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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Anatolie Stati, et al.,) Civil Action
) No. 14-CV-1638
) Plaintiffs,)
) TELEPHONIC STATUS
vs.) CONFERENCE
)
Republic of Kazakhstan,) Washington, DC
) August 10, 2020
) Defendant.) Time: 10:00 a.m.

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE
HELD BEFORE
THE HONORABLE JUDGE AMY BERMAN JACKSON
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

For Plaintiffs: James E. Berger
 Charlene C. Sun
 KING & SPALDING LLP
 1185 Avenue of the Americas
 New York, NY 10036
 (212) 556-2202
 Email: Jberger@kslaw.com
 Email: Csun@kslaw.com

For Defendant: Matthew H. Kirtland
 Michael Bhargava
 NORTON ROSE FULBRIGHT US LLP
 799 9th Street, NW, Suite 1000
 Washington, DC 20001
 (202) 662-4659
 Email:
 Matthew.kirtland@nortonrosefulbright.com
 Email:
 Michael.bhargava@nortonrosefulbright.com

Court Reporter: Janice E. Dickman, RMR, CRR, CRC
 Official Court Reporter
 United States Courthouse, Room 6523
 333 Constitution Avenue, NW
 Washington, DC 20001
 202-354-3267

1 THE COURTROOM DEPUTY: Good morning, Your Honor.
2 Your Honor, this is civil case No. 14-1638, Anatolie Stati,
3 et al., versus the Republic of Kazakhstan.

4 Will speaking counsel for the plaintiff parties
5 please identify himself and colleague for the record.

6 MR. BERGER: Good morning, Your Honor. Good morning
7 Mr. Haley. This is James Burger of King & Spalding for the
8 petitioners Stati. And I'm joined on the line by Charlene Sun,
9 also of King & Spalding for the petitioners.

10 THE COURT: All right. Good morning.

11 THE COURTROOM DEPUTY: Will counsel for the Republic
12 of Kazakhstan please identify himself and colleague for the
13 record.

14 MR. KIRTLAND: Good morning, Your Honor. Good
15 morning, Mr. Haley. This is Matthew Kirtland for respondent
16 Republic of Kazakhstan. With me on the line today is my
17 colleague Michael Bhargava. Thank you.

18 THE COURT: All right. Good morning. Pending before
19 the Court is another appeal filed by the respondent Republic of
20 Kazakhstan of an order issued by the magistrate judge in the
21 long-running post-judgment discovery dispute in this case. I
22 decided to issue my opinion orally instead of in writing
23 because I have a lot to say.

24 I will summarize this in a minute order with the
25 dates and the particulars, but this will be my ruling. And I'm

1 proceeding in this manner because I didn't think that I could
2 convey the emphasis that I wanted to convey on paper. And I
3 have serious concerns about the way this case has been
4 conducted to date.

5 I understand a great deal of money is at stake and
6 it's of great importance to the parties. And I don't know, at
7 the end of the day, if the problem lies with the parties or it
8 lies with the lawyers. But this case has been marred from the
9 beginning by unnecessary contentiousness and, really, that's
10 putting it mildly.

11 At every turn I've had to deal with the unnecessary
12 length and number of pleadings, the repetition of arguments,
13 even after they've been fully briefed and rejected; pleadings
14 full of posturing and personal attacks, the utterly
15 unsubstantiated and legally insupportable RICO action based on
16 the Stati parties' filing of the petition to enforce the
17 arbitral award in the first place.

18 Don't get me wrong, the Republic of Kazakhstan had
19 every right to litigate the petition to confirm the arbitral
20 award, and they had every right to appeal my decision. But
21 those proceedings are over. These are post-judgment
22 proceedings. And the Republic of Kazakhstan and its counsel
23 needs to get that into their heads because the level of
24 intransigence that we've seen to date is not acceptable and it
25 officially ends today.

1 And the Stati lawyers should not be smiling right now
2 because when I'm talking about the manner in which this case is
3 being litigated, I'm talking to you, too. I can tell you that
4 what I'm about to say I've never had to say in any case. But
5 first I want to go over the history of these proceedings and
6 how we got here.

