

The Court is in receipt of Petitioner's pre-motion letter, dated May 4, 2022, concerning the Republic of the Congo's deficient discovery responses. (Dkt. #112). The Court has also received the Republic's letter in opposition, dated May 9, 2022. (Dkt. #113).

The Court is sympathetic to the Republic's arguments concerning the propriety of broad-based merits discovery while there are lingering questions about subject matter jurisdiction under the Foreign Sovereign Immunities Act. The Republic's framing of this dispute gave the Court occasion to review the relevant Second Circuit precedent concerning the propriety of letting discovery go forward in such circumstances.

Generally speaking, in the FSIA context, "a plaintiff may be allowed limited discovery with respect to the jurisdictional issue; but until she has shown a reasonable basis for assuming jurisdiction, she is not entitled to any other discovery." *Filus v. Lot Polish Airlines*, 907 F.2d 1328, 1332 (2d Cir. 1990). Further, "in the FSIA context, 'discovery should be ordered circumspectly and only to verify allegations of specific facts crucial to an immunity determination.'" *EM Ltd. v. Republic of Argentina*, 473 F.3d 463, 486 (2d Cir. 2007) (quoting *First City, Texas-Houston, N.A. v. Rafidain Bank*, 150 F.3d 172, 176 (2d Cir. 1998)). Prior to a decisive finding of subject matter jurisdiction, the Court's task with respect to discovery is to calibrate the "delicate balancing 'between permitting discovery to substantiate exceptions to statutory foreign sovereign immunity and protecting a sovereign's ... legitimate claim to immunity from discovery.'" *Id.* (quoting *Rafidain Bank*, 150 F.3d at 176).

As all of the discovery that Petitioner propounded on the Republic goes to the merits of the dispute, the Court believes it to be premature prior a ruling on the Republic's pending motion to dismiss. Accordingly, Petitioner's motion to compel the Republic to provide substantive responses to its discovery requests is DENIED.

Furthermore, after considering the Republic's more fully developed arguments concerning subject matter jurisdiction, the Court believes the appropriate course of action is to stay discovery pending disposition of its motion to dismiss. Accordingly, discovery into the merits of the Petition is hereby STAYED as to the Republic, pending further order of the Court. For avoidance of doubt, this Order does not stay discovery as to Respondent Ecree LLC, which has not spoken to this issue and is not a sovereign entity protected by the FSIA.

The Clerk of Court is directed to terminate the pending motion at docket entry 112.

SO ORDERED.

Dated: May 11, 2022
New York, New York



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE