

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

NML CAPITAL, LTD., AURELIUS CAPITAL  
MASTER, LTD., ACP MASTER, LTD., BLUE  
ANGEL CAPITAL I LLC, AURELIUS  
OPPORTUNITIES FUND II, LLC, PABLO  
ALBERTO VARELA, LILA INES  
BURGUENO, MIRTA SUSANA DIEGUEZ,  
MARIA EVANGELINA CARBALLO,  
LEANDRO DANIEL POMILIO, SUSANA  
AZQUERRETA, CARMEN IRMA  
LAVORATO, CESAR RUBEN VAZQUEZ,  
NORMA HAYDEE GINES, MARTA  
AZUCENA VAZQUEZ, OLIFANT FUND,  
LTD.,

*Plaintiffs-Appellees,*

v.

THE REPUBLIC OF ARGENTINA,

*Defendant-Appellant.*

**Nos. 12-105-cv (L), 12-109-cv (CON),**  
12-111-cv (CON), 12-157-cv (CON),  
12-158-cv (CON), 12-163-cv (CON),  
12-164-cv (CON), 12-170-cv (CON),  
12-176-cv (CON), 12-185-cv (CON),  
12-189-cv (CON), 12-214-cv (CON),  
12-909-cv (CON), 12-914-cv (CON),  
12-916-cv (CON), 12-919-cv (CON),  
12-920-cv (CON), 12-923-cv (CON),  
12-924-cv (CON), 12-926-cv (CON),  
12-939-cv (CON), 12-943-cv (CON),  
12-951-cv (CON), 12-968-cv (CON),  
12-971-cv (CON)

**ORAL ARGUMENT REQUESTED**

**EMERGENCY MOTION OF THE EXCHANGE BONDHOLDER GROUP FOR LEAVE  
TO APPEAR AS INTERESTED NON-PARTIES**

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Pursuant to Rule 27 of the Federal Rules of Appellate Procedure (“*Fed. R. App. P.*”) and Local Rule 27.1, the interested non-parties listed in Appendix A (collectively, the “Exchange Bondholder Group” or “EBG”) submit this Emergency Motion for Leave to Appear as Interested Non-Parties for the purpose of appealing orders entered by the Southern District of New York, District Court Judge Thomas P. Griesa, on November 21, 2012, and for the purpose of seeking an emergency stay of an injunction (“the Injunction”) entered by the district court pending appeal.

### **BACKGROUND**

The relevant factual background is set forth in the Declaration of Sean F. O’Shea dated November 26, 2012 submitted in connection with the EBG’s Emergency Motion for Stay Pending Appeal (“Motion to Stay”) pursuant to *Fed. R. App. P.* 8(a)(2), filed concurrently herewith.

### **ARGUMENT**

The EBG, as interested non-parties, should be granted standing to appeal the district court’s orders and to seek an emergency stay pending appeal. This Court has long recognized the ability of a nonparty to appeal a district court’s judgment where the nonparty has “a plausible affected interest” in the judgment. *Official Comm. Of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F.3d 73, 77 (2d Cir. 2006) (holding nonparty had standing to appeal). *See also, e.g., Aurelius*

*Capital Partners, LP v. Republic of Argentina*, 584 F.3d 120, 127-28 (2d Cir. 2009) (holding nonparty had standing to appeal where court's orders sought to attach and execute upon funds administered by nonparty); *Karaha Bodas Co. L.L.C. v. Pertamina*, 313 F.3d 70, 82 (2d Cir. 2002) (holding nonparty had standing to appeal garnishment order where it alleged ownership of property encompassed by order); *Kaplan v. Rand*, 192 F.3d 60, 67 (2d Cir. 1999) (holding nonparty shareholder, who never moved to intervene in derivative action in district court, had standing to appeal award of attorneys' fees; nonparty "ha[d] an interest that is affected by the judgment directing payment of the fee"). *See also Devlin v. Scardelletti*, 536 U.S. 1, 14 (2002) (holding nonparty class member had standing to appeal without intervening below).

As set forth more fully in the Motion to Stay, the EBG has a compelling interest in the outcome of the instant appeal. Specifically, the Injunction at issue in this appeal violates the EBG's Due Process rights and constitutes an unlawful judicial taking of private property for purely private purposes under the Fifth Amendment to the United States Constitution. It impermissibly conditions the EBG's otherwise unconditional right to receive payments on billions of dollars bonds issued by the Republic of Argentina ("the Republic") on the Republic's payment of an ordinary contract judgment in favor of the Plaintiffs-Appellees. The Injunction was also entered without affording the Exchange Bondholders, who

were unjoined necessary parties before the district court, notice and an opportunity to heard, and should therefore be vacated pursuant to Fed. R. Civ. P. 60(b). Accordingly, the EBG respectfully requests that this Court grant it leave to appear and participate in this appeal as an Interested Non-Party.

Should the Court, for any reason, deny this motion for leave to intervene, the EBG, in the alternative, moves for leave to participate in this appeal and file its concurrently-submitted Motion to Stay as an *amicus curiae*.

### **CONCLUSION**

For the foregoing reasons, the EBG respectfully requests that this Court grant this Emergency Motion and give the EBG leave to appear as Interested Non-Parties for the purpose of appealing the district court's November 21, 2012 orders and for the purpose of seeking an emergency stay pending appeal by way of the concurrently-submitted Motion to Stay. In the alternative, the EBG respectfully requests that the Court grant the EBG the right to file the concurrently-submitted Emergency Motion for a Stay as a brief of *amicus curiae*.

Respectfully submitted,

November 26, 2012

By: /s/ Sean F. O'Shea  
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