7 The Stati parties' petition to confirm an
8 international arbitral award obtained in Sweden was filed in
9 this court in September of 2014. After many pleadings,
10 oppositions, replies, and always surreplies, after motions to
11 strike the pleadings, rulings on the pleadings, motions to
12 reconsider the rulings on the pleadings, the Court confirmed
13 the award on March 23rd, 2018. That order is at Docket 69, my
14 memorandum opinion Docket 70.

15 On May 1st, 2018 the petitioner served post-judgment
16 discovery on Kazakhstan in an effort to enforce the award,
17 including a request for the production of documents, which is
18 at Docket 117-3. After that, nothing happened.

19 Petitioner filed a motion to compel, Docket 81, and
20 Kazakhstan filed a motion to strike the motion, which was
21 Docket 81, and a motion for protective order against the
22 request for production and seeking to quash deposition notices,
23 that was Docket 86, along with the motion to stay execution of
24 the judgment altogether; oh, but without having to post a bond,
25 like everyone else. That was Docket 83.

1 Respondent did not confer with petitioners about
2 narrowing the requests before filing its motion, and produced
3 no documents to petitioners at that time. Meanwhile, the Stati
4 parties moved to execute on the judgment, Docket 73. Docket
5 73.

6 So on November 13, 2018 -- 2018 -- I ordered the
7 parties to meet and confer in an effort to resolve the
8 discovery disputes and said what you can't resolve among
9 yourselves is going to be referred to the magistrate judge for
10 resolution. I was not aware at that time that the words "meet
11 and confer" -- despite their prominence in this court's local
12 rules, despite the fact that the attorneys on this case are all
13 members of the bar of this court -- hold no particular meaning
14 for this group at all.

15 On November 30th, 2018, Docket 95, Kazakhstan took
16 the position that it wouldn't participate in discovery, so on
17 December 4, 2018 I referred the motion to compel, Docket 81,
18 and the motion for protective order, Docket 86, to the
19 magistrate judge for decision.

20 On May 31st, 2019 she ordered that the 30(b)(6)
21 deposition take place. After that was over, on July 16, 2019,
22 Kazakhstan filed another motion for protective order, Docket
23 113, and they said, well, our deponent said we don't have any
24 assets in the United States, so that's the end of that. But
25 there's no rule of procedure that requires those statements to

1 good untested. And on August 12th, 2019, the magistrate
2 judge -- who was duly appointed by the judges of this court --
3 held a hearing and denied respondent's motion, ordering
4 Kazakhstan to produce documents to petitioner by November 8th,
5 2019. And then she said, specifically, the next step would be
6 that respondent produce the documents responsive to the
7 petitioners' request for reproduction of documents. The Court
8 orders that the parties undertake an effort to meet and confer
9 in a renewed effort to agree upon limits of either the number
10 of requests or the definitions.

11 That order was put in writing in a minute order the
12 following day, August 13, 2018. The magistrate judge said: It
13 is further ordered that counsel shall, beginning as soon as
14 practical and concluding by August 30th, 2019, meet and confer
15 in an effort to limit the number of, and the definitions
16 accompanying, the petitioners' requests for the production of
17 documents. It is further ordered that counsel shall jointly
18 file a status report by no later than September 9, 2019. It is
19 further ordered that respondent shall produce the documents
20 responsive to the remaining requests by no later than November
21 8, 2019. And she set a status hearing for November 13, 2019.

22 The meet and confer was supposed to begin at once and
23 conclude by August 30th. It wasn't a request. It wasn't
24 optional. It was an order. And the results of the meet and
25 confer were supposed to be reported on September 9.

1 Shortly thereafter, on August 23rd, 2019, petitioners
2 sent a significantly slimmed-down version of its request for
3 production to respondent. It reduced 182 requests down to 40.
4 Now, that was a good first step. But this is where you have to
5 question the judgment and the lawyering that's going on on both
6 sides. Was there a legitimate justification for 182 requests
7 for production in the first place? Were you billing your
8 clients by the request?

9 It's all very troubling. But, petitioners managed to
10 jettison 142 of the requests, and it provided \$100,000 --
11 \$100,000 threshold on the value of the assets involved, it
12 shortened the time period involved, it reduced the number of
13 foreign countries involved and the number of entities that
14 could be defined as instrumentalities of the respondent whose
15 documents were being requested.

