[e] threat" of the "harmful foreign activities of the Government of the Russian Federation," including its "efforts to undermine the conduct of free and fair democratic elections and democratic institutions in the United States and its allies and partners" and "to foster and use transnational corruption to influence foreign governments." EO14024, 86 Fed. Reg. at 20249. Pursuant to that order, OFAC "imposed full blocking sanctions" on VTB to "sever a critical artery of Russia's financial system" and to "send[] an unmistakable signal that the United States is following through on

its promise of delivering severe economic costs." Treasury Press Release, *supra* at 3.

The conduct at issue here demonstrated disrespect for U.S. sanctions—with a green light from Russian courts to impose the burden of U.S. sanctions on U.S. institutions. If a sanctioned entity can obtain an ASI in Russia, it can effectively stop any legal proceeding anywhere around the world, by requiring opposing parties to withdraw actions and prohibiting them from making any argument outside of a Russian court or face severe financial penalties. A327. And if such entity prevails in their suit to recover funds frozen pursuant to sanctions, Russian institutions can avoid bearing the brunt of those sanctions—which instead falls on U.S. entities. *See Zarmach Oil Servs., Inc. v. Dep't of Treasury*, 750 F. Supp. 2d 150, 157-58 (D.D.C. 2010).

U.S. commercial institutions are thus put in an impossible position. JPMorgan, for example, was faced with two bad options: (1) ignore the Russian court's orders, subjecting itself to a $500,000 penalty for failure to comply with the ASI, and a freeze of its Russian assets to enable VTB to recover its frozen assets; or (2) comply with the Russian court's order by withdrawing the New York Action and paying VTB $439 million, in direct violation of U.S. sanctions. *See* EO14024, 86 Fed. Reg. at 20249; OFAC, *Russian Harmful Foreign Actions Sanctions* (Jan. 10, 2025), https://ofac.treasury.gov/faqs/topic/6626. And it cannot otherwise use

VTB's frozen funds to offset the Russia court's $439 million judgment. *See* 31 C.F.R. § 587.405. "OFAC has not authorized JPMorgan or any similarly situated financial institutions to recoup their losses from blocked property, even where Russian judgments have already been entered against those other Western banks." A23. In short, JPMorgan—not VTB—suffers the harm of U.S. sanctions and has to pay $439 million out of pocket simply for complying with U.S. law.

Vacating the district court's sanctions order would tell the world that all this is perfectly acceptable. While failure to comply with ASIs issued by Russian courts—even if entered in contempt of ASIs issued by U.S. courts—subjects U.S. commercial entities to significant financial penalties, failure to comply with ASIs properly issued by U.S. courts would have no consequences. This Court should not let VTB's misconduct serve as a blueprint for avoiding U.S. sanctions.

2. Vacating the sanctions order would also invite further disrespect of U.S. courts. Courts are vested with inherent power to impose "submission to their lawful mandates." *Bagwell*, 512 U.S. at 831 (citation omitted). A court's "contempt authority is at its pinnacle" and "most essential" when "contumacious conduct threatens a court's immediate ability to conduct its proceedings." *Id.* at 832. In such cases, the Supreme Court has described "the judicial contempt power [a]s a 'power of self-defense.'" *Id.* (citation omitted).

Granting VTB's requested relief would instruct sanctioned entities that they can ignore U.S. court orders with impunity. As long as they can obtain an ASI in Russian court, they can force the dismissal of properly brought lawsuits in U.S. courts—and, according to VTB, use that ill-obtained dismissal to avoid any consequence from defying federal court orders. Stripping a district court of its power to impose and enforce sanctions in this way would render toothless contempt sanctions and incentivize rampant misconduct like VTB's.

3. In addition, condoning VTB's conduct would vitiate important contract rights. A forum selection clause "represents the parties' agreement as to the most proper forum." *Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 63 (2013) (citation omitted). They are "an 'indispensable element in international trade, commerce, and contracting,'" *Martinez v. Bloomberg LP*, 740 F.3d 211, 218-19 (2d Cir. 2014) (citation omitted), and are generally "integral to the obligations of the overall contract," *Magi XXI, Inc. v. Stato della Citta del Vaticano*, 714 F.3d 714, 722 (2d Cir. 2013) (citation omitted). Forum selection clauses may, for example, "affect[] how [parties] set monetary and other contractual terms" or even be "a critical factor in their agreement to do business together in the first place." *Atl. Marine*, 571 U.S. at 66. Accordingly, forum selection clauses are presumptively enforceable, *Martinez*, 740 F.3d at 218-19, and "given controlling weight in all but the most exceptional cases," *Atl. Marine*, 571 U.S. at 63.

Enforcing forum selection clauses implicates "strong federal public policy," such as respecting the "legitimate expectations" of contracting parties, "reducing uncertainties about where suit may be brought," and imposing "'orderliness and predictability.'" *Martinez*, 740 F.3d at 218-19 (citation omitted). It also "further[s] vital interests of the justice system, including judicial economy and efficiency, ensure[s] that parties will not be required to defend lawsuits in far-flung fora, and promote[s] uniformity of result." *Id.* at 219 (citation omitted). The need for this Court to protect these interests is particularly acute because of New York's status as "a national and international leader in commerce," and the large numbers of U.S. contracts that set New York as the chosen forum. *Deutsche Bank Nat'l Tr. Co. v. Barclays Bank PLC*, 140 N.E.3d 511, 513 (N.Y. 2019); *159 MP Corp. v. Redbridge Bedford, LLC*, 128 N.E.3d 128, 132 (N.Y. 2019) (recognizing "New York's status as the preeminent commercial center in the United States, if not the world").

JPMorgan bargained for access to America's courts and its established rule of law. JPMorgan lost much of the benefit of that bargain when VTB commenced its improper litigation in Russia—and now finds itself threatened with considerable financial harm. An order affirming the sanctions order below will partially compensate JPMorgan for its losses. And more importantly, it will send a strong message about how contumacious behavior like VTB's will be treated by the American courts.

CONCLUSION

This Court should affirm.

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Respectfully submitted,

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This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5) and Second Circuit Rule 29.1(a) because it contains 6,602 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

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