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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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BANK OF AMERICA, N.A., a national	)	Appeals from the
banking association, successor to LaSalle	)	United States District Court for
Bank, National Association,	)	the Northern District of Illinois,
	)	Eastern Division
Plaintiff-Appellee,	)	
	)	
v.	)	Nos. 2009-CV-5108, 2009-CV-5109
	)	
PETHINAIDU VELUCHAMY and	)	Hon. Milton I. Shadur,
PARAMESWARI VELUCHAMY,	)	<i>Judge, Presiding</i>
	)	
Defendants-Appellants.	)	

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**BRIEF OF PLAINTIFF-APPELLEE BANK OF AMERICA**

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**CIRCUIT RULE 26.1 DISCLOSURE STATEMENT**

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## **JURISDICTION**

The jurisdictional summary in the appellants' brief ("Def. Br.") is complete and correct.

We do, however, take issue with appellants' characterization of the orders at issue as being "of indefinite duration." Def. Br. 1. It does not affect appellate jurisdiction, but the district court clearly stated that the defendants were "free to ask" it at any time to rule that its "temporary possession of the passports" was "no longer necessary or appropriate for any reason," including by offering evidence showing that the defendants' transfer of millions of dollars out of the United States was for "legitimate reasons other than to remove assets from the jurisdiction of the Court or hide it from creditors." A6 ¶¶ 2-3. As of this writing, defendants have made absolutely no attempt to do so in the district court.<sup>1</sup>

## **ISSUE**

1. Whether the district court abused its discretion in ordering the defendants (the Veluchamys) to temporarily surrender their passports because of the danger that the Veluchamys would flee to India, in light of uncontradicted evidence that

- (a) the Veluchamys, after defaulting on their Bank of America loans,
  - (i) transferred more than \$25 million from their bank accounts in the United States to their bank accounts in India, from which they sent approximately \$17

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<sup>1</sup> On April 18, defendants moved in the district court to have Mrs. Veluchamy's passport returned to her so she could go on her pre-planned May 4 trip to India, but they did not even attempt to show that the Veluchamys' previous transfers of \$25 million to India were to pay legitimate debts. R.407 (No. 09-cv-05109). The district court granted the motion on April 20, on the conditions that she return her passport to the court immediately upon her return and that she not engage in any financial transactions while in India. The Veluchamys' June trip to India for a wedding is not scheduled to begin until June 13. BA217 at 323.

Except where noted, citations to the record ("R.") are to docket numbers in No. 09-cv-05108. Other cited record materials are contained in the Appendix ("A") attached to the appellants' opening brief, the appellants' Separate Appendix ("SA"), and Bank of America's Supplemental Appendix ("BA").

million to their adult children's Indian bank accounts, thus almost entirely emptying the Veluchamys' United States bank accounts,

(ii) significantly diluted or transferred to relatives (primarily their adult children) their ownership interests in businesses and other property in the United States; and

(iii) within a week after the \$43 million judgments were entered against them, visited and emptied their bank safe deposit boxes;

(b) the Veluchamys apparently own two houses in India worth \$15 million and other Indian assets worth more than \$38 million;

(c) although they gave Bank of America financial statements showing assets far in excess of the loan amounts, the Veluchamys now claim to have no money in the United States and invoke the Fifth Amendment concerning their financial statements; and

(d) all of the Veluchamys' lavish living expenses are now being paid for by Veluchamy family-owned companies or the Veluchamys' children.

## **STATEMENT OF THE CASE**

### **A. Nature Of The Case.**

Between December 2005 and February 2008, defendants Pethinaidu Veluchamy ("Mr. Veluchamy") and Parameswari Veluchamy ("Mrs. Veluchamy") borrowed \$29 million from Bank of America's predecessor, LaSalle Bank, that the Veluchamys did not repay. R.220 at 2-3. In addition, Mr. Veluchamy personally guaranteed an additional \$10 million loan made to defendant First Mutual Bancorp, the bank holding company owned by the Veluchamy family; that loan also was not repaid. *Id.* at 1-3. The Veluchamys initially defaulted on their loans on November 30, 2008, subsequently entered into forbearance agreements extending the due dates, and defaulted again when the forbearance agreements came due on June 30, 2009. *Id.*

Bank of America sued, and on December 30, 2010 the district court (Judge Coar) entered judgment in Bank of America's favor on all of the loans and the guaranty; the judgments total more than \$43 million. R.222-223. (Contrary to defendants' assertion (Def. Br. 11), Bank of America prevailed not because the Veluchamys asserted the Fifth Amendment, but because their defenses and counterclaims were factually false and legally meritless. See R.154; R.220.<sup>2</sup>) The Veluchamys filed a timely Rule 59 motion, which Judge Shadur (assigned the case following Judge Coar's retirement) denied on February 23, 2011. R.241; R.310-311. The Veluchamys did not appeal the December 30 judgments or the denial of their Rule 59 motion.

In order to obtain the \$39 million in loans—and to obtain a forbearance agreement as of November 2008 (the loans' original due date) giving the Veluchamys a seven-month extension on repaying the loans—the Veluchamys provided a series of financial statements showing they had assets in the United States far in excess of the amount of the debt. SA32-34 ¶¶ 10-11; SA66; R.346, Exs. 3-4.<sup>3</sup> Yet as Bank of America has moved to collect the more-than \$43 million judgments, it has found overwhelming evidence of a systematic scheme by the Veluchamys to

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<sup>2</sup> For example, defendants' defenses and counterclaims all rested on the assertion that defendants were kept in the dark about a series of risky loans made at their family bank (*e.g.*, R.220 at 4), but uncontested evidence showed that defendants were on the loan committees and personally approved all of the allegedly suspect loans. When asked to comment on this evidence, defendants invoked the Fifth Amendment and refused to testify. R.171 ¶¶ 4-5, 45-46, 51.

<sup>3</sup> The first affidavit of Gary Kleinrichert (SA28-49), a forensic accountant, and the 10 exhibits attached to his affidavit (SA66-76) summarize in considerable detail his key findings about the Veluchamys' assets as of March 16, 2011. That affidavit cites numerous documents by Bates number. Those documents, which contain the underlying data, were filed separately (R.346); the exhibit numbers in Exhibit Group A of that filing correspond to the footnotes in the Kleinrichert affidavit—each exhibit contains the documents cited in the parallel footnote. Exhibit Group B, also filed at R.346, has a separate set of backup documents for the 10 exhibits attached to Mr. Kleinrichert's March 16 affidavit. A second affidavit from Mr. Kleinrichert, dated April 18, 2011 (BA28-107), contains further detail of what he has learned since March 16. This second affidavit is based on, among other things, the depositions of the Veluchamys and others that have occurred since March 25, as well as documents from the Veluchamys, which they did not begin producing until April 4, 2011.

send tens of millions of dollars to India—where they emigrated from and where they own at least two businesses—and to transfer other American assets to relatives (primarily their adult children), all in an effort to keep their assets out of the reach of Bank of America while still keeping those assets in the family and in their control. The Veluchamys now claim to have absolutely no money—yet their lavish living expenses are all now paid for by companies controlled by the Veluchamys’ two adult children, or by the children themselves, who received more than \$18 million in transfers from the Veluchamys since their default on the Bank of America loans.

The Veluchamys themselves categorically refused—until after this appeal was underway—to provide documents or testimony about their assets and income, instead making blanket assertions that the Fifth Amendment privilege against self-incrimination applied to any and all information they might provide. R.279. (They claimed to be concerned about a potential federal criminal investigation stemming from the failure of Mutual Bank of Harvey, which the Veluchamys owned through First Mutual Bancorp until the FDIC closed Mutual Bank in 2009. *Id.*; R.380 at 3-4 (Tr. 3/2/11); R.378 at 3-5 (Tr. 3/9/11).) Ultimately, the district court rejected this pretext for refusing to disclose anything about their assets. *Infra* at 11.

Despite the Veluchamys’ lack of cooperation, between mid-January and mid-March 2011 Bank of America was able to obtain a substantial amount of information about the Veluchamys’ movement of assets from third-party citation respondents, including some financial institutions and Veluchamy-related companies. That information showed that starting immediately after their default on June 30, 2009, the Veluchamys transferred almost \$29 million out of their U.S. bank accounts; they sent some \$24 million of that amount to accounts abroad, including nearly \$22 million sent to the Veluchamys’ own bank accounts in India. SA34-39 ¶¶ 13-24; SA68-72; R.346, Exs. 7-39. Indeed, on the very same day they defaulted on Bank of America’s loans, the

Veluchamys received an \$8 million tax refund from the U.S. Treasury—and a few days later sent the entire amount to India instead of paying Bank of America. SA36 ¶ 16; SA68-69, 71; R.346, Exs. 11-14. As a result of all of the transfers from their accounts, the balances in the Veluchamys' U.S. bank accounts (as of January 2011) for which Bank of America has obtained records total only about \$34,000.<sup>4</sup> SA67, 70.

With respect to assets that are not readily movable, such as the Veluchamys' real estate and many business entities, the Veluchamys have significantly diluted or transferred to their children the Veluchamys' ownership interests in those assets; and to the extent the Veluchamys have been able to monetize their interests in those assets, the money they have obtained has quickly been sent out of the United States. SA39-48 ¶¶ 25-40; SA73-75; R.346, Exs. 40-77. In addition, in 2010 Mr. Veluchamy resigned as a Director and Officer from ten family-owned companies; he also resigned as Chairman from the six companies in which he held that post. SA44 ¶ 34; SA76. Moreover, the Veluchamys previously informed Bank of America that they owned two houses in India worth \$15 million and owned businesses and other assets in India worth \$38.6 million. BA3.