16 That's all set out in the status report from
17 September 9 at Docket 118. And that's all good. It probably
18 could have been accomplished a long time before that, but at
19 least one side was taking steps consistent with the magistrate
20 judge's direction.

21 Meanwhile, on August 27, Kazakhstan filed objections
22 to the magistrate judge's order denying the motion for
23 protective order and they appealed her order to this Court.
24 That was Docket 117.

25 And on the last day of the meet and confer period,

1 Kazakhstan's lawyers told Stati's lawyers: Wait. What order?
2 We don't have to comply with an order. We don't have to
3 participate in discovery at all until the appeal gets resolved.
4 And that's reflected in Exhibit B to Docket 118, found at
5 Docket 118-2.

6 They thought better of that because at the last
7 minute, on September 9th, the day the status report was due,
8 Kazakhstan offered to undertake a reasonable search to produce
9 documents responsive to eight of the document requests -- those
10 limited to assets within the United States -- but only if Stati
11 would agree to stay the rest of the discovery pending the
12 appeal of the magistrate judge's order. That's Docket 118-2 at
13 page 5. And they said if you don't do that, we're going to
14 move to stay.

15 Petitioners declined because respondent had never
16 conferred to narrow the request for production and respondent
17 never produced any documents. But, Kazakhstan never went on to
18 ask the Court for a stay.

19 On November 7th, 2019 the magistrate judge postponed
20 the previously scheduled hearing on the status of discovery
21 until after I ruled on the appeal. And we know from exhibits
22 attached to a later status report, Docket 136, that on November
23 8th, 2019 Kazakhstan stuck by its position that it didn't have
24 to do anything until after I ruled on the proper scope of
25 discovery. Stati responded, Well, but the magistrate judge

1 didn't stay anything. And so, meanwhile, with the court order
2 outstanding, neither the Republic of Kazakhstan nor its
3 attorneys seemed to care.

4 On December 2nd, 2019, while the appeal was still
5 pending, the Stati parties filed a motion for sanctions and to
6 hold Kazakhstan in contempt, noting, Well, gee, there's been no
7 stay pending appeal, no meet and confer, no documents produced,
8 even related to assets in the United States. That's Docket
9 129, it's pending. The magistrate judge stayed consideration
10 of it.

11 On May 18th, 2020, Docket 133, this Court decided the
12 appeal. I upheld the August 13 denial of the motion for
13 protective order. Kazakhstan doesn't seem to realize that. I
14 upheld the denial of the motion for protective order. On page
15 7 of my order I ruled the petitioners' efforts to identify
16 where Kazakhstan may be holding property subject to execution
17 was appropriate. I noted, among other things, that the
18 magistrate judge sought to establish a reasonable step-by-step
19 discovery process, but it was nowhere near complete.

20 So what happened then? Kazakhstan didn't like the
21 magistrate judge's order, but now it had one from me. Did some
22 documents change hands? I thought I'd resolved things, but I
23 guess not. This time the foolishness started with the Stati
24 parties.

25 On May 22nd, Docket 136-2, they sent a communication

1 that said, Given the Republic of Kazakhstan's failure to accept
2 the narrowed requests for production, it's now obligated to
3 respond to the first set, the 182. I've never heard of such a
4 thing. You narrowed your request; the new set is now the
5 requests.

6 On May 29th the Stati parties wrote to Kazakhstan's
7 lawyers again, saying, Are you going to respond? Are you going
8 to say anything? Finally, on June 2nd, two weeks after the
9 Stati parties' letter, Kazakhstan responds. It says, Well, we
10 were not able to agree on a set of narrow discovery requests
11 because we were pursuing an appeal. Not able? Please. What
12 does that even mean? Why does the pendency of the appeal
13 impede your ability to have a conversation?

14 Kazakhstan also said, And we disagree with your
15 characterization of the state of the record and the magistrate
16 judge's order. She didn't order us to produce any documents.

17 Now, this took me by surprise because she said, It is
18 further ordered that. And if there was no order calling for
19 you to do something, then what were you appealing?

20 But in any event, Kazakhstan said we need to meet and
21 confer because that's what the magistrate judge ordered us to
22 do way back when. So on June 4th the Stati parties reply,
23 Docket 136-4, and they say, We disagree with your
24 characterization of the magistrate judge's order, but sure, go
25 ahead and submit a counterproposal to our already substantially

1 narrowed request for production. Oh, and here's some
2 interrogatories.

