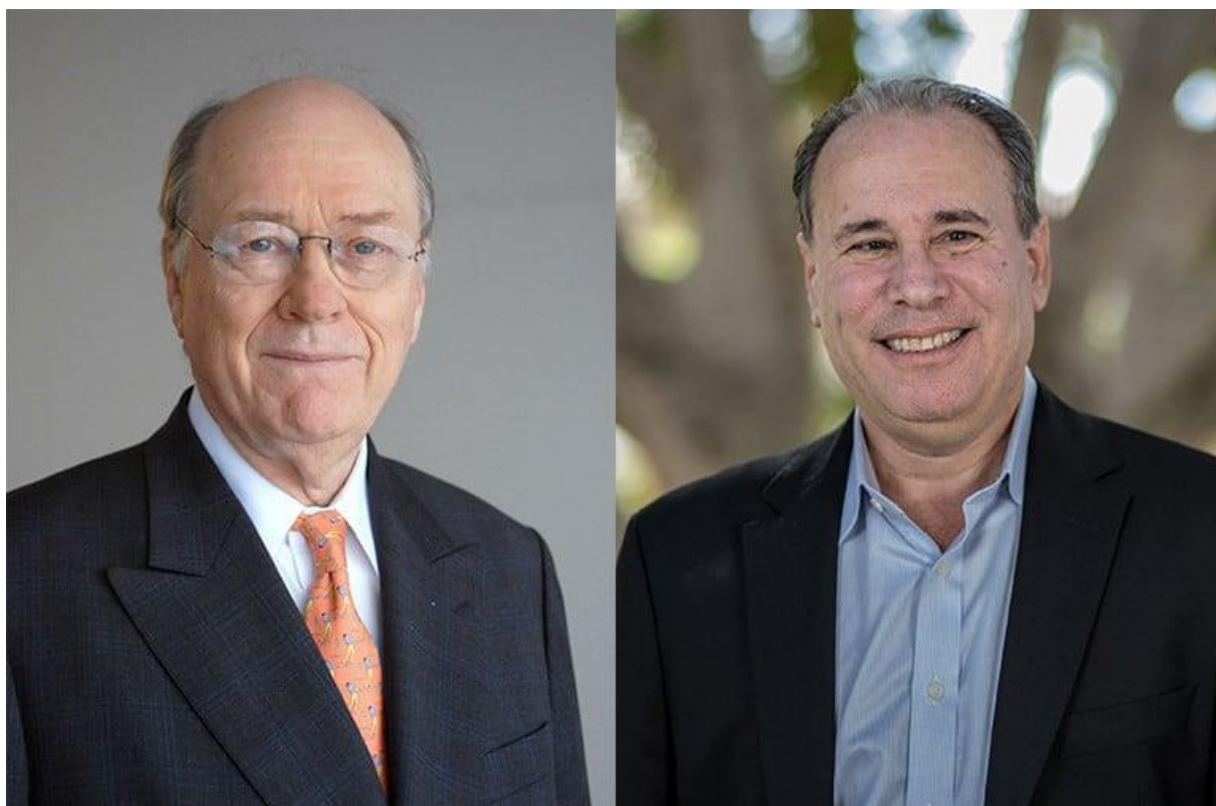


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## International Litigation at the Limits of Judicial Power: 'Tatneft and Nasri'

In their International Litigation column, Lawrence Newman and David Zaslowky examine two recent decisions—one concerning national security interests and the other addressing in rem jurisdiction—in which courts effectively thwarted efforts by winning parties to actualize their wins..

By Lawrence W. Newman & David Zaslowky | September 22, 2026



Whether the outcome of an international litigation is considered a "success" can turn on the distinction between legal rights and practical remedies.

Courts may recognize claims, confirm awards, and enter judgments, yet a litigant may still confront significant obstacles when seeking to recover assets or obtain meaningful relief. Two recent cases illustrate that problem from different perspectives.

In *PAO Tatneft v. Ukraine*, now before the U.S. Court of Appeals for the District of Columbia, a judgment creditor's effort to obtain post-judgment asset discovery has collided with asserted national-security concerns arising from the Russia-Ukraine war.

In *United States v. Nasri*, No. 22-55685 (9th Cir. Sept. 2, 2026), the Ninth Circuit held that federal courts may not exercise in rem jurisdiction over foreign property absent actual or constructive control over the res.

The cases arose in different procedural contexts, one involving arbitral award enforcement and the other civil forfeiture. Yet both address a common question: how far may a federal court go when the effectiveness of its orders ultimately depends upon information, assets or cooperation outside its immediate control?