#### **B. Course Of Proceedings And Disposition Below.**

As third-party documents were produced, the picture grew increasingly alarming from Bank of America's perspective. By mid-March, there seemed to be a significant risk that the Veluchamys would follow their money and flee to India in order to avoid paying the more-than \$43 million judgments and evade potential criminal prosecution. Not only had the Veluchamys transferred almost \$22 million to their bank accounts in India, but the district court, on March 9, had rejected their attempt to assert blanket objections to providing any financial information on

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<sup>4</sup> Per district court order, a \$196,000 brokerage account has been turned over to the district court clerk; the intervenors (see *infra* at 24-27) claim priority. R.280; R.304 at 2. The total in the text does not include 401(k) accounts.

Fifth Amendment grounds. R.378 at 5-6 (agreeing that Bank of America was entitled to “know what assets they have, where the assets are and what assets were transferred”) (Tr. 3/9/11); see R.348 (Mar. 16, 2011 order overruling the Veluchamys’ Fifth Amendment “objection to the production of documents and refusal to answer any and all questions,” and ordering the citations to discover their assets to proceed).

In light of all this, Bank of America filed an emergency motion on March 16, which was accompanied by (a) a brief; (b) a 21-page affidavit from a forensic accountant, Gary Kleinrichert, summarizing the evidence of the millions of dollars in transfers out of the country and the transfers or dilutions of the Veluchamys’ business interests in the United States, along with 10 exhibits (charts, tables, or summaries of key evidence); and (c) an affidavit from one of Bank of America’s outside lawyers, Shennan Harris, who had, pursuant to court order, opened a Chase Bank safe deposit box belonging to the Veluchamys, which one of the Veluchamys—for the first time in a decade—had opened on January 5, 2011 (less than a week after the more-than \$43 million judgments were entered) and which was now empty. SA5-108. Bank of America asked the court for an order compelling the Veluchamys, among other things, to (a) immediately bring back from abroad and turn over to the clerk of the court any funds transferred out of their U.S. bank accounts to another country since they defaulted on June 30, 2009; (b) produce copies of current bank statements for all of their accounts anywhere in the world; (c) provide a complete list of all transfers of their assets from January 1, 2009 to the present; and (d) temporarily surrender their passports to the clerk of the court and remain in this country. SA6-7, 25-26. The district court conducted two hearings on the motion on March 16, the first at 11:00 a.m. (A11-45), the second at 2:30 p.m. (A46-65).

**1. The morning hearing.**

Observing that the emergency motion sought to “restore...the status quo antebellum,” the

district court noted during the first hearing that the long-arm statute would have to be

awfully long to reach India. And, of course, it is a matter of preserving the integrity of the system here and the fact that there is a huge judgment and that, apparently, what used to be a lot of money is elsewhere rather than here, and that there may be [only] \$34,000.00 on tap to satisfy a multi-million dollar judgment.

A19-20. The Veluchamys' lawyer responded that the Veluchamys "had debts in India"<sup>5</sup> that were paid in 2009. A21. The Veluchamys did not offer any evidence to the district court to support that assertion—either during or after the hearings—nor did they provide the district court with any details about the purported debts.

With respect to the passport issue, Judge Shadur noted that he was faced with evidence that the Veluchamys "have essentially divested themselves of United States holdings, and if they were to depart, would essentially take everything beyond the reach of the federal courts," and thus he considered "whether it is not appropriate to do something to prevent that aspect of it."

A27. The court asked whether requiring the Veluchamys to deposit their passports with the court "to prevent any further leakage in terms of this risk poses any kind of hardship." A25. The Veluchamys' lawyer answered that he did not know if they had travel plans, but said "[o]bviously, if they have no plans to leave the country in the next several months or year, et cetera, it is a nonissue." A26; accord A27-28 ("If I know that they are not going anywhere for a long time, there is clearly no burden on them in giving it up").

After hearing from both sides, the court stated:

it seems to me that...an order that would be appropriate would be one framed in

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<sup>5</sup> Contrary to his counsel's assertion about paying "debts in India," Mr. Veluchamy has since testified that in 2009 and 2010 he sent some \$25 million to his and his wife's bank accounts in India, \$16 million of which they then transferred to their children's bank accounts in India to pay purported "debts in...the United States," even though his children had United States bank accounts. *Infra* at 18-19. On their joint 2009 tax return, the Veluchamys answered "No" to the question whether they had any interest in or authority over foreign bank accounts. BA170, at 166. Asked whether this denial was incorrect, Mr. Veluchamy refused to answer, citing the Fifth Amendment. *Id.*

the alternative, that is, either repatriate the funds or make a showing that conforms to what you have just represented, that is, that when funds went over there...they were in satisfaction of existing preexisting debts...so that...nobody forces a debtor to prefer one rather than another legitimate creditor.

A34. The court thought it logical to place the burden for making this showing on the Veluchamys, because they were the “only” “people who have knowledge” about how the money was used. *Id.* The court noted that there “is certainly the appearance of” an “emergency.” A35. Bank of America, the court continued, had made a “serious presentation that deals with a showing of substantial...outflow and something that I think has to be accounted for.” A36. And “[t]he parties who can account for it are not the creditor on the outside looking in.” *Id.* Rather, it makes sense that “the burden is placed on the parties that have the knowledge to account.” A35. Judge Shadur stated that it “seems reasonable” to order the passports deposited with the court, because the Veluchamys

are not turning anything over for purposes of the Bank of America’s position at all. All we are doing is to take a snapshot essentially of the current situation. And that is in the classic status quo posture. We don’t want that to be disrupted.

A42-43. The court asked the Veluchamys’ counsel, before the afternoon hearing, to learn from his clients “whether there is any really imminent—and I mean imminent departure involved.” A42.

## **2. The afternoon hearing.**

That afternoon the Veluchamys’ counsel reported that Mrs. Veluchamy has tickets “in May to go with friends to India” for a Hindu retreat (the date was unspecified) “and there is a family wedding that she and her husband are going to [in] India in June.” A53. The court said “that would not, it seems to me, inhibit the entry of the kind of order that I am talking about because, you know, if they have pre-plans for that, that is well down the pike and we certainly ought to be much farther advanced in terms of what we know about and what kind of provisions

ought to be made.” A53-54. When the Veluchamys’ lawyer objected to turning in their passports (A56), the court responded that turning over the passports would

eliminat[e] the prospect that the Court’s jurisdiction can be defeated...under the circumstances here with money, which is the ordinary means of satisfying a judgment, being elsewhere and elsewhere at a position in which the Court, therefore, cannot have a direct control...over any aspect of it and where the individuals could essentially couple that with their absence.

A57. The court thought it “reasonable and sensible under the circumstances” that it could act in “protection of its jurisdiction.” A57, 59. The court stressed “this is not the permanent surrender at all. It is simply a case...of where the burden of production of information, burden of persuasion may be, and it seems to me that it is reasonable to place it there rather than on the plaintiffs who are only in the familiar position of being on the outside looking in.” A57-58.

Finally, regarding Bank of America’s requests for “all of the financial documents,” the court noted that the existing citation called for production of those documents and ordered the Veluchamys “to comply with the citation” “forthwith.” A60-61; A6 ¶ 1.

### **3. The March 18 order.**

The court issued a written order on March 18 reflecting its oral rulings. The March 18 order required the Veluchamys to “temporarily turn over” to the court “all of their passports” and any other documents that would permit international travel. A6 ¶ 2. The court would retain possession until the earlier of (a) the Veluchamys’ “repatriation of monies they transferred outside the United States since June 30, 2009” and deposit of the money with the court; (b) the Veluchamys’ “provision of evidence satisfactory to the Court that the monies were transferred for legitimate reasons other than to remove assets from the jurisdiction of the Court or hide it from creditors”; (c) satisfaction of Bank of America’s judgments; or (d) further court order. *Id.* The order also provided that “[a]t any time,” the Veluchamys are free to ask the district court to rule that possession of their passports “is no longer necessary or appropriate,” including but not

limited to that one or more of the conditions just recited have been satisfied. *Id.* ¶ 3.

As of the filing of this brief—nearly five weeks after the March 18 order—the Veluchamys have not filed such a motion with the district court. Nor have they submitted any evidence to the district court to show that they had legitimate reasons for transferring tens of millions of dollars from the United States to India after June 30, 2009. To the contrary, as explained below, the Veluchamys sought to delay both their production of documents and their depositions. Moreover, although they filed an April 18 motion to permit Mrs. Veluchamy to travel to India in May (R.407) (No. 09-cv-05109), that motion did not attempt to justify the transfers to India or, indeed, any of the Veluchamys’ financial activity since their default.

#### **4. Subsequent proceedings.**

On March 23, 2011, the Veluchamys filed a mandamus petition (No. 11-1685), which this Court denied on March 24. Later that day, the Veluchamys appealed from the part of the March 18 order concerning their passports. R.364. As noted earlier, they have not appealed the more-than \$43 million judgments; the time to do so has expired.

The district court citation proceedings have continued since the Veluchamys appealed the March 18 order. In particular, after unsuccessfully asking the district court to delay their discovery obligations (R.376; R.384), the Veluchamys have started producing documents and their depositions have begun. *Infra* at \_\_\_\_.

As noted earlier, on April 20, Judge Shadur granted Mrs. Veluchamy’s request to travel to India in May.

### **STATEMENT OF FACTS**

#### **A. The Veluchamys’ Conduct During Discovery In The Underlying Case.**

During the litigation that resulted in the more-than \$43 million judgments, the Veluchamys sought to avoid having to respond to virtually all discovery by asserting a blanket

Fifth Amendment privilege. Magistrate Judge Brown (like Magistrate Judge Cole in separate litigation involving the Veluchamys) rejected that argument, as did Judge Coar. R.127 (April 26, 2010 order overruling objections to Magistrate Judge Brown’s rulings). The Veluchamys’ unjustified refusals to respond to discovery resulted in two sanctions orders. R.66; R.150 at 14; see R.202; R.220 at 5.