3 On June 5th, in a minute order, the magistrate judge
4 ordered the parties to file a status report in which
5 respondent's compliance with the discovery request would be
6 addressed, and to do so by June 19th.

7 On June 8th Kazakhstan said, Docket 136-5, to the
8 Stati parties, No, we disagree with your characterization of
9 the magistrate judge's ruling. I kid you not. This is what
10 people were spending their time doing. And it's unbelievable
11 to me that your client is going to pay for this. And
12 Kazakhstan said, Your requests were not, quote, substantially
13 narrowed, close quote, and we've already provided a
14 counterproposal on September 9th, 2019.

15 I mean, really, am I the only one keeping score here?
16 What was transmitted on September 9, 2019 was, We will give you
17 documents responsive to eight requests related to assets in the
18 United States, if you agree to stay discovery pending our
19 appeal. They didn't agree. The appeal is over. There's been
20 no counterproposal to the 40 requests, and Kazakhstan's lawyers
21 know it. And if they really had no problem with the eight
22 requests for production, where are the documents?

23 Kazakhstan also said, on June 8th, Well, gee, there's
24 all this new stuff happening. You gave us interrogatories, the
25 magistrate judge wants a status report and we need to think

1 about all that, so they wasn't actually our response. We'll
2 give you a real response on June 11th. On June 11th, Docket
3 136-6, Kazakhstan says, The Court has now made clear that the
4 scope of permissible discovery in this case is limited, and is
5 limited to information that's relevant to the property of the
6 Republic of Kazakhstan in the United States. And they quoted
7 several sentences of my order, adding their own emphasis,
8 because apparently the lawyers from Kazakhstan love italics.
9 And each thing they emphasized, as Kazakhstan did in its
10 appeal, is that assets abroad are not attachable.

11 But that's not the issue. That doesn't mean, and the
12 opinion did not say, that the Stati parties did not ask
13 questions about foreign bank accounts or take any discovery
14 about assets or operations abroad. Records of funds coming and
15 going to a foreign bank account could very well yield the
16 existence of an account or assets in the United States, which
17 is what I said they could explore. This is discovery.
18 Kazakhstan did not point to and could not point to a sentence
19 where I said the scope would be as limited as it was trying to
20 claim.

21 So on June 19th, Docket 136-7, the Stati parties
22 reply, You're relitigating the appeal you just lost, and by the
23 way, where is that counterproposal? And with that, the status
24 report was due and they filed it on Docket 136. It took the
25 parties 13 pages, with 43 pages of exhibits, to describe the

1 exactly nothing that had transpired for the previous month.

2 The review of the exhibits attached to the report was
3 even more frustrating to me than the review of the docket, and
4 I'm betting that it did very little to impress Magistrate Judge
5 Robinson. What we do know is that upon review of the parties'
6 status report and all of these attachments, the magistrate
7 judge came to the entirely unremarkable and appropriate
8 conclusion that the Republic of Kazakhstan -- which had yet to
9 produce a single piece of paper and had yet to meet and
10 confer -- had not complied with her order of August 12th, 2019.

11 Therefore, she said in an order, a year later, June
12 24th, 2020, you need to comply, and you need to comply by July
13 8th. I'm not going to read the entire minute order here, but
14 that order on the docket from June 24th is what Kazakhstan has
15 now appealed in Docket 136 and that's why we're here.
16 Petitioners oppose the appeal at Docket 140, and respondent's
17 replied at Docket 142.

18 So let me start with my conclusion. Exercising the
19 broad discretion that I have in overseeing discovery under the
20 Federal Rule of Civil Procedure 26, and post-judgment discovery
21 in particular under Rule 69 and the authorities I already set
22 out in my rushed order dated May 18, including *Republic of*
23 *Argentina versus NML Capital, Ltd.*, 573 U.S. 134, at 138, from
24 2014, the magistrate judge's order will be affirmed, with
25 certain additions and revisions which I'm going to detail

1 later.

