

## SECOND CIRCUIT REVIEW

# 'Bugliotti v. Republic of Argentina': COVID-Era Executive Order Revives Some Argentine Bondholder Claims

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In *Bugliotti v. Republic of Argentina*, No. 24-2950, 2026 WL 643747, –F.4th–(2d Cir. Mar. 9, 2026), the U.S. Court of Appeals for the Second Circuit addressed the effect of New York’s COVID-era executive orders on the statute of limitations, holding that the orders automatically tolled limitations periods for 228 days without any showing of equitable entitlement by the invoking party.

In an opinion authored by Circuit Judge William J. Nardini, joined by Senior Circuit Judge Denny Chin and Circuit Judge Maria Araújo Kahn, the court affirmed in part, vacated in part, and remanded, concluding that while New York’s statute of limitations “savings statute,” C.P.L.R. §205(a), did not rescue the bondholders’ claims, the COVID orders rendered some of their claims timely. The court also held that collateral estoppel did not bar relitigation of certain issues not reached on a prior appeal, and that, under



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Argentine law, the bondholders possessed authority to sue on the bonds.

## Background

This appeal is the latest chapter in a long-running saga involving creditors seeking to recover on Argentina’s defaulted sovereign bonds. In this case, the plaintiffs-appellants (the Bondholders) seek over \$35 million in defaulted principal payments on bonds issued by the Republic of Argentina under a 1994 Fiscal Agency Agreement (the FAA), which included a consent to jurisdiction in New York and a waiver of sovereign immunity.

The Bondholders deposited the bonds with a trustee, Caja de Valores S.A. (Caja), and

Argentina later defaulted. In 2023, the Second Circuit affirmed dismissal of the Bondholders' first action, holding that they lacked authority to enforce the bonds because Caja, as trustee, had never delegated that authority. *Bugliotti v. Republic of Argentina*, 67 F.4th 102, 105–06 (2d Cir. 2023).

After the Second Circuit's 2023 ruling, the Bondholders secured authorization from a Buenos Aires commercial court to sue Argentina instead of Caja, and refiled in the Southern District of New York on July 28, 2023.

District Judge Loretta A. Preska dismissed once more, on multiple grounds. The district court held that New York's six-year statute of limitations barred the claims, that the C.P.L.R.'s savings statute permitting an action to be re-filed within six months after its dismissal did not apply, the Bondholders could not invoke the COVID-era executive orders pausing the statute of limitations absent a showing of equitable entitlement, and that collateral estoppel precluded relitigating of the district court's prior alternative holding that the bondholders could not bring suit without "reassembly" of the bonds, something they never undertook to do.

### **The Savings Statute: N.Y. C.P.L.R. §205(a)**

Under C.P.L.R. §205(a), a plaintiff whose timely-commenced action is dismissed may refile within six months of dismissal, so long as the dismissal was not for certain enumerated reasons—including "failure to obtain personal jurisdiction over the defendant." The Bondholders argued that the prior dismissal was based on lack of "standing," not lack of personal jurisdiction, and that §205(a) therefore preserved their claims.

The Second Circuit rejected this argument, holding that the nature of the 2023 dismissal was fundamentally jurisdictional. Under the Foreign Sovereign Immunities Act, personal jurisdiction over a foreign sovereign exists only

where an exception to immunity applies and service of process has been accomplished. *CC/Devas (Mauritius) Limited v. Antrix Corp. Ltd.*, 605 U.S. 223, 229, 232 (2025).

The Bondholders' sole basis for jurisdiction therefore was Argentina's waiver of sovereign immunity in the FAA. Because the prior dismissal held that the Bondholders could not bring suit under the bonds (only the trustee could), and therefore the Bondholders could not invoke the FAA's jurisdictional provisions, that ruling "undermined the Bondholders' sole basis for asserting that the district court had personal jurisdiction over Argentina."

Although the district court used the word "standing," in its opinion, the Second Circuit explained that the true defect was jurisdictional: the court was addressing the Bondholders' lack of standing to enforce the consent-to-jurisdiction terms of the FAA, not a lack of Article III standing.

The court was also unpersuaded by the Bondholders' fallback argument that §205(a) should apply where the jurisdictional defect is "curable." As a threshold matter, the text of §205(a) draws no distinction between curable and non-curable defects. But even assuming such a distinction existed, the court found the argument foreclosed here by *Yonkers Contracting Co. v. Port Authority Trans-Hudson Corp.*, 93 N.Y.2d 375 (1999), in which the New York Court of Appeals held that §205(a) does not apply when the prior dismissal was for failure to establish that the defendant waived its sovereign immunity.

As the Second Circuit explained in *Hakala v. Deutsche Bank AG*, 343 F.3d 111, 114, 116 (2d Cir. 2003), "[g]iven the fact that a sovereign entity was free to make itself completely immune to suit by simply declining to waive its immunity, the harsh result of disallowing the remedial provision of §205(a) was far less unfair." Because the prior dismissal rested on the Bondholders' inability to

take advantage of Argentina’s waiver of sovereign immunity, the same rationale applied, and the C.P.L.R.’s savings statute was inapplicable.

### **Tolling Under New York’s COVID Executive Orders**

While rejecting the C.P.L.R. savings statute argument, the Second Circuit agreed with the Bondholders that the COVID-era executive orders tolled the statute of limitations—and, critically, that no showing of equitable entitlement was required.