**B. The Veluchamys’ Conduct During Discovery In The Citation Proceedings.**

The Veluchamys’ recalcitrance increased after the more-than \$43 million judgments were entered and Bank of America began citation proceedings in search of assets to pay the judgments. The district court issued citations to discover assets to Mr. and Mrs. Veluchamy on January 14; the citations required the Veluchamys to produce a broad range of financial documents—and testify—by early February. R.229; R.212 (No. 09-cv-5109). The Veluchamys did neither; they refused to produce any documents or provide any testimony. Instead, as already discussed, they asserted a blanket Fifth Amendment privilege. The district court, however, rejected that argument (R.348; R.378 at 5-6 (Tr. 3/9/11)), much as Magistrate Brown had rejected the Veluchamys’ attempt to assert a blanket Fifth Amendment privilege during discovery in the underlying case. R.107, Ex. 1 at 19 (“the Fifth Amendment is not asserted as a blanket matter, it’s asserted on a question by question, situation by situation basis with respect to document production in particular”).

**C. Information Provided By Third Parties, Before The March 16 Hearing, Concerning The Veluchamys’ Assets.**

Although the Veluchamys refused to provide any information about their assets before the March 16 hearing, Bank of America obtained a substantial amount of information about their transfers of money and assets from third-party citation respondents, including some financial institutions and Veluchamy-related companies. Before Bank of America filed its emergency

motion, that information was reviewed and analyzed by the forensic accountant it retained.

When the Veluchamys obtained the underlying loans and when Bank of America later consented to a forbearance agreement to give the Veluchamys seven more months to repay the loans, the Veluchamys provided financial statements listing assets in the United States worth far more than the amounts of the loans. SA32-34 ¶¶ 10-11; SA66; R.346, Exs. 3-4. The Veluchamys' financial statement also listed two homes in India worth \$15 million and other assets in India valued at an additional \$38.6 million. BA3. However, the information that Bank of America received from the citation respondents about the Veluchamys' assets showed that the U.S. assets were gone: since the Veluchamys' June 30, 2009 default, virtually all of their assets in the United States have either been moved out of the country or transferred to the Veluchamys' relatives. From the limited amount of information that Bank of America received by mid-March from third parties, it learned the following about what happened to the Veluchamys' assets in the United States:

**1. Personal bank accounts in the United States.**

Bank of America obtained statements for eight personal bank accounts in the United States belonging to the Veluchamys, all of which were opened in 2009 or 2010. Vast amounts of money were transferred out of these accounts after the Veluchamys' default on their Bank of America loans. Almost all of the money that was once in those accounts is now gone.

The Veluchamys opened a personal checking account at State Bank of India in Chicago on June 15, 2009 for the stated purpose of "sending remittances to India"; they closed the account on October 15, 2010, with Mr. Veluchamy's handwritten note stating that he was planning to leave the country "for short term." SA34-36 ¶¶ 13, 16; SA69-70; R.346 Exs. 7-8.

On the same day—June 30, 2009—that the Veluchamys defaulted on the Bank of America loans under the forbearance agreement, they received an \$8 million tax refund from the

U.S. Treasury. SA34-36 ¶¶ 13, 16; SA68-69; R.346, Exs. 11-14. They promptly deposited the entire \$8 million in their State Bank of India-Chicago account and then wired all of it to their bank accounts at Canara Bank in India. SA36 ¶ 16; SA68-69, 71; R.346, Exs. 11-14. A year later, the Veluchamys received another large U.S. tax refund, this time for \$7.18 million, and within a few days they again sent almost all of that refund (\$7 million) to their Canara Bank accounts in India. SA38-39 ¶ 22; SA68-69, 71; R.346, Exs. 34-36.

From the State Bank of India-Chicago account and their other accounts at PNC Bank and Citibank, the Veluchamys also made a number of other large transfers of money out of the country from their U.S. bank accounts:

- On September 17, 2009, \$4 million was transferred to Mr. Veluchamy's account at Canara Bank in India. SA36-37 ¶ 17; SA68, 71; R.346, Ex. 20.
- On October 7, 2009, they transferred \$2.8 million to Mr. Veluchamy's account at Canara Bank in India. SA36-37 ¶ 17; SA68, 71; R.346, Ex. 22.
- A series of international transfers in 2010 totaled \$2.2 million. SA37-39 ¶¶ 18-20, 23; SA68, 71; R.346, Exs. 25-32, 37-39.

In addition, the Veluchamys made two other transfers within the United States, totaling \$1 million, to their children, Arun and Anu, in October 2009. SA36-37 ¶ 17; SA68-69, 71-72; R.346, Exs. 23-24.

\* \* \*

All told, Bank of America learned by mid-March 2011 that the Veluchamys transferred almost \$29 million out of their personal accounts after the Bank of America loans went into default. SA39 ¶ 24; SA70. As of mid-March, Bank of America had discovered that those transfers included \$24 million sent outside of the United States—including almost \$22 million to the Veluchamys' bank accounts in India, \$15 million of which came from U.S. tax refunds.

SA34-36 ¶¶ 13, 16, 22; SA70; R.346, Exs. 34-36. Only about \$34,000 remained in the bank accounts for which Bank of America was able to obtain records. SA67.

## **2. Other assets in the United States.**

After they defaulted on June 30, 2009, Mr. and Mrs. Veluchamy transferred to others or significantly diluted their interests in many other assets located in the United States:

*VMark.* VMark is the holding company for most of the Veluchamys' family-owned companies. SA40 ¶ 26. In January 2009, Mr. Veluchamy gave his 51% interest in VMark to his wife; later in 2009, Mrs. Veluchamy's interest in VMark was diluted due to stock purchases by the Veluchamys' two children, Arun and Anu. SA41-42 ¶¶ 28-30; SA73; R.346, Exs. 47-50. In July 2010, Mrs. Veluchamy pledged her remaining VMark stock to Oakbrook Financial, a company she had just incorporated, which was located on the same private compound in Oak Brook, Illinois where the Veluchamys' home is located. SA42 ¶ 30; SA78 ¶ 6; R.346, Exs. 51-52.

*Other Companies.* Mr. Veluchamy transferred his interests in two companies to his children, in July 2009 (Unique Mailing Services) and in November 2010 (University Subscription). SA42-43 ¶¶ 31-32; SA74-75; R.346, Exs. 54-56.

*Partnership.* The Veluchamys transferred their interests in a partnership to their children, in July 2010 (Bear Stearns Venture Partnership). SA47-48 ¶ 40; R.346, Exs. 75-77.

*Avadamma LLC.* The Veluchamys formed Avadamma LLC in March 2009; one of the LLC's stated purposes was "to provide protection of family assets from claims of future creditors." SA45-46 ¶ 36; R.346, Ex. 58. That same month the Veluchamys assigned to Avadamma their ownership interests in four commercial properties—University Plaza (Villa Park), Meadowbrook Shopping Center (Downers Grove), North Park Mall, and 500 N. LaSalle (Chicago)—which had formerly been owned by the Veluchamys in land trusts. SA45-46 ¶ 36;

R.346, Exs. 59-60. In May 2009, Mrs. Veluchamy transferred almost all of her interest in Avadamma LLC to a newly created trust, Dynasty Trust, whose beneficiaries include Mrs. Veluchamy's children. SA45-46 ¶ 36; R.346, Exs. 61-63.

*Other Land Trusts.* The Veluchamys used to be the sole owners of at least three other land trusts. SA47 ¶ 39. In late 2009 and early 2010, they transferred their interests in those land trusts into new land trusts owned by new LLCs owned by their children. *Id.*; R.346, Ex. 74.

*Veluchamy LLC.* Veluchamy LLC owns commercial property in New Jersey. SA46-47 ¶ 37; R.346, Ex. 64. In November 2010, Mr. Veluchamy transferred his interest in Veluchamy LLC to his children. SA46-47 ¶ 37; R.346, Exs. 65-70.

*Safe Deposit Boxes.* On January 5, 2011—six days after the more-than \$43 million judgments were entered—Mrs. Veluchamy accessed two large JP Morgan Chase safe deposit boxes, the first time the boxes had been accessed in 10 years. SA78 ¶¶ 4-5, SA 86, 90. When the boxes later were opened pursuant to court order, they were empty. SA77-78 ¶¶ 2, 4-5.

### **3. Officer and Board member resignations.**

In January 2009, Mr. Veluchamy resigned as an Officer of Creative Automotion, a company owned by the Veluchamy family. SA44 ¶ 34; SA76. Between January 1, 2010 and September 17, 2010, Mr. Veluchamy also resigned as Creative Automotion's Chairman of the Board; in addition, he resigned as an Officer and Director of eight other family-owned companies *Id.* Before his resignations, Mr. Veluchamy was Chairman of the Board for five of those companies. *Id.* The vast majority of Mr. Veluchamy's resignations occurred in September 2010. *Id.*

#### **D. The Veluchamys' Recent Depositions.**

As already discussed (at 11), the Veluchamys vigorously resisted any discovery during the citation proceedings that began in January 2011, refusing to provide any documents or to

submit to depositions, on the basis of blanket Fifth Amendment arguments that the district court rejected on March 9. The court ordered the Veluchamys to comply “forthwith” with the citations to discover assets, A6 ¶ 1 (March 18 order), and they finally agreed to produce documents on April 1 and to be deposed on April 7 and 8. R.376. On March 31, however, the Veluchamys asked to delay document production until April 13 and postpone their depositions until April 20 and 21. *Id.* Bank of America objected, and the district court ordered the Veluchamys to adhere to the dates they previously agreed to, stating that “production forthwith” means “immediacy under the circumstances here.” BA10. The court found specifically that the Veluchamys had not complied with its previous order to produce documents in response to the citations to discover assets. BA11. The court referred to the Veluchamys’ failure to comply as bearing all the marks of “scofflaw activity.” BA8.