2 I find that the magistrate judge was appropriately
3 fed up when she ordered Kazakhstan -- which had yet to produce
4 a single piece of paper -- to start complying with its legal
5 obligations. I find that she appropriately did not bother to
6 order Kazakhstan -- which had yet to meet and confer
7 meaningfully about anything -- to meet and confer first. The
8 arbitral award was upheld. The magistrate judge said, Produce
9 documents. It was an order. Kazakhstan appealed her order.
10 I, too, said the order to produce documents is affirmed. That
11 was an order. But the gamesmanship did not stop. The
12 intransigence did not stop.

13 The parties have showed nothing but utter disrespect
14 to a magistrate judge of this court who seems to have the
15 patience of Job. But you did that at your peril because I
16 guess I don't, at least not when I'm supposed to read a bunch
17 of self-serving, completely unproductive correspondence between
18 two civil litigators who are being anything but civil. And
19 maybe it's because I know that the magistrate judges in this
20 courthouse are quite busy. They're dealing with matters of
21 individual liberty every day. And during this public health
22 crisis, they're dealing with matters of life and death, during
23 this time of COVID in the D.C. jail and the Bureau of Prisons,
24 the gun violence on the streets, the threats against the
25 judiciary, of immigrant children in detention camps. Everyone

1 in this building is dealing with issues of life and death. The
2 magistrate judge should not have to waste her time pulling
3 adults apart on the playground.

4 The level of effort on the part of the attorneys, the
5 time, the paper, and the judicial resources that have all been
6 devoted to the discovery dispute I referred for resolution have
7 long since passed the point where they can be considered to be
8 reasonably justified by the nature and scope of the dispute
9 itself.

10 So, I hope you all have found it satisfying because,
11 as I said at the outset, it's over. I have affirmed her again.
12 You've been ordered to comply with the discovery request and I
13 want it done and I want it done now. And it will happen or
14 both respondent and its counsel will be subject to contempt,
15 not just of her orders, but of mine.

16 Also, any of you who are participating in this
17 litigation in this court, if -- who are not licensed to
18 practice, are here through the discretion and grace of a ruling
19 permitting your appearance pro hoc, you should be advised that
20 such an order can be revoked.

21 Respondent also asked the Court to deny the motion
22 for sanctions that petitioners filed in December 2019 following
23 their failure to produce any documents. That's Docket 129.
24 Because that motion deals with defiance of the magistrate
25 judge's orders and the magistrate judge has not yet decided

1 that motion, an appeal of that to me is premature and I'm not
2 going to address it.

3 Now I want to go over my reasons for my ruling in a
4 little more detail. First of all, Kazakhstan claims that the
5 magistrate judge improperly rubber-stamped the request for
6 production, claims that it's confused about which request it
7 was supposed to respond to, and it raised some objections about
8 the scope of the request for production. And that's all in
9 their objections at page 2, and then 17 through 33.

10 Kazakhstan asks the Court to vacate the June 24th
11 order, direct the parties to meet and confer about petitioners'
12 revised document requests, and to submit any unresolved
13 disputes to the magistrate judge for resolution.

14 One problem with this is that Kazakhstan did not seek
15 a stay of the August 13 order to produce documents by November
16 8th pending its appeal of that order. It granted itself a stay
17 and simply declined to comply while the appeal was pending. It
18 did not confer with petitioners about the request, nor did it
19 produce any documents, even the ones it conceded were relevant,
20 almost a year ago, related to the assets in the United States.
21 And it hasn't met and conferred or produced any records in the
22 two months after the Court upheld the appeal either.

23 So Kazakhstan's demand now that the Court has to give
24 them a chance to meet and confer and clarify things rings
25 hollow. It had nearly a year to confer with petitioners about

1 the 40 requests remaining and the proposal.

2 So I will uphold the magistrate judge's June 24th
3 finding that respondent has failed to comply with the August
4 13, 2019 order. Respondent has failed to confer with
5 petitioners in any meaningful way and it refused to produce
6 responsive documents by November 8, 2019 or by July 8, 2020, as
7 ordered.

8 Respondent's description of the law that applies to
9 this situation is also inaccurate. In its reply, Docket 142,
10 it said the Federal Rules of Civil Procedure make it clear that
11 discovery in aid of execution is not unlimited. As this Court
12 has explained, the only lawful purpose of discovery is to
13 locate and identify property that's subject to attachment and
14 execution in support of the judgment at issue.