### **National Security and Post-Judgment Discovery in Tatneft**

The Tatneft dispute has already produced a substantial body of litigation over several years. Following arbitration under the 1998 Russia-Ukraine Bilateral Investment Treaty, applying the UNCITRAL Rules, a Permanent Court of Arbitration tribunal awarded Tatneft approximately \$112 million arising from the loss of its investment in Ukratnafta, the operator of Ukraine's Kremenchug refinery.

Ukraine's efforts to overturn the award in the French courts were unsuccessful. Tatneft subsequently obtained confirmation of the award in the U.S. District Court for the District of Columbia, and the resulting judgment, together with prejudgment interest, now exceeds \$173 million. The case was paused with the parties' consent in the weeks after Russia's 2022 invasion of Ukraine.

That stay prevents Tatneft from conducting discovery to identify Ukrainian assets available for execution, which led Tatneft to request that the stay be lifted.. Ukraine contends that disclosure of information concerning state assets, transactions, commercial relationships, infrastructure, and related matters could jeopardize national security during its ongoing war with Russia.

The United States reinforced those concerns in a Statement of Interest filed by the Department of Justice in the District of Columbia district court, Action No. 1-17-cv 580-CKK, Document 136, filed May 13, 2026, arguing that ordinary protective orders may not adequately prevent sensitive information from ultimately reaching Russian authorities.

The U.S. stated that "Ukraine has raised credible concerns that Tatneft is seeking this post-judgment discovery... to compromise Ukraine's national security by revealing sensitive military and economic information; in addition, the close ties between Tatneft and the Russian government make it likely that the discovery materials will end up in the hands of Ukraine's adversary," concluding that "the court should maintain the stay for the duration of the Russian-Ukraine war," or in the alternative, if the court should determine to lift the stay, it should "first reconsider the appropriate scope of post-judgment discovery."

The government's concerns cannot be dismissed lightly. Courts traditionally accord substantial weight to Executive Branch judgments concerning foreign policy and national security.

Nevertheless, the existence of a valid judgment also carries consequences. Federal Rule of Civil Procedure 69(a)(2) broadly authorizes post-judgment discovery, reflecting the practical reality that a creditor cannot execute against assets it cannot identify.

The most important precedent remains *Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134 (2014). There, the Supreme Court rejected Argentina's argument that the Foreign Sovereign Immunities Act created a free-standing immunity from post-judgment discovery.

The court drew a critical distinction between locating assets and attaching them. Discovery concerning assets may proceed even though separate questions remain regarding whether particular property is immune from execution.

NML Capital therefore provides substantial support for Tatneft's position. Yet it does not require every discovery request to be enforced precisely as drafted. The Supreme Court emphasized the district court's ordinary discretion under the Federal Rules, including the authority to issue protective orders and impose reasonable limitations.

The issue in Tatneft, therefore, is not whether discovery may be restricted. It plainly may. The issue is whether national-security concerns justify a complete or effectively indefinite suspension of meaningful discovery.

That question implicates another important authority. Under *Landis v. North American Co.*, 299 U.S. 248 (1936), federal courts possess inherent authority to stay proceedings, but are required to balance competing interests and avoid imposing immoderate or indefinite delays.

A stay linked generally to the duration of the Russia-Ukraine conflict could prove extraordinarily lengthy and potentially open-ended. During that period assets may move, ownership structures may change, records may disappear, and opportunities for collection may be lost. Although interest continues to accrue, interest may provide little practical protection if collectible assets cease to exist.

The danger is not limited to this case. A broad rule permitting indefinite suspension of post-judgment discovery whenever national-security concerns are asserted could significantly diminish the value of arbitral awards and judgments against states and state-related entities. Confirmation would remain available, but effective enforcement could become increasingly uncertain.

A more tailored approach appears preferable. Discovery can be staged and narrowed. Courts can distinguish between ordinary commercial assets and information connected to defense operations, wartime logistics, or critical infrastructure. Attorneys'-eyes-only restrictions, sealed proceedings, in camera review, special masters, and technological protections can reduce disclosure risks while preserving at least some avenue for enforcement.

No safeguard is perfect. There may be categories of information that remain too sensitive to disclose even under the most restrictive conditions. But the governing principle should be proportionality.

Restrictions should address demonstrated risks rather than completely foreclosing the ordinary mechanisms by which federal judgments are enforced.

### **Foreign Assets and Constitutional Limits in Nasri**

The Ninth Circuit confronted a different problem in *United States v. Nasri*: whether a federal court may exercise in rem jurisdiction over foreign property when Congress has expressly authorized a forfeiture proceeding but the court lacks possession or control of the property itself.