From the Veluchamys’ depositions that have occurred to date (Mr. Veluchamy on April 7 and 13; Mrs. Veluchamy on April 8; further depositions of each are being scheduled), and the documents they have recently produced, Bank of America has learned the following additional information that is relevant to this appeal<sup>6</sup>:

**1. Failure to produce documents.**

The citations direct the Veluchamys to produce “all books, papers, or records in your possession or control” that may contain information about their income, assets, and property; the

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<sup>6</sup> This information has been added to the record on appeal. R.410-416 (No. 09-cv-05109). This Court also may take judicial notice of subsequent district court proceedings in this case, which are relevant to this appeal. *Philips Med. Sys. v. Bruetman*, 982 F.2d 211, 215 n.2 (7th Cir. 1992) (the court will take judicial notice when “new evidence is of a ‘proceeding[] in other courts, both within and outside of the federal judicial system, if the proceedings have a direct relation to matters at issue”); *Green v. Warden*, 699 F.2d 364, 369 (7th Cir. 1983) (same); *Bryant v. Carleson*, 444 F.2d 353, 357-58 (9th Cir. 1971) (in an expedited interlocutory appeal, taking “judicial notice of a number of developments since the taking of this appeal”—including later district court proceedings—“since such circumstances may affect our consideration of the various issues presented”).

stated time frame is “on or after January 1, 2009 through the date of production.” R.229-2 at 1 & Rider; R.212-1, R.212-2 at 1 & Rider (No. 09-cv-05109). At their depositions, however, the Veluchamys admitted that they had not produced any documents from 2011 (except for documents concerning their IRAs, which they believe are exempt from creditors). The Veluchamys claimed they did not realize that Bank of America was interested in their current assets. BA152, at 34; BA154, at 45 (Mr. Veluchamy: “When we produced, it was up to 2010”; “I maybe misunderstood...what you wanted”); BA200, at 146 (Mrs. Veluchamy: I was not “trying to find documents from the present year, 2011”).

The Veluchamys also have not produced important bank documents, for 2011 and other years as well. The Veluchamys claim that some of the money they sent to India might have been used to repay loans from Canara Bank in India, but they admitted they have not produced any documents concerning those alleged loans or the purported payments. BA166, at 137-40; BA203, at 238-39. The Veluchamys testified they no longer had Canara Bank accounts, but they have not produced any Canara Bank documents showing that their accounts were closed. BA182, at 37-38; BA157, at 63-64. Mr. Veluchamy claimed that “I have to go in person” to India to get the Canara Bank statements. BA228, at 436-37. He admitted that the “first time” he asked about getting Canara Bank statements was on April 12, the day before his second deposition. *Id.* at 437.

As for American financial institutions, Mr. Veluchamy claims that their banks and E\*Trade refuse to provide current statements due to the citation proceedings. BA154-55, at 46-52; BA156-57, at 60-61; BA158, at 65. Mrs. Veluchamy, in contrast, said they still received monthly bank statements in the mail, but acknowledged they had not produced any 2011 statements to Bank of America. BA180-81, at 31-34; BA200, at 146.

## **2. Withdrawal of cash after citation proceedings commenced.**

The citations issued to the Veluchamys in January 2011 prohibit them from using or disposing of any assets not exempt from execution. R.229-2; R.212-1, 212-2 (No. 09-cv-05109). Nonetheless, on February 1, 2011, Mrs. Veluchamy wrote a check from their TCF bank account for \$2,000 payable to cash, and on February 2, 2011 she withdrew the remaining \$536 in that account. BA207-08, at 262-65. Both transactions occurred after the Veluchamys were served with the citations freezing their assets. BA208, at 265.

## **3. Purported indemnity agreements.**

Mr. Veluchamy testified that \$16 million of the money he and his wife sent to India was transferred to their adult children—Arun, their son, and Anu, their daughter—in India pursuant to so-called “indemnity” agreements. BA165, at 129-31, 143; BA215, at 300-01. The agreements, purportedly dated *as of* July 2008, September 2008, and March 2009, state that—because the FDIC asked the Veluchamys to contribute additional capital, and Arun and Anu previously contributed millions of dollars to First Mutual Bancorp—the Veluchamys would indemnify their children if the contributed capital was lost. BA248-51; BA159, at 81. In fact, approximately \$15 million of those capital contributions were made when First Mutual was well capitalized: between 1998 and 2006—years before the FDIC request and the dates on the indemnity agreements. BA208, at 266-67; BA222, at 396-98; BA32 ¶ 8(b). Mr. Veluchamy testified that after Bank of America filed suit in August 2009, he and his wife paid Arun approximately \$9.5 million and Anu about \$7.2 million pursuant to the indemnity agreements; the payments were made to Arun’s and Anu’s bank accounts in India, even though, Mr. Veluchamy admitted, those obligations were “debts in...the United States” and his children had U.S. bank accounts. BA159, at 81; BA164-65, at 126-29; BA167, at 143; BA215, at 300-02. The Veluchamys’ lawyer previously told Judge Shadur that the money sent to India was used for

“debts in India.”<sup>7</sup> A21.

The two largest indemnity agreements—\$9 million for Arun and \$6 million for Anu—provide that the indemnitees (Arun and Anu) will make their personal resources available for their parents in the future: “Indemnitee agrees to provide whatever personal guaranties and/or use of personally owned collateral is required for the benefit of Indemnitors [the Veluchamys].” BA248. Mr. Veluchamy testified that Arun and Anu have never refused to do what he requested pursuant to this provision, such as providing additional guarantees and collateral for loans to “get rid of my guarantees.” BA223-25, at 404-12.

Significantly, the purported indemnity agreements are not listed as contingent liabilities (or anywhere else) on the financial statements that the Veluchamys provided to Bank of America. BA1-3; R.346, Ex. 3. When asked which alternative applied—the indemnity agreements did not really exist or the financial statements were false—Mr. Veluchamy asserted his Fifth Amendment privilege and refused to answer. BA159, at 81-83. When Mrs. Veluchamy was asked whether she and her husband had any contingent liabilities in 2009 based upon the indemnity agreements, she likewise invoked the Fifth Amendment and declined to answer. BA198, at 128.

The Veluchamys also agreed to indemnify the Veluchamy Family Foundation, a tax-exempt 501(c)(3) charitable foundation the Veluchamys founded and operated, for its \$2 million capital contribution to Mutual Bank. BA211-14, at 287-97; BA245-47. However, the

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<sup>7</sup> Mr. Veluchamy produced spreadsheets purporting to show the payments he made to his children under the indemnity agreements; he said he personally prepared the spreadsheets on his computer. BA220, at 352. He said he did not still have the computer on which he prepared the documents. *Id.* at 353. He said his computer crashed during a snowstorm, and then within a few minutes gave a series of inconsistent explanations for what happened to the computer: (a) he gave it to one of his companies, and “I don’t know what they did with [it]”; (b) he doesn’t remember what happened to it; (c) someone from one of his companies “looked at it” and said “there’s no way of recovering anything, and he junked it”; and (d) “I threw it in the garbage.” BA220-21, at 354-58.

Veluchamys paid that \$2 million “indemnity” to Anu’s personal account in India, not to the Foundation. BA214, at 297-99. Anu, in turn, loaned the \$2 million to a Veluchamy-controlled company established in 2010, Oakbrook Financial. BA216, at 305-06.

#### **4. Assets and living expenses.**

Although conceding that, from mid-2009 through 2010, they sent \$24 million from their accounts in the United States to their Canara Bank accounts in India (BA209, at 268, 270), the Veluchamys testified that they currently have no assets at all. BA149, at 22 (Mr. Veluchamy: “I don’t have any money in my control. ...Not now”); BA157, at 64 (“as of today [I] have no money”); BA181, at 36 (Mrs. Veluchamy: “I don’t have any money now”); BA187 at 84 (she does not “receive money from any source now”). When asked if he would pay any of Bank of America’s judgments or repatriate money from India if ordered to do so, Mr. Veluchamy responded, “I don’t have it. I cannot pay it.” BA149, at 21-22. Mr. Veluchamy apparently had hoped to keep the transfers to India secret: he testified that he closed the State Bank of India-Chicago account in October 2010 because “I heard some source they were talking about I have money, I send it to India and all those things. People talk. They didn’t keep it confidential.” BA229-29, at 439-41.

The Veluchamys received salaries in 2010 from four family-owned companies totaling approximately \$500,000, and other distributions from some of the 16-18 family-owned business entities, but they stopped receiving any salaries or distributions after the citations to discover assets were issued. BA102-03 ¶ 135; BA187-89, at 84-91; BA190-91, at 95-97; BA159, at 83; BA168, at 151; BA169, at 158-59; BA170, at 165, 167. They will be “entitled to get paid that salary” at “some point in the future”; the decision on “when to pay” will be made by Mrs. Veluchamy and the two children (now the directors of the family-owned companies). BA159-60, at 84-85.

In the meantime, the Veluchamys' monthly expenses, which they estimated at somewhere between \$15,000 and \$20,000<sup>8</sup>—including the mortgage on their 10,000-square-foot house in Oak Brook; food; health insurance; their housekeeper; utility bills; travel expenses, including trips to India (Mrs. Veluchamy's May flight—business class—cost \$4,000); property taxes; credit card bills; car lease; gas for the car; and lawn care and snow removal—are being paid for by companies now owned partly or entirely by their son and daughter. BA149-51, at 22-30; BA183-88, at 65-85; BA197, at 121-22; BA202, at 205; BA217-18, at 323-24; BA229-30, at 443-45; BA230, at 447; R.407, Ex. B (No. 09-cv-5109); SA40-44 ¶¶ 26-33, SA73-74; BA104-06 ¶¶ 136-39; see SA95 (aerial photograph of the Veluchamy family compound). The Veluchamys' daughter, Anu, also provides them with some money. BA230, at 445.

Family-owned companies have also recently paid \$470,000 for the Veluchamys' personal legal expenses, including for this litigation. BA106 ¶ 140; BA163, at 110-12; BA170-71, at 173-74.

The Veluchamys' financial statement listed the cash value of a life insurance policy at \$2.775 million. BA2. When asked if he still had this life insurance policy, Mr. Veluchamy refused to answer, asserting the Fifth Amendment. BA231, at 450.