15 The only proper discovery in this case is that which
16 is relevant to locating property that meets those requirements
17 and is proportional to the needs of the case. It completely
18 ignores that portion of my order that flat out rejected
19 respondent's continued insistence that there are special limits
20 to discovery in aid of execution of a judgment.

21 On page 6 of my opinion I quoted the Supreme Court,
22 which trumps all of us, that said, Rules governing discovery in
23 furtherance of post-judgment execution are, quote, quite
24 permissive, close quote.

25 Therefore, when respondent says to me: With that

1 basic and undisputed principle as the starting point, one might
2 have expected the Statis to explain how the discovery that has
3 now been ordered meets their standards, especially given that
4 in its objections Kazakhstan noted that the absence of a
5 proffer will advance an inquiry.

6 Well, when you tell me that Stati has failed to
7 grapple with basic and undisputed points, you have it exactly
8 upside down. It is Kazakhstan that has failed to grapple with
9 the basic and undisputed starting points here, which is that
10 Rule 26 is broad and Rule 69 is broad. And citing its own
11 objections isn't authority for anything.

12 There's no point in continuing to conflate what is
13 attachable with what is discoverable because that's not what
14 the law says and that's not what I have ruled.

15 Kazakhstan's claimed confusion about what the
16 document requests are that are at issue is equally problematic.
17 If it was unsure about what requests were the subject of the
18 magistrate judge's order, it could have asked the magistrate
19 judge for clarification. And I notice that this, too, is an
20 example where respondent's aggrieved tone is completely
21 unjustified by the situation.

22 Kazakhstan says, in essence, how dare she order us to
23 respond to the narrowed request for production. When she
24 ordered us to produce documents way back in August 2019, she
25 didn't even know what that list would include. Well, it's true

1 that the narrowed list did not exist and the magistrate judge
2 didn't know what the specific requests were on August 12th,
3 2019 -- 2019 -- when she issued her first order. That was the
4 day she ordered the parties to narrow the list. But they've
5 been on the docket since September 9th, 2019. And it's the
6 order from after that, a year later, July 2020, not the one
7 from August 12th, that's being appealed right now.

8 So Kazakhstan's contention that it was somehow
9 outrageous for the magistrate judge to take them into account
10 in her order of July 2020, the suggestion that she couldn't
11 have possibly understood what she was ordering them to do, is
12 not the least bit persuasive. And if Kazakhstan had any
13 constructive proposals for coming up with a list of requests to
14 which it would respond, it had a year to transmit them.

15 But in the event there's any possible lack of clarity
16 about what to do and when to do it or which requests needed to
17 be responded to and which don't, I'm going to take care of all
18 of that for you right now. In doing so I'm considering, in my
19 discretion, the legal limits on what can be attached in
20 enforcing an arbitral award and all the principles set out in
21 Rule 26(b)(1) that parties may obtain discovery regarding any
22 non-privileged matter that's relevant to a party's claim or
23 defense and proportional to the needs of the case, considering
24 the importance of the issues at stake in the action, the amount
25 in controversy, the parties' relative access to the relevant

1 information, the parties' resources, the importance of
2 discovery in resolving the issues, and whether the burden or
3 expense of the proposed discovery outweighs its likely benefit.
4 I'm also considering the fact that the rule tells me
5 information within the scope of discovery need not be
6 admissible in evidence to be discoverable, which bears on the
7 point about whether the documents -- the assets have to be
8 attachable to ask questions about them.

9 Because document discovery has not even moved off the
10 starting blocks, and with all of the principles of Rule 26 and
11 all of the law that both sides have provided me in mind, it is
12 hereby ordered that:

13 Respondent must search for documents responsive to
14 the eight requests identified in its own email of September 9,
15 2019, Docket 118-2, page 3. That is, requests 1, 5, 7, 10, 12,
16 14, and 17, as revised to omit the Kazakhstan
17 instrumentalities, for the moment. And it must produce all
18 responsive, non-privileged documents to petitioners by August
19 31st, 2020.

20 A joint status report concerning compliance with this
21 portion of my order must be submitted to the magistrate judge
22 on September 1st, 2020.