The government alleged that Younes Nasri managed Phantom Secure, a Canadian company that supplied encrypted communications devices said to be used by transnational criminal organizations.

Alongside criminal charges, the government commenced a civil forfeiture proceeding against approximately \$1.2 million held in two accounts at Bendura Bank AG in Liechtenstein. Liechtenstein restrained the funds at the request of the United States, but the property itself remained abroad.

The amendment of 28 U.S.C. §1355 in 1992 had the purpose of facilitating forfeiture actions involving foreign assets. Section 1355(b)(2) authorizes proceedings involving property located outside the United States, and several appellate courts have interpreted the statute broadly.

The D.C. Circuit's decision in *United States v. All Funds in Accounts in Banco Espanol de Credito*, 295 F.3d 23 (D.C. Cir. 2002), and the Third Circuit's decision in *Contents of Account Number 03001288 v. United States*, 344 F.3d 399 (3d Cir. 2003), treated statutory authorization as sufficient to permit such proceedings, without addressing the constitutional issue.

Indeed, in a prior case, the Ninth Circuit held similarly. See *United States v. Approximately \$1.67 Million (US) in Cash, Stock and Other Valuable Assets Held by or at: 1) Total Aviation LDT.*, 513 F.3d 991, 996-98 (9th Cir. 2008);

The Ninth Circuit took a different view this time, noting that in \$1.67 Million, neither the parties nor the court raised the constitutional requirements of in rem jurisdiction. Although acknowledging the breadth of §1355, the court concluded that statutory authority could not eliminate constitutional limits.

Relying on traditional principles governing in rem jurisdiction and Supreme Court decisions emphasizing control of the res as the foundation of such jurisdiction, including *Republic National Bank of Miami v. United States*, 506 U.S. 80 (1992), the court held that the Fifth Amendment's Due Process Clause requires actual or constructive control over foreign property before a federal court may adjudicate rights in that property.

The majority's reasoning was fundamentally practical. An in rem judgment purports to determine interests in property and bind the world. But if the court lacks any effective power over the property and a foreign sovereign remains free to disregard the judgment, the resulting decree begins to resemble an advisory declaration rather than an enforceable adjudication.

To define constructive control, the Ninth Circuit returned to the Second Circuit's influential decision in *United States v. All Funds on Deposit in Any Accounts Maintained in the Names of Meza or De Castro*, 63 F.3d 148 (2d Cir. 1995). There, British authorities had restrained assets and cooperated extensively with the American forfeiture effort. The Second Circuit concluded that those circumstances created constructive control even though Britain was not legally obligated to transfer the funds.

Adopting that framework, the Ninth Circuit held that constructive control may exist when a foreign sovereign effectively acts as an agent of the United States for purposes of preserving and ultimately transferring the property. The court remanded for further development of the record concerning Liechtenstein's cooperation and the practical extent of American control.

The decision leaves substantial questions unresolved. How much cooperation is enough? Must a foreign state merely freeze the asset, or must it indicate willingness to enforce a future American judgment? Can constructive control disappear if foreign cooperation changes during litigation? The opinion establishes a constitutional requirement but leaves future courts to develop its contours.

The majority also distinguished the Supreme Court's recent decision in *Fuld v. Palestine Liberation Organization*, 606 U.S. 1 (2025). While *Fuld* adopted a flexible Fifth Amendment analysis in the context of personal jurisdiction, the Ninth Circuit concluded that such flexibility did not eliminate the traditional requirement of control in proceedings directed against property itself.

The dissent sharply disagreed, emphasizing Congress's authority over foreign affairs and arguing that the majority unnecessarily restricted federal efforts to reach the proceeds of transnational crime.

## **Conclusion**

Viewed together, *Tatneft* and *Nasri* illuminate a recurring theme in international litigation. Courts may possess jurisdiction, enter judgments, and recognize legal rights, yet still confront the practical limitations imposed by national security, sovereign interests, territorial boundaries, and foreign-state cooperation.

In *Tatneft*, the question is whether wartime security concerns justify restricting a judgment creditor's ability to locate assets. In *Nasri*, the question is whether constitutional principles permit a court to adjudicate rights in foreign property absent meaningful control over the res.

The issues differ, but both cases underscore the same lesson: in cross-border disputes, the effectiveness of judicial power depends not simply on legal authority, but on the court's ability to obtain information, reach assets, and secure cooperation beyond its borders.

**Lawrence W. Newman** *is of counsel and David Zaslowsky is a partner in the New York office of Baker McKenzie.*