## **5. Houses and other assets in India.**

When obtaining the loans that resulted in the more-than \$43 million judgments, the Veluchamys provided a financial statement that listed two houses in India worth \$15 million, two businesses in India (spinning mills) worth \$12 million, and other assets in India worth \$26.6 million. BA3. When Mr. Veluchamy was asked whether he still had the two houses in India, he

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<sup>8</sup> In the space of a few minutes, Mr. Veluchamy originally estimated their personal living expenses at \$500 to \$1,000 per month, then estimated the monthly mortgage payment on their home was \$7,000 to \$8,000, and then, after being asked about other expenses, estimated that their living expenses were “15- to 20,000 per month. I'm not sure exactly.” BA149-50, at 22-27.

invoked the Fifth Amendment and declined to answer; he did the same when asked whether he had given the houses to his sister in India to keep them away from Bank of America and other creditors. BA172, at 178-79; BA219, at 328-29. Mrs. Veluchamy testified she had never owned a house in India, but when asked if her husband had, she took the Fifth Amendment, as she did when asked whether they ceased owning the Indian houses to avoid paying Bank of America. BA194, at 110; BA199, at 130-31. The Veluchamys both invoked the Fifth Amendment and refused to answer whether they still had the assets in India listed on their financial statement. BA201, at 180; BA232, at 452.

In recent years, Mrs. Veluchamy has traveled two to three times annually to India, where she has “a big family.” BA194, at 110; BA195, at 116. Mr. Veluchamy typically travels with her to India. BA217, at 322. He has two sisters living in India. BA218, at 325. Mrs. Veluchamy testified that “[e]very time whenever I go to India, I sell a couple of jeweleries”—gold jewelry given to her by her parents. BA193-94, at 106; BA194, at 109. She has received tens of thousands of dollars from these sales over the last two or three years. *Id.* at 111-12.

#### **6. Indian identity documents.**

In 2010, Mr. and Mrs. Veluchamy obtained an Indian Permanent Account Number (PAN), which is essentially an Indian tax identification number. BA210, at 272-73; see also <http://www.incometaxindia.gov.in/PAN/Overview.asp>. In 2009 or 2010, Mr. and Mrs. Veluchamy each obtained an Overseas Citizen of India card, which includes a life-long, indefinite visa allowing entry into India. BA210, at 273-74; see [http://www.mha.nic.in/uniquepage.asp?id\\_pk=553](http://www.mha.nic.in/uniquepage.asp?id_pk=553); <http://www.mha.nic.in/pdfs/pr021205.pdf>.

#### **7. The Veluchamys’ transfers of assets.**

As of March 16, Bank of America’s expert, Mr. Kleinrichert, had identified \$24 million transferred abroad from the Veluchamys’ U.S. bank accounts, nearly \$22 million to India. *Supra*

at 13. But after reviewing the Veluchamys' recent depositions and recently-produced documents, Mr. Kleinrichert has determined that from June 30, 2009 through 2010, the Veluchamys actually transferred \$25.6 million from the U.S. accounts to their accounts at Canara Bank in India. BA30-32 ¶¶ 7-8(a); BA60 ¶ 45; BA63-64 ¶ 54; BA108. From their Canara Bank accounts, the Veluchamys transferred \$17.6 million to the bank accounts of their children, Anu and Arun, in India and another \$6.3 million to Indian businesses owned in part by the Veluchamys. BA32-33 ¶¶ 8(b); BA62-64 ¶¶ 51-54. Arun and Anu then used some of the money their parents gave them to acquire business interests from their parents; Arun and Anu have also used the cash flow from those businesses to acquire more assets from their parents. BA34-35 ¶¶ 8(d), 8(f); BA69 ¶ 67.

#### **8. E\*Trade.**

Mr. Veluchamy admitted in his deposition that he is permitted to trade in one or two E\*Trade accounts supposedly belonging to his son and daughter. BA173, at 195-96; BA174, at 198-99; BA175, at 201-04. The statements for one account—which although purportedly owned by the children was registered to Mr. and Mrs. Veluchamy's Oak Brook address—show that millions of dollars were transferred out of that account from October 2009 through May 2010, some to another E\*Trade account that Mr. Veluchamy owned jointly with his daughter. *Id.* at 205; BA33-34 ¶ 8(c); BA64-68 ¶¶ 55-64.

#### **9. Mr. Veluchamy's continued involvement with the family companies.**

As noted earlier (at \_\_\_), Mr. Veluchamy resigned as Chairman, Director and Officer of many family-owned companies in 2010 (and thus he no longer need attend company meetings). Despite his official withdrawal, Mr. Veluchamy testified that he remains involved in the businesses' operations. BA171-72, at 175-77.

## **10. Safe deposit boxes.**

Mrs. Veluchamy explained that she opened their two safe deposit boxes at JP Morgan Chase on January 5, 2011—the first time the boxes were opened in a decade—because she was looking for an old life insurance policy. BA191-93, at 100-05. Three months after opening the boxes, she says she does not recall why she was searching for the policy. BA193, at 105. She said the only other item in the two large boxes—one is 21 inches by 10 inches by 10 inches, the other is 21 inches by 10 inches by 5 inches—was her will. BA192, at 101; SA78 ¶¶ 4-5. The Veluchamys pay \$220 annually for the two safe deposit boxes. BA162, at 106.

### **E. The One-Day Judgments.**

The more-than \$43 million judgments in the underlying litigation were entered on December 30, 2010. R.222-223. Three weeks later, after the citation proceedings to discover the Veluchamys' assets were underway, three parties previously unknown to Bank of America—Jaganath Naidu (“Dr. Naidu”), Vasudevaki Naidu (“Mrs. Naidu”), and Rajiv Parthasarathy—moved to intervene, claiming that they had obtained two Agreed Judgments totaling almost \$2.8 million against Mr. Veluchamy in Cook County Circuit Court on December 2 and 3, 2010, right after the complaints were filed on December 1, 2010. R.239; R.243-1. The intervenors claimed that their judgments predated, and therefore had priority over, Bank of America's judgments. R.239 ¶ 9. The district court thought that the “suspect” circumstances of the one-day judgments—“at least facially there was a serious potential of collusion”—“offended the olfactory nerves,” and when the intervenors resisted discovery into the circumstances surrounding their judgments, the court ordered discovery to proceed promptly. R.325 at 8 (Tr. 1/25/11); R.326 at 4 (Tr. 1/31/11); R.327 at 18 (Tr. 2/2/11); R.330; R.379 at 2-12 (Tr. 3/10/11).

The intervenors' counsel was less than candid about her clients' identities before their depositions, telling the district court on March 16 that “my understanding” is that “two of the

intervenors are family friends of the judgment debtors [the Veluchamys] and that one of the intervenors is in some way a relative, though not one of their children.” A36. In fact, the intervenors are all closely related to the Veluchamys: Mrs. Naidu is one of Mrs. Veluchamy’s sisters; Dr. Naidu is thus the Veluchamys’ brother-in-law; and Mr. Parthasarathy is Mrs. Veluchamy’s nephew (the son of another sister of Mrs. Veluchamy). BA110, at 7; BA116, at 44.

Moreover, documents show—and the Naidus admitted when they were deposed—that Mr. Veluchamy “chose” or “suggested” the Naidus’ lawyers; Mr. Veluchamy reviewed and approved the Naidus’ lawyers’ retention letter; Mr. Veluchamy’s lawyers reviewed the retention letter before it was sent to the Naidus; Mr. Veluchamy directed the Naidus to sign the retention letter; and Mr. Veluchamy paid the retention fee for the Naidus’ lawyers, whose idea it was to file suit against Mr. Veluchamy. BA113-14, at 32-33; BA114-15, at 36-39; BA117, at 49-52; BA138-39, at 19-21; BA141, at 31; R.392, Exs. 3-4. (For his part, although his email said he would “take care of” the retention payment, Mr. Veluchamy denies paying the fee, but admits that he told his daughter, Anu, to pay it. BA226-27, at 423-24.) Mrs. Naidu conceded that it did not “make sense...that the person you’re going to sue is going to review your retention agreement with your lawyer and pay your lawyer’s fee.” BA117-18, at 52-53. Neither of the Naidus reviewed their complaint before it was filed, or saw it until the day before their depositions. BA119, at 58-59; BA140, at 28.

As for the purported unpaid loans that were the basis for the one-day judgments against Mr. Veluchamy personally, the Naidus’ depositions revealed, first, that the supposed loans were loans to companies, not to Mr. Veluchamy. BA120, at 71; BA121-22, at 75-77; BA123, at 84; BA127-28, at 107-09; BA131, at 125; BA143, at 49; BA145, at 61-62. Second, those alleged loans were made well before the promissory notes for the loans were created—in one case three years before. BA123, at 84; BA142-43, at 47-49; BA143, at 51. The promissory notes were Mr.

Veluchamy's idea. BA144-45, at 60-61. Third, the state court complaint falsely alleges that no payments were made on the loans: the Naidus admitted that payments had been made. BA129-30, at 114-17; BA131, at 127; BA132, at 138; BA143, at 50; BA144, at 59-60.

Most significantly, after being shown documents establishing that Mr. Veluchamy orchestrated the "loan," Mrs. Naidu admitted that \$1 million of the \$1.4 million that the Naidus supposedly loaned to Mr. Veluchamy actually originated with Mr. Veluchamy, who transferred \$1 million from one of his companies in India into the Naidus' account (supposedly in payment of an undocumented loan from sometime in the 1990s) and "immediately directed" the Naidus to transfer the \$1 million to a bank account for another Veluchamy company in the United States, which they did.<sup>9</sup> BA120-21, at 72-73; BA124-25, at 96-98; BA126-27, at 101-06; R.392, Exs. 6-7.