23 With respect to the remainder of the 40 requests for
24 production that were still standing after the petitioners'
25 narrowing of their request, see Docket 119-3, it is further

1 ordered that petitioners must search for and produce:

2 First, all non-privileged documents that are
3 responsive to the following requests, with the definitions,
4 threshold amounts, time periods, geographical scope, and any
5 other matters as narrowed by the petitioners in August 2019:
6 Requests 2, 3, 4, 6, 11, 13, 20, and 31.

7 They must produce non-privileged records responsive
8 to request 15, but only those reflecting the identification of
9 any accounts from which payments to the U.S. law firms and
10 consultants were made, and the dates and the amounts.

11 They must produce non-privileged documents that are
12 responsive to requests 22 and 29, but only to the extent that
13 they relate to transfers to third parties from the U.S. or
14 accounts based in the U.S.

15 Non-privileged documents response to requests 25 and
16 26 to the extent any such debts are secured by collateral or
17 security within the U.S. or are to be paid in the U.S. or from
18 a U.S. account.

19 Non-privileged document responsive to requests 27 and
20 28 to the extent any such debts are secured by and collateral
21 or security within the U.S. and are to be paid in the U.S. or
22 to a U.S. account.

23 Non-privileged documents responsive to request 30,
24 limited to documents reflecting payments to those firms'
25 international affiliates for work performed in the U.S., or

1 payments to those firms' international affiliates from accounts
2 in the U.S.

3 Non-privileged documents responsive to request 36,
4 limited to the transfer or disposal of assets within the U.S.,
5 and;

6 Any documents responsive to requests 1, 5, 7, 10, 12,
7 14, and 17 insofar as they relate to the narrowed definition of
8 the Republic of Kazakhstan instrumentalities.

9 And, it must produce all those categories of
10 documents by September 21st, 2020.

11 A joint status report concerning compliance with this
12 portion of my order must be submitted to the magistrate judge
13 on September 22nd, 2020.

14 The following requests are overbroad as written and
15 they must, therefore, be the subject of an actual, good faith
16 effort by the parties to meet and confer to limit them as I'm
17 about to describe.

18 Requests 8 and 9, like some others, are overbroad and
19 unduly burdensome and disproportionate to the issues at stake
20 insofar as they seek, quote, all documents related to, close
21 quote commercial transactions in the United States. Respondent
22 may seek the production of records that reflect the existence
23 of the transactions, the identity of the counterparty, the
24 amount of money involved, the method of payment, and any
25 account in the United States from which any payment was

1 supposed to be made. But otherwise "all documents" is
2 overbroad.

3 Requests number 16 and 17 are overbroad insofar as
4 they call for the identification of any assets in the relevant
5 country. Petitioners must narrow the requests to focus them
6 more specifically on records that could shed light on the
7 existence of assets within the United States or transfers of
8 assets to the relevant countries from the United States during
9 the relevant time period.

10 Requests 23 and 24 must be narrowed to call for the
11 production of records related to those commercial transactions
12 that involve the payment of money to or from the United States,
13 a counterparty in the United States, or contract performance in
14 the United States. And as I noted before, the term "all
15 documents" related to even those transactions is overbroad as
16 it goes beyond what might be necessary to shed light to the
17 issues at hand.

18 Request 35 is somewhat vague and overbroad and could
19 be limited to address records related to the location,
20 availability of assets for satisfaction of the arbitral award
21 or in some other way to focus directly on what's actually being
22 sought.

23 Requests 37, 38, 39, and 40 will similarly be the
24 subject of further communication among counsel. I'm not
25 entirely certain of the relevance of all flights taken, and the

1 request could be more narrowly tailored.

2 The parties must also meet and confer in an effort to
3 narrow the scope of the interrogatories to conform with what
4 I've just explained is the permissible scope of the request for
5 production. This will start with petitioners' transmittal to
6 respondent of a narrowed set of interrogatories by August 13th.

7 With respect to all the matters about which I've just
8 directed the parties to meet and confer, they must do so by
9 August 19, 2020. And they must do so in person, by phone, or
10 by video conference. Mailing letters back and forth doesn't
11 help. Email doesn't count. This has to be in person, or at
12 least by Skype or video, or Zoom, where you can see each other
13 and come up with an agreed scope and schedule for compliance in
14 a single conversation. If the parties do that, and if they're
15 in agreement that they've come to an impasse, they may then
16 seek the assistance of the magistrate judge.