On March 20, 2020, then-Governor Andrew Cuomo issued Executive Order 202.8, declaring that “any specific time limit for the commencement... of any legal action... is hereby tolled from the date of this executive order until April 19, 2020,” a period that was extended by subsequent orders through Nov. 3, 2020, a total of 228 days.

The district court had analyzed the COVID orders under an equitable tolling framework, requiring the Bondholders to demonstrate how the pandemic had impaired their ability to file claims—a showing they could not make, since they were actively litigating throughout 2020.

Looking to half a dozen New York Court of Appeals and Appellate Division cases, the court noted New York state courts characterize the executive orders as “tolling” the statute of limitations, uniformly extending the period for claims in existence on March 20, 2020 by 228 days. See, e.g., *Favourite Ltd. v. Cico*, 42 N.Y.3d 250, 260–61 (2024).

The district court’s equitable tolling requirement was therefore inapplicable, because the COVID orders “do not condition their applicability upon any equitable showing by a party,” but instead “provide automatic relief from limitations periods on New York-law claims for a set period of time.”

The court then rejected two other arguments advanced by Argentina. First, Argentina

contended that the COVID orders extended the limitations period only for claims that expired while the orders were in effect. The court found this unsupported by the text of Executive Order 202.8, which contains no such restriction, and inconsistent with how tolling generally operates, and the argument was expressly rejected by the Second Department in *Baker v. 40 Wall St. Holdings Corp.*, 226 A.D.3d 637, 638 (2d Dep’t 2024), a holding the Second Circuit found accurately reflected New York law.

Second, Argentina argued that Cuomo lacked authority to toll the statute of limitations at all. The court disagreed, relying on Executive Law §29-a, which authorizes the governor, during a state disaster emergency, to “temporarily suspend specific provisions of any statute” if compliance would “prevent, hinder, or delay action necessary to cope with” the emergency, and further provides that such suspensions “may provide for the alteration or modification” of statutory requirements. N.Y. Exec. Law §29-a(1), (2)(d). The First and Second Departments have both confirmed that this authority encompasses tolling limitations periods. *Murphy v. Harris*, 210 A.D.3d 410, 411 (1st Dep’t 2022); *Brash v. Richards*, 195 A.D.3d 582, 584–85 (2d Dep’t 2021).

Applying the 228-day tolling period, the court concluded that the deadline for the Bondholders’ claims on bonds which matured Jan. 30, 2017 was pushed from Jan. 30, 2023, to Sept. 15, 2023. Because the Bondholders filed suit on July 28, 2023, those claims were timely. Claims on older bonds, however, remained time-barred: those bonds matured on Feb. 21, 2012, and the six-year limitations period expired in February 2018—long before the pandemic and the COVID orders.

### **Collateral Estoppel**

In an earlier iteration of the suit, the district court held that the Bondholders were (1)

the wrong plaintiffs, as they delegated their authority to the bond trustee, and (2) in any event would have been required under Argentine law to “reassemble” the bonds at issue—return previously received certificates for principal payments to the trustee and deposit the cash equivalent of the tax credits they had received in lieu of interest payments—before bringing suit. To work around these holdings, the Bondholders received authorization from a court in Argentina to proceed with the case without the involvement of the trustee.

Argentina argued, and the district court agreed, that the Bondholders were now collaterally estopped from proceeding without reassembly, since the district court previously held it was required.

The Second Circuit, held, however, that the district court’s determination in the prior proceeding that the Bondholders were required to reassemble the bonds before bringing suit had no preclusive effect. The panel held the Court in its prior consideration of the issue was “studiously agnostic,” on the district court’s alternative holding that Argentine law required the Bondholders to reassemble their bonds before suing.

Rather, the prior panel affirmed dismissal solely on the alternative ground that Caja had not delegated its enforcement rights to the Bondholders, never reaching the issue of reassembly. Applying the well-established rule from *Niagara Mohawk Power Corp. v. Tonawanda Band of Seneca Indians*, 94 F.3d 747, 754 (2d Cir. 1996) that only a basis actually considered by the appellate court can have preclusive effect in subsequent litigation, the court concluded the Bondholders were free to relitigate the reassembly question.

## Argentine Law

On the merits of Argentine law requiring reassembly, the court concluded that Argentine law does not require the Bondholders to reassemble the bonds as a condition precedent to suing for unpaid principal for the bonds.

The court then turned to a question the district court did not reach—if the Argentine court’s authorization for the Bondholders to proceed without the trustee was valid. Holding the court had discretion to decide issues for the first time on appeal, the issue was fully briefed, was a pure question of law it would review *de novo* on appeal anyway, and efficiency would be served by deciding the issue now, the court proceeded to hold the Argentine authorization was valid.

The court rejected Argentina’s argument that an arbitration clause in the trust agreements required the Bondholders to obtain authorization from the Arbitration Tribunal of the Buenos Aires Stock Exchange, rather than a court, because the proceeding to seek authorization was not a “dispute” covered by the arbitration clause.

## Conclusion

*Bugliotti* is a significant decision for navigating statute of limitations issues in New York. Its holding that the COVID-era executive orders operate as an complete and automatic toll of the limitations period—without any showing of equitable entitlement—provides clarity in the federal courts. At the same time, the decision reinforces that New York’s savings statute will not rescue claims previously dismissed for failure to establish a waiver of sovereign immunity, even where the jurisdictional defect was subsequently cured.