Finally, the Naidus testified that it was Mr. Veluchamy, not the Naidus, who gave them most of the documents for production to Bank of America. BA110, at 8; BA111, at 17-18; BA112, at 22; BA113, at 30-31; BA136, at 9-10; BA137-38, at 14-18. Mr. Veluchamy has subsequently acknowledged that he provided some documents to the Naidus (BA153, at 42; BA161, at 89-90)—even though, at the same time, the Veluchamys were refusing to produce any documents to Bank of America on Fifth Amendment grounds.

The circumstances concerning the third intervenor, Mr. Parthasarathy (Mrs. Veluchamy's nephew), are also troubling. He admitted in his deposition that he did not loan \$1.15 million as his state court complaint alleges, but only \$200,000; the loan was to a company, not to Mr. Veluchamy as his complaint alleges; Mr. Veluchamy told him Bank of America was going to get

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<sup>9</sup> Mrs. Naidu claimed she wanted to be "repaid" for the purported 1990s loan, but conceded that "it was Mr. Veluchamy's idea"—to which she readily agreed—"to send [her] the money on June 8th [2009]" so that she could then "immediately" "send it along to VMark" (a Veluchamy company in the United States). BA127, at 106.

ahead of him if he did not go to court; Mr. Veluchamy's daughter, Anu, has paid for Mr. Parthasarathy's lawyers "temporar[il]y"; and the lawyers Anu sent him to (the same firm Mr. Veluchamy chose for the Naidus) came up with the idea of filing a lawsuit. BA235-36, at 43-47; BA237-38, at 52-55; BA239-40, at 60-61; BA241, at 160; BA242, at 162.

### **STANDARD OF REVIEW**

The district court's findings of fact must be affirmed unless they are clearly erroneous; conclusions of law are reviewed *de novo*. *Pro's Sports Bar v. City of Country Club Hills*, 589 F.3d 865, 870 (7th Cir. 2009). To the extent the orders on appeal are considered injunctions (see Def. Br. 3), they will be reversed only for abuse of discretion. *Lawson Prods. v. Avnet*, 782 F.2d 1429, 1437 (7th Cir. 1986). This Court "give[s] substantial deference to the district court's discretionary acts of weighing evidence or balancing equitable factors." *Advent Elecs. v. Buckman*, 112 F.3d 267, 274 (7th Cir. 1997). When the abuse-of-discretion standard applies, the question "is not what this Court would have done in the first instance, but whether this Court has a strong conviction that the district court exceeded the permissible bounds of judgment." *Teamsters Local Unions v. Barry Trucking*, 176 F.3d 1004, 1011 (7th Cir. 1999) (citing *American Hosp. Supply v. Hospital Prods.*, 780 F.2d 589, 594-95 (7th Cir. 1986)). The Court gives "substantial deference" to district court decisions when "the district judge had to act in haste,...had to balance factors which...usually cannot be quantified," and in the "hectic atmosphere" of the district court proceedings "the judge may have developed a feel for the facts and the equities that remote appellate judges cannot obtain from a transcript." *American Hosp.*, 780 F.2d at 594-95. Accord *Lawson*, 782 F.2d at 1436.

### **SUMMARY OF ARGUMENT**

The evidence in this case is voluminous, undisputed, and disturbing. When the Veluchamys borrowed \$40 million, they provided Bank of America with financial statements

showing that they owned assets worth far more than that amount, both in the United States and India. But after Bank of America began collection efforts to recover the more-than \$43 million judgments, it learned that the Veluchamys have engaged in a massive effort to hide, move, and transfer their assets in order to avoid paying the judgments entered against them. The Veluchamys admit that, since defaulting on their Bank of America loans, they have transferred more than \$25 million from the United States to India. Further, because this is a civil case, it may be inferred from the Veluchamys' repeated invocations of the Fifth Amendment that they still own their two homes in India (worth \$15 million) and their business and other assets in India (worth another \$38.6 million). They each have family in India, and they each recently obtained an Indian tax identity number and an Overseas Citizen of India card, which allows them to stay in India forever if they like. On this continent, in contrast, the Veluchamys say they have nothing—they have no money, they have no bank accounts, they have substantially diluted or transferred their ownership interests in businesses in the United States, and Mr. Veluchamy resigned from all of his positions with those businesses. What is more, the Veluchamys claim to be concerned about potential criminal liability. All of this provides the Veluchamys with incentive to flee, not stay.

Under these extraordinary circumstances, the district court acted well within its discretion in concluding there was a significant risk that if the Veluchamys left for India they might never return and the millions of dollars in assets they have in India would remain there, depriving the court of any ability to ensure that the Veluchamys' vast Indian assets would be used to pay the more-than \$43 million judgments entered against them. The Veluchamys' argument on appeal, at bottom, is that the district court can do nothing to prevent this, because the Veluchamys have not previously fled the country and have not been held in contempt—in other words, the court cannot close the barn door until after the horses have escaped. The district court, however, was

not required to wait until it was too late—a court is not powerless to act when, as here, judgment debtors have stripped their U.S. assets of all value and transferred millions of dollars abroad, where they already have existing assets worth tens of millions of dollars. Case law holds that courts, in appropriate circumstances, have the authority to compel judgment debtors to surrender their passports when there is a significant risk that the judgment debtors will leave the country rather than pay the judgments that have been entered against them. If the exceptional circumstances that exist here do not warrant the exercise of judicial discretion to require defendants to turn over their passports, the message to judgment debtors will be that they are free to send money abroad and then decamp, so long as they have not been held in contempt before and have not previously fled the United States.

The Veluchamys have asserted that they sent \$25 million to India to pay legitimate debts there. But the district court invited them on March 16 to show that their story was supported by facts: if they offered evidence establishing that the money was used for legitimate Indian debts, the court would return their passports. Yet nearly five weeks later, the Veluchamys have not taken up the district court's offer; despite filing a motion to permit Mrs. Veluchamy's trip to India, they still have not even tried to persuade the court that they sent \$25 million to India for legitimate reasons. Their failure to even attempt such a showing speaks volumes.

## **ARGUMENT**

### **I. The District Court Has The Authority To Order Judgment Debtors To Surrender Their Passports.**

It is well settled that, in post-judgment proceedings seeking a turnover of assets to pay a judgment, a court may order emergency relief in order to prevent a dissipation of assets. *E.g.*, *Dexia Credit v. Rogan*, 2008 WL 4543013, at \*1 (N.D. Ill. Oct. 9, 2008) (granting preliminary injunction following entry of *ex parte* TRO against judgment debtor freezing assets and

prohibiting transfers or other dispositions of assets, because of evidence that the judgment debtor had “taken steps in the past to hinder Dexia from collecting” and “likely would take further steps”), *aff’d*, *Dexia Credit v. Rogan*, 602 F.3d 879, 882 (7th Cir. 2010) (noting that the TRO evidence showed that the judgment debtor’s wife helped conceal assets by transferring several million dollars into Canadian accounts). See also *SEC v. Lauer*, 52 F.3d 667, 671 (7th Cir. 1995) (affirming preliminary injunction because it was “essential to prevent the dissipation of assets”).

Moreover, the Illinois citation statute,<sup>10</sup> 735 ILCS 5/2-1402, is “liberally construed,” and “gives the court broad powers to compel the application of discovered assets or income in order to satisfy a judgment.” *Dexia Credit v. Rogan*, 629 F.3d 612, 624 (7th Cir. 2010), *pet. for cert. filed* (U.S. Apr. 4, 2011) (No. 10-1209). See 735 ILCS 5/2-1402(c)(1) (courts may “[c]ompel the judgment debtor to deliver up, to be applied in satisfaction of the judgment, in whole or in part, money, choses in action, property or effects in his or her possession or control, so discovered, capable of delivery and to which his or her title or right of possession is not substantially disputed”); 735 ILCS 5/2-1402(a) (courts may “compel[] the application of non-exempt assets or income discovered toward the payment of the amount due under the judgment”).

Courts are not limited to compelling judgment debtors to identify and turn over their assets. To prevent judgment debtors from leaving the country and evading their obligations to turn over assets and pay judgments, courts also have the power to order judgment debtors to surrender their passports temporarily. *Herbstein v. Bruetman*, 241 F.3d 586, 587 (7th Cir. 2001), affirmed an order that a judgment debtor “surrender his passport to ensure that he remained available until he had identified all of his assets.” This Court explained:

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<sup>10</sup> Supplementary proceedings “in aid of judgment or execution” follow the procedure of the state where the district court is located. Fed. R. Civ. P. 69(a)(1); *Star Ins. v. Risk Marketing*, 561 F.3d 656, 661-62 (7th Cir. 2009).

Bruetman can get his passport back whenever he pleases. All he need do is complete the examination, fully disclosing all of his assets. Then the proceedings will end and Bruetman will be free to travel (though his assets must stay behind).

*Id.* at 589. Other courts, too, have ordered that passports be surrendered temporarily in order to prevent the defendant from leaving the country to defraud creditors or avoid paying a judgment. *E.g.*, *Chadwick v. Janecka*, 312 F.3d 597, 600 (3d Cir. 2002) (Alito, J.) (state trial court ordered defendant to surrender his passport because his transfer of \$2.5 million of marital assets to Gibraltar—after a divorce action was filed but before a judgment—“was an attempt to defraud [his wife] and the court”), *rev’g* 2002 WL 12292, at \*1 (E.D. Pa. Jan. 3, 2002); *SEC v. Universal Consulting Resources*, 2010 WL 4873733, at \*2, 7 (D. Colo. Nov. 23, 2010) (granting TRO and ordering defendant—who probably had assets outside the United States that could be used to pay civil penalties obtained by the SEC—to surrender his passport until he “complied fully” with his obligation “to provide a sworn accounting” of his assets).