17 However, you're ordered that if and when the parties
18 seek to resolve any dispute with the magistrate judge, you must
19 seek to resolve it by a telephone or video conference with the
20 magistrate judge assigned to the matter before you may file a
21 single piece of paper -- no motions to compel, no motions for
22 protective order, no motions for clarification, or motions for
23 sanctions -- unless and until you have the express, advance
24 permission from the magistrate judge to brief the issues in
25 writing, or the magistrate judge establishes some other

1 procedure for discovery disputes.

2 Motions may not exceed five pages in length and they
3 must be stripped of condescension, sarcasm, and personal
4 attacks. You won't need italics unless citing the name of a
5 case. And you can forget bold font in the body of the pleading
6 as well. And you may not attach your own emails or letters to
7 the pleadings unless requested by the magistrate judge making
8 the decision.

9 This rule does not apply to a joint motion for
10 protective order to protect the confidentiality of certain
11 records, although it would apply to a dispute over the terms of
12 such an order.

13 All these terms and conditions will still apply if
14 the matter is reassigned to any other magistrate judge of this
15 court. Although any magistrate judge assigned to the matter
16 may, in its discretion, devise its own set of procedures.

17 A joint status report concerning compliance with this
18 portion of my order, the meet and confer portion of my order,
19 must be submitted to the magistrate judge on August 20th, 2020.

20 With respect to any request I haven't listed yet or
21 any aspects of the requests that I carved out, it's hereby
22 ordered that the question of whether the Stati parties may
23 pursue any of that additional discovery sought in those
24 requests or the corresponding interrogatories will be deferred
25 until after Kazakhstan has complied with the request I've

1 ordered it to comply with and responded to the interrogatories
2 that the parties agree or the magistrate judge determines are
3 consistent with this ruling.

4 For instance, any dispute concerning requests 32, 33,
5 and 34 must await the receipt of the information responsive to
6 request 31. At that time, petitioners will be required to file
7 a motion with the magistrate judge asking to pursue the
8 additional discovery that specifies exactly what it wants to
9 request and why that information could lead to the
10 identification of attachable assets.

11 To reiterate, though, as these rulings reflect, post-
12 judgment discovery is not limited to questions about attachable
13 assets. Information about assets and transactions in other
14 countries could bear on the existence of assets in the
15 United States, but the Stati parties will have to explain how
16 with respect to any request it's still seeking to enforce.

17 Finally, if either party requires a reasonable
18 extension of any of the deadlines set in this order, they're
19 required to meet and confer pursuant to Local Civil Rule 7(m)
20 and file any motion for extension, supported by good cause,
21 with the magistrate judge for decision.

22 Furthermore, Docket 143, petitioners' motion to file
23 a surreply to the reply with its hundreds of pages of documents
24 attached is hereby denied as moot.

25 First of all, the reply was all about which foreign

1 assets were attachable, which, as I've said, is beside the
2 point. Second, the evidence about the decision of the English
3 High Court and the Swedish Court of Appeals decision wasn't new
4 evidence. The Stati parties had already given me those
5 decisions themselves. The exhibits attached to the reply were
6 simply Kazakhstan's legal take on them. None of it bears on
7 the Court's consideration of the narrow issue before it today,
8 which is simply the validity of the magistrate judge's
9 discovery order.

10 With that, my ruling is complete and this matter is
11 remanded to the magistrate judge for proceedings consistent
12 with this order.

13 I note that Kazakhstan repeatedly insists that this
14 is a foreign arbitral award and its assets are in foreign
15 countries. The way to avoid further proceedings in the
16 United States, then, would be to satisfy the arbitral award
17 with those assets and jointly inform the Court that that has
18 been accomplished. And you're welcome to do that at any time.

19 Thank you.

20 MR. BERGER: Thank you, Your Honor.

21 MR. KIRTLAND: Thank you, Your Honor.

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 10th day of August, 2020

Janice E. Dickman, CRR, CMR, CCR
Official Court Reporter
Room 6523
333 Constitution Avenue, N.W.
Washington, D.C. 20001