The common law writ of *ne exeat* also provides a basis for ordering that a passport be turned over to the court temporarily. In *United States v. Shaheen*, 445 F.2d 6 (7th Cir. 1971) (Stevens, J.) (cited Def. Br. 3), this Court reversed an order granting a writ of *ne exeat* that restrained the appellant from leaving the country during the pendency of an action to collect tax deficiencies, but the Court “assume[d] that the district court would have the power” to prevent a party from traveling abroad “on the basis of an appropriate showing.” *Id.* at 11. The showing there—in the context of a case involving a “disputed claim”—was not appropriate because, although the defendant stated that he planned to stay in Rome for a time, there was “no direct proof...that his foreign assets are significant,” “no evidence that [he] is in the process of transferring assets abroad,” and no showing that his assets in the United States would not “satisfy the deficiencies.” *Id.* at 9-11. The situation here, in contrast, is the opposite on every score: Bank of America has received two judgments, the Veluchamys own Indian assets worth more

than \$50 million, they have transferred an additional \$25 million in cash to India, and they both testified that they now have no money at all in the United States to pay the judgments. *Supra* at 20-23.

Other *ne exeat* cases also support the result here. See *United States v. Robbins*, 235 F. Supp. 353, 356 (E.D. Ark. 1964) (writ of *ne exeat* to prevent defendant from leaving the country is warranted when the evidence indicates “a threatened departure of the defendant from the jurisdiction,” which would defeat “the court’s power to give effective *in personam* relief due to its loss of control over the defendant’s person”); *United States v. Lipper*, 1981 WL 1762, at \*1, 5, 7 (N.D. Cal. 1981) (granting writ of *ne exeat* and ordering defendant to surrender his passport; defendant was liquidating his U.S. assets and planned to move permanently to France to escape tax liabilities; the authority to issue the writ “is clearly without question,” and “there is a strong likelihood that a substantial portion of [the defendant’s] assets would be difficult if not impossible to collect absent issuance of the requested writ”). And although some states limit the availability of *ne exeat* to equitable actions, Illinois law—whose procedure governs (*supra* at \_\_\_ n.\_)—provides that the writ is also available in legal actions, even before a judgment is entered. 735 ILCS 5/16-101 (“Relief by *ne exeat* republica may be granted, in cases where the debt or claim is not actually due, but exists fairly and bona fide in expectancy at the time of making application, and in cases where the claim is due; and it is not necessary, to authorize the granting of such relief by *ne exeat*, that the applicant show that his or her debt or claim is purely of an equitable character”).

## **II. The District Court Properly Ordered The Veluchamys To Surrender Their Passports In Light Of The Undisputed, Extraordinary Evidence Here.**

A district court clearly has the power to order judgment debtors to surrender their passports in appropriate circumstances. The Veluchamys argue that “a demonstrated propensity

to flee the country to avoid the litigation, *and* contempt, are required before a judgment debtor's passport may be impounded.” Def. Br. 18 (emphasis added). That is not correct. In *Herbstein*, the defendant previously fled the country, but he had not yet been held in contempt, and the Court did not hold that previous flight was a prerequisite for every passport-surrender order. See 241 F.3d at 587-89. In two other cases cited earlier, *Chadwick*, 312 F.3d at 600, and *Universal Consulting*, 2010 WL 4873733, at \*2, the courts ordered that passports be surrendered even though there was neither contempt nor a propensity to flee. The same was true the first time around in *Merrill Lynch Bus. Fin. v. Kupperman*, 2007 WL 2300737, at \*1 (D.N.J. Aug. 7, 2007) (cited Def. Br. 19 n.5), where the court *granted* a motion to compel surrender of the defendant's passport that remained in place for *10 months* until the defendant filed a motion for its return. And *Wolinetz v. Weinstein*, 2009 WL 936883 (D.N.J. Apr. 6, 2009) (cited Def. Br. 18), involved a *pre-judgment* passport-surrender motion where there were no allegations—much less evidence—of money transfers abroad.

The Veluchamys have not cited any case with anything remotely like the extraordinary circumstances that the *undisputed* evidence here establishes:

- Since defaulting on their Bank of America loans, the Veluchamys have transferred more than \$25 million from their accounts in the United States to their accounts in India. Some \$17 million of this amount was then transferred to the Veluchamys' children's accounts in India, purportedly in payment of United States debts pursuant to “indemnity” agreements never disclosed on the Veluchamys' financial statements. When asked which was false—the financial statements or the “indemnity” agreements—Mr. Veluchamy took the Fifth. *Supra* at 18-19, 23.

- The Veluchamys' financial statement listed two homes in India worth \$15 million, two businesses in India worth \$12 million, and other assets in India worth \$26.6 million.

BA3. When the Veluchamys were asked whether they still had the houses and other assets in India, or whether they had transferred the houses to one of Mr. Veluchamy's sisters to try to shield them from Bank of America, the Veluchamys invoked the Fifth Amendment and refused to answer. *Supra* at 21-22. The refusal to answer in a civil case warrants an adverse inference—here, that the houses and other assets in India still belong to the Veluchamys. *Greviskes v. Universities Research*, 417 F.3d 752, 758 (7th Cir. 2005) (“the district court is permitted to draw negative inferences from the assertion of privileges” under the Fifth Amendment); *Harris v. City of Chicago*, 266 F.3d 750, 753 (7th Cir. 2001) (“The rule that adverse inferences may be drawn from Fifth Amendment silence in civil proceedings has been widely recognized by the circuit courts of appeals, including our own”).

- The Veluchamys' bank accounts in the United States are now empty. The Veluchamys say they cannot pay the judgments and have no money at all, but they continue to live in their 10,000-square-foot home in Oak Brook and their extravagant lifestyle does not seem to have been affected. They admit to spending an estimated \$15,000-\$20,000 per month—all paid for by their children or by various companies owned or operated by their children. *Supra* at 20-21.

- The Veluchamys' ownership interests in their many businesses in the United States have either been significantly diluted or transferred to their children. *Supra* at 14-15.

All this evidence is undisputed. The Veluchamys try to diminish its impact by asserting that Bank of America's expert engaged in “conjecture” about wire transfers, and by referring to what the expert “states” or “describes.” Def. Br. 6, 12. But Bank of America's forensic expert's conclusions and statements are based on uncontradicted documentary evidence and the deposition testimony given thus far. Mr. Veluchamy himself admitted the truth of the expert's central conclusion: the Veluchamys transferred \$24 million to their bank accounts in India after

defaulting on their Bank of America loans in mid-2009. BA209, at 268, 270.

Having failed to offer any evidence of their own, the Veluchamys offer a variety of groundless responses to try to explain away the uncontradicted evidence summarized above:

They argue that their massive transfers of money to India occurred before the judgments were entered. Def. Br. 6, 13. But fraudulent transfers that occurred up to four years before a judgment may be recovered. 740 ILCS 160/10. Besides, because there is only a 14-day window between the date of a judgment and when collection efforts may begin (Fed. R. Civ. P. 62(a)), no defendant bent on sending assets overseas—particularly the amounts involved here—would wait until the last minute to begin the process. The judgments here could hardly have been a surprise. The Veluchamys admitted they had not repaid the loans, their defenses and counterclaims were based on false allegations, and Judge Coar applied well-settled law in rejecting their arguments. *Supra* at 3 n.2; R.154; R.220. The Veluchamys have not even bothered to appeal the underlying judgments.

The Veluchamys contend they “have done nothing remotely rising to the level of contempt” and “have done nothing to ‘drag out’ the collection proceedings.” Def. Br. 20. But they were sanctioned twice in the underlying litigation for refusing to respond to discovery. R.66; R.150 at 14. In the citation proceedings that started in January 2011, they refused to provide *any* documents and refused to be deposed; they did not produce any documents or submit to depositions until April. They based their refusal to cooperate on blanket invocations of the Fifth Amendment. But it has long been established that “[t]here is no blanket Fifth Amendment right to refuse to answer questions in noncriminal proceedings”—“[t]he privilege must be specifically claimed on a particular question.” *Capitol Products v. Herson*, 457 F.2d 541, 542 (8th Cir. 1972) (rejecting judgment debtor’s refusal to answer questions during post-judgment proceedings to discover his assets). This Court rejected a judgment debtor’s blanket

invocation of the Fifth Amendment more than 30 years ago. *Martin-Trigona v. Gouletas*, 634 F.2d 354, 357, 360-62 (7th Cir. 1980). And the district court ruled on April 1 that the Veluchamys' refusal to produce documents violated its orders. BA11. Even now, the Veluchamys have made the astonishing claim they did not realize that Bank of America was interested in 2011 information about current assets. *Supra* at 17. And we now know from the intervenors' depositions that the Veluchamys orchestrated two sham lawsuits and one-day judgments in state court so that their relatives who served as plaintiffs in those suits could seek priority as judgment creditors ahead of Bank of America. *Supra* at 24-27.

The Veluchamys argue that Bank of America's "proper remedy" is to "seek[] to recover the assets in question from the transferees," or attempt to enforce its judgments in India. Def. Br. 22-23. As they surely know, it would be a fool's errand to attempt to litigate in India. American judgments may not be enforceable in India, and in any event the morass of the Indian judicial system is enough to cause litigants to look with envy at the pace of *Jarndyce v. Jarndyce*. See Indian Code of Civil Procedure 1908, §44A (judicial decrees of "any reciprocating territory...may be executed" in India); *Enforcing Foreign Judgments In India* (<http://madaan.com/enforcingjudgment.html>) (the United States is not a "reciprocating territory"); *Report: India court 466 years behind schedule* (Feb. 12, 2009) (<http://www.msnbc.msn.com/id/29164027>) ("The High Court in New Delhi is so behind in its work that it could take up to 466 years to clear the enormous backlog, the court's chief justice said in a damning report that illustrates the decrepitude of India's judicial system"); Amy Kazmin, *India's long and winding legal system* (Mar. 7, 2011) (<http://blogs.ft.com/beyond-brics/2011/03/07/indias-long-and-winding-legal-system>) ("In some [Indian] courtrooms, families are still fighting decades-old property battles launched by their forefathers several generations earlier").

The Veluchamys note that "they and their children live and work" in the United States.

Def. Br. 21. But they have not offered any evidence to provide a legitimate explanation for why they paid alleged United States debts (the so-called “indemnifications”) to their children—who have U.S. bank accounts—in India (from where the children apparently brought back some of the money to buy their parents’ assets in the United States). *Supra* at 18-19. And since the Veluchamys obviously need money—as Mrs. Veluchamy admitted, “I need cash too, right?” (BA196, at 120)—and they claim to have *no* money in the United States, it is no leap at all to conclude that there is a significant possibility that the Veluchamys will leave the United States for India, where they still have plenty of money, along with houses and other assets worth tens of millions of dollars. See *United States v. Anderson*, 2011 WL 221882, at \*14-15 (D.S.C. Jan. 24, 2011) (ordering the defendant to surrender her passport because “her assets simply do not appear to be sufficient to ensure that she would return to the United States”; “there exists a realistic possibility that Anderson may not return from another international trip”).

The Veluchamys state that they have not been found guilty of a crime or sued for fraud (Def. Br. 10), but the evidence discussed above indicates both criminality and fraud: the evidence strongly suggests that the Veluchamys may have committed bank fraud (failure to disclose the purported indemnity agreements) and tax fraud (failure to disclose foreign bank accounts), and they have used their charitable foundation not for charitable purposes, but to funnel money into family-owned commercial enterprises. *Supra* at 7 n.5, 19-20.

The Veluchamys criticize Bank of America for “offer[ing] no evidence” of what was in the Veluchamys’ empty safe deposit boxes. Def. Br. 23. How could Bank of America possibly know that? In any event, it is certainly suspicious that the Veluchamys opened the large boxes for the first time in ten years less than a week after the \$43 million judgments were entered and cleared out whatever was in them. Just three months later, Mrs. Veluchamy claimed that she was looking in the safe deposit boxes for an old insurance policy, but she says she does not remember

why. *Supra* at 24.

On the undisputed facts before it on March 16, the district court properly concluded that there “is certainly the appearance of” an “emergency.” A35. The Veluchamys had shipped millions of dollars to India, leaving nothing here; they have houses, businesses, and family in India; their ownership interests in businesses in the United States had been substantially diluted or transferred to relatives; Mr. Veluchamy had recently resigned from all of his positions with companies here; the Veluchamys had recently obtained Indian identity documents; the Veluchamys had stonewalled on discovery of their assets; and the Veluchamys were worried about possible criminal prosecution in the United States. All of this indicated a significant risk that the Veluchamys would go where their money was—India.

The court acted quickly to prevent that from occurring, but explicitly designed its order to be temporary (A6 ¶ 3), pending the Veluchamys’ provision of satisfactory evidence that the millions of dollars they sent to India “were transferred for legitimate reasons other than to remove assets from the jurisdiction of the Court or hide it from creditors” (A6 ¶ 2(b)). The court thought it “reasonable” to place the “burden of persuasion” on the Veluchamys because they know how the money was used. A34, 57. Since March 16, the Veluchamys have had plenty of time to submit evidence to the district court to support their story that they sent \$25 million to India to pay legitimate debts, but they have not even tried to do so. If that has lengthened the time that their passports have been kept in the district court, they have only themselves to blame. The Veluchamys’ failure to even attempt to argue that the transfers were for legitimate debts—even in their recent request that Mrs. Veluchamy be allowed to travel—leads to an inevitable conclusion: they transferred millions to India not for legitimate purposes, but to hide assets from Bank of America and other creditors. Mr. Veluchamy’s own testimony establishes that millions were transferred to their children in India for purported U.S. debts to the children, not Indian

debts, as his lawyer had previously asserted. *Supra* at 7 n.5, 18-19.

To prevent judgment debtors and their cohorts from shielding assets from judgment creditors, court may enter orders “tailored to the scope of [the] alleged misconduct.” *Dexia*, 602 F.3d at 885 (affirming order barring judgment debtor’s wife from continuing to transfer assets to Canada). It is well settled that “[a] significant risk of transfer beyond the court’s jurisdiction of the assets of a judgment debtor that might be used to satisfy the judgment against him qualifies as irreparable injury.” *Dexia*, 2008 WL 4543013, at \*11. Permitting judgment debtors to flee the United States so they can join their assets abroad would be an equally irreparable injury to a judgment creditor. The order here was tailored to the unique circumstances confronting the court; no other order could have provided effective relief to a judgment creditor owed \$43 million by judgment debtors harboring tens of millions of dollars in assets overseas. In *Herbstein*, the defendant attempted to collect the judgment for eight years. 241 F.3d at 589. Bank of America hopes to avoid that.

To be sure, if the Veluchamys recover their passports and flee to India, the district court could still order them to transfer assets to the United States to satisfy the judgments here. *E.g.*, *United Int’l Holdings v. Wharf (Holdings)*, 210 F.3d 1207, 1234-36 (10th Cir. 2000), *aff’d*, 532 U.S. 588 (2001). But once they are safely in India, the court would have no means of enforcing such an order. It would be faced with the modern equivalent of Andrew Jackson’s reported statement in the wake of *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832): “Well, John Marshall has made his decision, now let him enforce it.” Jean Edward Smith, *JOHN MARSHALL: DEFINER OF A NATION* 518 (1996).

A court is not required to wait until its orders can have no practical effect. The order here did not impound the Veluchamys’ passports “as a form of security” (*Herbstein*, 241 F.3d at 589) or as a “permanent punishment for failure to repay a bank loan” (Def. Br. 25), but as a means to

ensure that the court would have the ability to enforce an order to repatriate assets held by the judgment debtors abroad. Under the unique circumstances here—established by undisputed evidence—the district court did not abuse its discretion in ordering the Veluchamys to turn in their passports temporarily, to prevent them from evading their obligation to pay the judgments and leaving the United States. The Veluchamys may retrieve their passports at any time by showing that the transfers to India were for legitimate debts or by paying the judgments.

### **III. The Veluchamys’ Remaining Arguments Are Meritless.**

The cases discussed earlier (at 30-32) demonstrate that the right to travel abroad does not trump a judgment creditor’s right, under appropriate circumstances, to temporarily prevent a judgment debtor from leaving the country to avoid paying a judgment. The Veluchamys contend that their right to travel cannot be interfered with (Def. Br. 12-13, 15, citing *Kent v. Dulles*, 357 U.S. 116 (1958)), but since *Kent* “[t]he Court has made it plain that the *freedom* to travel outside the United States must be distinguished from the *right* to travel within the United States.” *Haig v. Agee*, 453 U.S. 280, 306 (1981). While the constitutional right to interstate travel is “virtually unqualified,” the “‘right’ of international travel has been considered to be no more than an aspect of the ‘liberty’ protected by the Due Process Clause of the Fifth Amendment,” which “can be regulated within the bounds of due process.” *Id.* at 307. “The Constitution’s due process guarantees call for no more than what has been accorded here: a statement of reasons and an opportunity for a prompt postrevocation hearing.” *Id.* at 309-10. The district court here complied with *Agee*: it gave detailed reasons for its decision, and it offered the Veluchamys an opportunity to proffer evidence that their purported justification for transferring millions of dollars to India—paying legitimate Indian debts—had some basis in reality. More than a month has since elapsed, but the Veluchamys have not even attempted to make such a showing in the district court. The Veluchamys’ other constitutional argument—that because Mrs. Veluchamy is

planning to attend a Hindu retreat in India in May the district court's order "amounts to an unconstitutional prior restraint upon her right to free exercise of religion" (Def. Br. 15)—is now moot given the district court's April 20 order.

Finally, there are two problems with the Veluchamys' footnote argument that the district court violated Rule 52 because it "did not make findings of fact and conclusions of law justifying the forfeiture of the Appellants' passports." Def. Br. 24 n.6. First, the Veluchamys have waived this argument. *Williams v. General Elec. Capital*, 159 F.3d 266, 274 (7th Cir. 1998) ("plaintiffs' claim regarding adequacy of representation, which appeared in their brief in a solitary footnote, is insufficiently developed on appeal and is therefore waived"); *Reed-Union Corp. v. Turtle Wax*, 77 F.3d 909, 913 (7th Cir. 1996) ("Reed-Union devotes only one page in its brief to this subject. Its presentation is so sketchy that we deem the matter waived").

Second, there is no rigid requirement under Rule 52 for written findings and conclusions. It is perfectly acceptable for a court to "pronounce[] its reasons and conclusions orally." *Dexia*, 602 F.3d at 884-85. So long as there is "a sufficient record from which [this Court] can render a decision," Rule 52 is satisfied.<sup>11</sup> *Id.* at 885. That is the situation here. The district court explained the basis for its decision at length during two hearings. *Supra* at 6-9. And as this brief explains in detail, the undisputed evidence presented to the court and uncovered since March 16 fully supports the district court's ruling.

## CONCLUSION

The district court's judgment should be affirmed.

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<sup>11</sup> In addition, a failure to satisfy Rule 52 is "harmless error if a reviewing court 'can ascertain from the record that one party or the other was clearly entitled to judgment in its favor,' or if there is no danger of confusion about the basis of the decision" and "the record supports the court's order." *Attorney General of Oklahoma v. Tyson Foods*, 565 F.3d 769, 782 (10th Cir. 2009).

April 20, 2011

Respectfully submitted,

BANK OF AMERICA , N.A.

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**CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)**

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). According to the word processing program used to prepare this brief (Word 2007), this brief contains 13,953 words, excluding the parts of the brief exempted to Fed. R. App. P. 32(a)(7)(B)(iii).

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James C. Schroeder

**CIR. R. 31(e) CERTIFICATE**

I hereby certify that I have filed this brief with the Court electronically on a virus-free disk in non-scanned PDF format.

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James C. Schroeder

## **CERTIFICATE OF SERVICE**

I, Shennan Harris, hereby certify that two copies of the foregoing Brief of Plaintiff-Appellee Bank of America and one copy of the Supplemental Appendix of Plaintiff-Appellee Bank of America were served upon each of the following by messenger on April 20, 2011:

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